

# **CHAPTER FIVE**

## **The Launching of the Constitutional Process**

# From the Mounting Tensions to the Continental Congresses

- The Constitution of the United States is the central instrument of American government and the supreme law of the land.
- The American Constitution is the world's oldest written constitution in force, one that has served as the model for a number of other constitutions around the world.
- The path to the Constitution was neither straight nor easy.
- A draft document emerged in 1787, but only after intense debate and six years of experience with an earlier federal union.
- The 13 British colonies in America declared their independence from their motherland in 1776.
- A year before, war had broken out between the colonies and Britain, a war for independence that lasted for six bitter years.
- While still at war, the colonies — now calling themselves the United States of America — drafted a compact that bound them together as a nation.
- The compact, designated the "Articles of Confederation and Perpetual Union," was adopted by a congress of the states in 1777 and formally signed in July 1778.
- The Articles became binding when they were ratified by the 13th state, Maryland, in March 1781.

# The Articles of Confederation

[March 1, 1781]

- The Articles of Confederation devised a loose association among the states and set up a federal government with very limited powers.
- In such critical matters as defense, public finance, and trade, the federal government was at the mercy of the state legislatures.
- It was not an arrangement conducive to stability or strength.
- Within a short time the weakness of the confederation was apparent to all.
- Politically and economically, the new nation was close to chaos.
- In the words of George Washington, who would become the first president of the United States in 1789, the 13 states were united only "by a rope of sand."

# Government Under the Articles of Confederation [1781 – 1789]

- *“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 II);*
- *“The said states enter into a firm league of friendship with each other...binding themselves to assist each other” (Article III);*
- *“Delegates shall be annually appointed by the states to meet in Congress...with a power reserved to each state to recall its delegates and to send others in their stead” (Article V);*
- *“No state, without the consent of the United States shall send any embassy or enter into agreement, alliance or treaty with any King, prince or state” (Article VI);*
- *“The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers...” (Article X).*

# Framing the Constitution

- It was under these inauspicious circumstances that the Constitution of the United States was drawn up.
- In February 1787 the Continental Congress, the legislative body of the republic, issued a call for the states to send delegates to Philadelphia, in the state of Pennsylvania, to revise the Articles.
- The Constitutional Convention convened on May 25, 1787, in Independence Hall, where the Declaration of Independence had been adopted 11 years earlier, on July 4, 1776.
- Although the delegates had been authorized only to amend the Articles of Confederation, they pushed aside the Articles and proceeded to construct a charter for a wholly new, more centralized form of government.
- The new document, the Constitution, was completed September 17, 1787, and was officially adopted March 4, 1789.
- The 55 delegates who drafted the Constitution included most of the outstanding leaders, or Founding Fathers, of the new nation.
- All agreed on the central objectives expressed in the preamble to the Constitution: "We the people of the United States, in order 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 to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

# The Constitution of the United States of America

## [September 17, 1787]

- The U.S. Constitution calls itself the "supreme law of the land."
- Courts have interpreted this clause to mean that when state constitutions or laws passed by state legislatures or by the national Congress are found to conflict with the federal Constitution, these laws have no force;
- Final authority is vested in the American people, who can change the fundamental law, if they wish, by amending the Constitution;
- The people do not exercise their authority directly, however.
- They delegate the day-to-day business of government to public officials, both elected and appointed.
- The power of public officials is limited under the Constitution.
- Most commonly, the American people express their will through the ballot box.
- The Constitution, however, does make provision for the removal of a public official from office, in cases of extreme misconduct or malfeasance, by the process of impeachment: Article II, Section 4 reads: "The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

# Basic US Constitutional Principles

## *The Principles of Government*

*(Although the Constitution has changed in many aspects since it was first adopted, its basic principles remain the same now as in 1789)*

- The three main branches of government — executive, legislative, judicial — are separate and distinct from one another. The powers given to each are delicately balanced by the powers of the other two. Each branch serves as a check on potential excesses of the others.
- The Constitution, together with laws passed according to its provisions and treaties entered into by the president and approved by the Senate, stands above all other laws, executive acts, and regulations.
- All persons are equal before the law and are equally entitled to its protection. All states are equal, and none can receive special treatment from the federal government. Within the limits of the Constitution, each state must recognize and respect the laws of the others. State governments, like the federal government, must be democratic in form, with final authority resting with the people.
- The people have the right to change their form of national government by legal means defined in the Constitution itself.

