

STATE CONSTITUTIONS, THE ARTICLES OF CONFEDERATION, AND SHAY'S REBELLION, 1777-1787

I. After the war, the US still faced with many problems

- A. Indian problem.
- B. When and How will West be settled.
- C. How can Americans reconcile power with liberty?
 1. Britain had said that all authority to govern lay with King and Parliament; Americans said no.
 2. How can Americans solve the problem of having a central government with real power and still give states a certain degree of autonomy?
 3. A series of tasks that had to be undertaken simultaneously.
 4. Had to devise a new government at both the national and local levels.

II. State Constitutions

- A. By 1777, 11 of 13 colonies had adopted a new state constitution
 1. Connecticut and Rhode Island continued to operate under their Royal Charters.
- B. Written Constitutions made by states.
 1. Separation of powers among branches of government
 2. British had practiced it, but colonists said King had conspired to wipe out this separation.
- C. 3 branches used as watchdogs over one another.
 1. System of checks and balances.
- D. Constitutions approved by conventions of delegates elected directly by the people.
 1. Fulfills the contract theory
 2. People considered the ultimate source of authority.
- E. Conventions sought to limit the power of the Executive.
 1. Executive was greatest threat to freedom: King, Royal Governors.
- F. In 11 new constitutions, Governors all had veto stripped.
 1. In 10 states, Governor had a 1-year term of office.
 2. In 8 states, Governor elected by the Legislature
- G. Governor's Council converted into a Senate.
 1. Now exclusively a legislative body.
 2. Elected, not appointed.
- H. Adoption of Bills of Rights.
 1. Natural Rights that no government should be allowed to interfere with.
 2. Freedom of Speech, Freedom of Press, Freedom of Religion, Freedom to assemble peaceably.
 3. Protection against unreasonable search and seizure.
 4. No general search warrants--had to be specific. Exclusionary Rule: If police find something else other than what they are looking for, they can't use it.
 5. Right to trial by jury of peers, Right to a fair trial, Right to counsel.

6. Right to be formally charged. If not indicted, can be freed on *Writ of Habeas Corpus* (an order commanding that a prisoner be brought to court to show why he or she is being detained)
7. Right not to be tortured.
8. Do not have to give testimony against yourself.
9. Life, liberty and property cannot be taken from you except by due process of law and with reasonable compensation.

III. The Articles of Confederation

- A. Relatively easy for colonists to make up state governments
 1. Had colonial charters to build upon.
 2. Change, adapt and tinker.
 3. Basic outline of government similar.
- B. However, no good outline of how to construct central government.
 1. Fear of centralized government
 2. Yet, had to have some kind of unified government
 - a. Had to unite to fight the Revolutionary War.
 - b. Feeling that union during the war had to be continued after the war to survive
- C. Second Continental Congress was first national government
 1. Ad hoc body. (for the particular end or case at hand without consideration of wider application)
 2. Had no real legal authority.
 3. Made to conduct the war.
 4. Need felt to put on a more legal footing.
- D. 12 June 1776: Committee was appointed led by Pennsylvania's John Dickinson to come up with a National government
 1. Came up with Articles of Confederation.
 2. 15 Nov. 1777: Second Continental Congress endorses the Articles of Confederation
 3. 1 March 1781: Maryland is last state to approve the Articles
 - a. MD had no Western land claims.
 - b. Smaller states feared that in time, the larger states with land claims would overshadow them.
 - c. Maryland insisted that states with land claims cede them to the National Government
- E. Articles of Confederation create:
 1. A perpetual league of friendship among otherwise sovereign states.
 2. Each state retain its independent sovereignty (supreme power, freedom from external control)
 3. Powers not expressly given to National Government retained by the states.
 4. Government consisted of a Unicameral Legislature.
 - a. Congress composed of delegates chosen by the state legislatures
 - b. Each state had only one vote in Congress, but had to have between 2 and 7 delegates present in Congress

5. Congress had the following powers

a. authority over external affairs.

- 1) Could send to and receive delegations from other countries.
- 2) Make war or negotiate peace.
- 3) Sole authority on National Defense.
- 4) Regulate foreign trade.

b. Postal service

c. Right to coin, issue, and borrow money

d. Had rights to all land ceded by the states: National Domain

e. Paper Authority to settle disputes between states, but no power to act

6. Needed nine states approval to pass a law

7. Needed unanimous vote to amend the Articles

8. Certain powers not given to Confederation Congress

a. No power to tax: Where was money to come from?