# Basic US Constitutional Principles

## OBJECTIVES OF THE FEDERAL SYSTEM

- ❑ *"... To Form a More Perfect Union"*
- ❑ *"... To Establish Justice"*
- ❑ *"... To Insure Domestic Tranquility"*
- ❑ *"... To Provide for the Common Defense"*
- ❑ *"... To Promote the General Welfare"*
- ❑ *"... To Secure the Blessings of Liberty"*

# For Further Reading...

- The primary aim of the Constitution was to create a strong elected government, directly responsive to the will of the people. The concept of self-government did not originate with the Americans; indeed, a measure of self-government existed in England at the time. But the degree to which the Constitution committed the United States to rule by the people was unique.
- The Articles of Confederation had tried to unite these self-governing states. The Constitution, by contrast, established a strong central, or federal, government with broad powers to regulate relations between the states and with sole responsibility in such areas as foreign affairs and defense.
- Centralization proved difficult for many people to accept. America had been settled in large part by Europeans who had left their homelands to escape religious or political oppression. These settlers highly prized personal freedom, and they were wary of any power — especially that of government — that might curtail individual liberties.

## For Further Reading...

- The Constitution and the federal government stand at the peak of a governmental pyramid that includes local and state jurisdictions. In the U.S. system each level of government has a large degree of autonomy.
- No product of human society is perfect. Despite its amendments, the Constitution of the United States probably still contains flaws that will become evident in future periods of stress. But two centuries of growth and unrivaled prosperity have proven the foresight of the 55 men who worked through the summer of 1787 to lay the foundation of American government.
- In the words of Archibald Cox, former solicitor general of the United States, "The original Constitution still serves us well despite the tremendous changes in every aspect of American life because the framers had the genius to say enough but not too much.... As the plan outlined in the Constitutional Convention succeeded, as the country grew and prospered both materially and in the realization of its ideals, the Constitution gained majesty and authority far greater than that of any individual or body of men."

# For Further Reading...

## What is the Constitution?

- The Constitution is the basic and supreme law of the United States. It prescribes the structure of the U.S. Government, provides the legal foundation on which all its actions must rest, and enumerates and guarantees the rights due all its citizens. The Constitution is a document prepared by a convention of delegates from 12 of the 13 States that met at Philadelphia in 1787.
- The original charter, which replaced the Articles of Confederation and which became operative in 1789, established the United States as a federal union of States, a representative democracy within a republic.
- The framers provided a Government of three independent branches. The first is the legislature, which comprises a two-house or bicameral Congress consisting of a Senate, whose Members are apportioned equally among the States, and a House of Representatives, whose Members are apportioned among the States according to population. The second, the executive branch, includes the President and Vice President and all subordinate officials of the executive departments and executive agencies. The third branch, the judiciary, consists of the Supreme Court and various subordinate Federal courts created by public law.
- The 27 amendments approved since 1791 are also an integral part of the Constitution. These include amendments 1 through 10, known collectively as the Bill of Rights, and amendments 11 through 27, which address a wide range of subjects.

# For Further Reading...

## What were the basic principles on which the Constitution was framed?

- That all States would be equal. The National Government cannot give special privileges to one State.
- That there should be three branches of Government--one to make the laws, another to execute them, and a third to interpret them.
- That the Government is a government of laws, not of men. No one is above the law. No officer of the Government can use authority unless and except as the Constitution or public law permits.
- That all men are equal before the law and that anyone, rich or poor, can demand the protection of the law.
- That the people can change the authority of the Government by changing (amending) the Constitution. (One such change provided for the election of Senators by direct popular vote instead of by State legislatures).
- That the Constitution, and the laws of the United States and treaties made pursuant to it, are "the supreme Law of the Land."

# For Further Reading

## What is the Bill of Rights?

- The Bill of Rights is a series of constitutionally protected rights of citizens.
- The first 10 amendments to the Constitution, ratified by the required number of States on December 15, 1791, are commonly referred to as the Bill of Rights.
- The first eight amendments set out or enumerate the substantive and procedural individual rights associated with that description.
- The 9th and 10th amendments are general rules of interpretation of the relationships among the people, the State governments, and the Federal Government.
- The ninth amendment provides that the "enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
- The 10th amendment reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

# For Further Reading

## What are the rights enumerated in the Bill of Rights?

- Right to freedom of religion, speech, and press (Amendment I);
- Right to assemble peaceably, and to petition the Government for a redress of grievances (Amendment I);
- Right to keep and bear arms in common defense (Amendment II);
- Right not to have soldiers quartered in one's home in peacetime without the consent of the owner, nor in time of war except as prescribed by law (Amendment III);
- Right to be secure against "unreasonable searches and seizures" (Amendment IV);
- Right in general not to be held to answer criminal charges except upon indictment by a grand jury (Amendment V);
- Right not to be put twice in jeopardy for the same offense (Amendment V);
- Right not to be compelled to be a witness against oneself in a criminal case (Amendment V);
- Right not to be deprived of life, liberty, or property without due process of law (Amendment V);
- Right to just compensation for private property taken for public use (Amendment V);
- Right in criminal prosecution to a speedy and public trial by an impartial jury, to be informed of the charges, to be confronted with witnesses, to have a compulsory process for calling witnesses in defense of the accused, and to have legal counsel (Amendment VI);
- Right to a jury trial in suits at common law involving over \$20 (Amendment VII);
- Right not to have excessive bail required, nor excessive fines imposed, nor cruel and unusual punishments inflicted (Amendment VIII).