- 1) Confederation Congress allowed to make requisitions upon states.
- 2) Each state had a money quota to pay the Confederation Government.
- 3) No machinery for enforcing the states payment quota.

b. Interstate commerce left to states.

c. Confederation Government can't coerce anyone to do anything.

- 1) No executive to enforce the law.
- 2) No judiciary to punish the lawbreakers.

F. Weaknesses of Articles of Confederation.

1. Confederation Government does not impinge upon people at all.

- a. Depends upon states to enforce the laws.
- b. If states do not enforce laws, there is no way of enforcing them.
- c. No executive to enforce law

2. Lack of money quickly becomes a problem for Confederation Government since there is no power to enforce taxation

a. What to do? Print paper money

- 1) If not back up, soon becomes worthless.
- 2) That option exhausted during the war.

b. Sell land from public domain, but does not raise enough money

c. Borrow money

- 1) If no money coming in, how can you pay it back?
- 2) Confederation Government sold bonds, which sold well initially, but government not bringing in enough money to pay off bonds.

3. Difficulty of amending the Articles of Confederation.

a. *Impost Amendment*: A tariff of 5% --all money goes to the Confederation Government

b. 12 states ratify, 1 (Rhode Island) refuses to ratify, so the amendment dies.

III. The Critical Period Under the Articles of Confederation (1781-1787)

A. The National Domain.

1. Confederation Congress determined to get as much money as possible from National Domain.

2. Want to do it in an orderly way: Want settlement to proceed from previously settled eastern areas to the west.

B. 8 May 1785: Land Ordinance of 1785.

1. Land not to be opened to settlement until surveyed by the National Government and sold at auction to the highest bidder.

2. Surveyed into specific units.

a. townships divided into squares 6 miles long east to west and north to south, producing a township of 36 square miles.

b. the township would be divided into thirty six lots, each lot being 640 acres, one square mile

c. 1 plot set aside for a public school.

3. The Land ordinance shows many important points:

a. Attempt to make money for government

b. Minimum price for selling land: one dollar an acre.

c. If land did not get one dollar, land withdrawn to be sold again later.

d. Problem: The average farmer did not have \$50 pass thru his hands in a year.

e. Average settler did not have 640 acres: more than he could farm.

4. The Land Ordinance favored speculators, who re-sold land at higher prices.

5. Results of Land Ordinance in money terms was disappointing.

6. Over time, the law is changed.

a. Minimum acreage reduced - lowered to 40 acres, which seemed to be the lowest unit a farm could survive upon.

b. Price reduced, could be sold for below a dollar, credit was allowed.

C. Northwest Ordinance of 1787 (13 July 1787) and the Southwest Ordinance of 1789

1. Established how territories in US will be governed.

2. Fall under sole authority of US government

3. Policy of Congress to raise the territories to an equality with the original 13 states.

4. Establishes statehood process.

5. How did a territory become a state?

a. 3-stage process leading to statehood:

1) 1st stage: When 1st opened, a territory ruled by a Governor and three

judges appointed by Congress.

2) 2nd stage: 5000 free male adults (excluding Indians) in territory, then the territory could elect a legislature.

a) But Governor still had a veto.

b) Could send delegates to Congress, but they were only allowed to observe.

3) 3rd stage: 60,000 free male adults reached, territory could draw up a state constitution which had to be submitted to the Federal Congress.

b. Grant to inhabitants of region of freedom of worship, right of trial by jury, and public support of education with other substantive and procedural due process rights.

c. Congress forbid slavery in NW Territory, but not in SW Territory

d. At this time, slavery was legal in all 13 colonies.

e. But, slavery did not exist extensively North of Maryland.

f. Slaves were viewed as essential to the cultivation of the South's great staple crops.

g. By the 1780's, slavery dead or dying in the North.

1) Maryland and Pennsylvania had longstanding border dispute.

2) Hired 2 surveyors to map a line which would solve the dispute.

3) Becomes the Mason-Dixon Line, and it acquired symbolic significance of separating the states with slavery dying and with slavery thriving.

IV. Weaknesses of the Articles of Confederation

A. Many saw the Articles of Confederation as too weak from the start.

1. Confederation Government constantly has to borrow money

2. Financial Crisis always looming.

3. Economic relations between the states not covered.

a. A number of states shared waterways had disputes.

1. NY-NJ wrangle over the Hudson.

2. MD-VA argue over the Chesapeake Bay.

B. Maryland and Virginia realize the problem is much bigger than them.

1. Virginia's James Madison supports John Tyler's call in 1786 to invite ALL states to send delegations.

2. Come to Annapolis, MD to negotiate a kind of treaty.

C. 11-14 Sept. 1786: Annapolis Convention.

1. Delegates from 5 states attended.

2. Mainly met to deal with commercial relations between states.

3. Also to deal with omitted powers in the Articles of Confederation

4. Showed a lack of interest in National Affairs.

5. Confederation Congress – itself - sometimes did not have a quorum (9 states) to conduct business.

6. Most Americans identified with their state rather than their nation.

7. Alexander Hamilton, age 27, of New York - Proposed that Annapolis Convention call another convention to consider meeting the needs not covered by the Articles of Confederation.

8. After the convention, a series of disorders broke out: most important was Shays's Rebellion

V. Shay's Rebellion

A. Gave the call for a constitutional convention an urgency that had previously been lacking.

B. Rebellion was the result of sharp economic downturn which had followed the American Revolution.

C. There was an economic depression, and many poor farmers were struggling to make ends meet.

D. Due to extremely high inflation, (Gold and Silver valuable, but paper money's value falling), creditors insisted on being paid their loans in specie.

E. Borrowers now had to pay back money when their income was declining.

F. Wave of bankruptcies.

1. Farms and businesses out of business.

2. Farms sold for far less than real value.

3. Many debtors went to jail because they could not repay their debts.

4. Many honest farmers lost their farms and livelihoods.

D. People sought redress from their state governments.

1. Confederation Government had no authority in these matters.

2. People applied for relief.

a. Pass Stay Laws: Declaring a moratorium on the use of courts by creditors (usually 1-2 year period).

b. Reform of Legal process itself: Said was skewed in favor of the creditors.

c. Pass legal tender acts: Make paper money and compel creditors to accept that money at face value, although paper money worth far less than face value.

3. Pressure to pass these laws proved irresistible.

4. Creditor class furious, saw this as a virtual confiscation of their property.

5. In Massachusetts creditor/debtor class lines sharply drawn.

a. Upper vs. Lower classes.

b. Most debtors lived in Western Mass.

c. Most creditors lived in Eastern Mass (ports).

6. Massachusetts Legislature dominated by Eastern commercial interests, and refused to pass any relief laws.

7. In Oct. 1786, group of farmers led by Daniel Shay's – a revolutionary war veteran who was broke - began an armed march on Federal arsenal at Springfield, Massachusetts then moved to Boston.

8. Massachusetts Governor James Bowdoin called out Boston militia.

a. Met column outside of Springfield (4 Feb. 1787).

b. Shay's forces defeated by troops under Benjamin Lincoln, and he was captured.

VI. Fear of descent into anarchy

A. Shay's Rebellion represented a threat to law and order.

B. States were being run poorly by a group of new men in politics who had no economic or political training

C. Also, the state governments susceptible to popular pressure.

D. One remedy: transfer power from state to Federal Government.

1. From the beginning many felt the Confederation Government was too weak.

a. Constant inability of Confederation Government to act.

b. Confederation Government always bankrupt.

E. Dec. 1786: Confederation Congress convenes.

1. Gave legitimacy to Annapolis call for convention: Endorsed it 21 Feb. 1787.

2. Said sole purpose of the convention was to *revise* the Articles of Confederation.

3. NOT come up with a whole new document.

F. James Madison writes Vices of the Political System of the United States

1. Madison reviewed the familiar criticisms of the Confederation:

a. the refusal of the states to honor the requisitions of Congress or to respect its authority, notably in foreign affairs

b. their inability to deal fairly with one another or to agree on measures vital to the common interest

c. And, above all, the failure of the framers of the Articles to recognize that the resolutions of Congress had to rest on the same coercive powers that gave force to all ordinary acts of government.

2. With these points detailed, however, he took up another set of issues. "In developing the evils which viciate the political system of the U.S. it is proper to include those which are found within the states individually, as well as those which affect the states collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a complete remedy."

3. In the states the "multiplicity," "mutability," and "injustice" of the laws passed since independence has called "into question the fundamental principle of republican government, that the majority who rule in such governments, are the safest guardians both of public good and private rights."

4. The simple truth, Madison believed, was that incompetent legislators were passing too many laws, and these poorly drawn acts were being repealed or revised before anyone could discover how well they were actually working. Such proceedings brought the very concept of law into contempt. In a republic obedience to law rested neither on the efficiency of monarchy or on the influence of an able aristocracy but on the free compliance of citizens who believed that the laws were rightly made and fairly executed.

5. More alarming than the laws being poorly drawn, was that there were unjust. Madison believed the laws making paper money legal tender for the payment of debts violated the rights of the people who had loaned money.