

A HISTORY OF THE UNITED STATES CONSTITUTION



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NO GOVERNMENT existed before 1788 that provided security and freedom or guaranteed "life, liberty, and the pursuit of happiness." The Founding Fathers who drafted our Constitution were familiar with the lessons of British history and the possibilities of oppression. The Magna Carta, which is the basis of American liberty, was the result of a struggle by the people against the tyranny of their rulers. The people decided to assert the "ancient rights of Englishmen," as given to them by the Charter of Henry I. The Magna Carta provided the protection of written law.

No one was denied justice, no one was imprisoned or dispossessed of property or rights except by the judgment of his peers.

Thus the right of trial by jury and the right to appeal to a court of law were established. This document protected personal and property rights. Taxes could be levied only by representatives of the people—from which came our revolutionary slogan, "No taxation without representation."

Four fundamental principles were established by the Magna Carta:

First, the king must rule in accordance with the desires of the people; sec-

ond, government is a contract between the king and the people; third, the despotic power of the king is restricted; fourth, the rights of Englishmen are stated definitely and exactly.

The Petition of Rights Under Charles I

Four hundred years later Charles I ignored the rights and privileges of Englishmen; property was confiscated without due process of law; people were imprisoned by order of the king without trial by jury; soldiers were quartered in their homes without their consent; government was carried on without the people being represented.

It became necessary to reclaim the principles of the Magna Carta which Charles I had disregarded. Parliament controlled the "purse strings" and refused to vote any money for maintenance of the government; hence, Charles I was forced to sign the Petition of Rights in 1628. Four principles of government were again established:

First, taxes are levied only with the consent of Parliament; second, troops are not to be quartered in private homes without the owner's consent; third, martial law cannot be declared in time of peace; fourth, every person is entitled to trial by a jury of his peers, and no illegal imprisonments are to be made.

In 1689 the British Parliament approved the Bill of Rights, and the inalienable or God-given rights of Englishmen were never again questioned by any British monarch.

Here let us note that the first eight amendments to the Constitution of the United States were influenced by the Petition of Rights. The framers of our Constitution were not only well acquainted with the Magna Carta and the Bill of Rights, they were also well educated in the thoughts and philosophies of John Locke, Montesquieu, and Blackstone.

Influence of Locke, Montesquieu, and Blackstone

John Locke was the son of a Puritan soldier. He was a philosopher of the Whig party. Every leader of the American Revolution quoted his philosophies as presented in his *Treatises of Government* published in 1690. Locke claimed that the natural rights of men consist of life, liberty, and property. He believed that government without law is contrary to the "laws of nature"; that political authority must come from the consent of the governed; that man's natural rights must be protected; and that the *legislative power* should be supreme as the *voice of the people*, although an executive or admin-

The President General's Message



DEAR DAUGHTERS:

Very special greetings to each of you individually as you assume your particular DAR Chapter responsibility this Fall. Be ever mindful of the importance of *your role* as an interested, active Daughter. That contribution, multiplied many times, nationwide, spells the success of the whole National Society program. Its example is contagious, encouraging as it does spontaneity, ingenuity and cooperation—which over the years have characterized the unique esprit de corps of DAR. If, perchance, you have delayed *volunteering* for service on a Committee, contact your Regent *now*, and let her know of your interest and support. This will mean much, adding immeasurably to the spirit and vitality of your Chapter, as well as providing personal satisfaction and increased knowledge through activity. Remember, you have a broad choice for participation among the 24 active National Committees—historic, educational, and patriotic.

Every Chapter is adequately equipped to assure stimulating monthly programs and to promote the FULL DAR STORY during 1963-64. At hand information includes: (1) 1962-65 Program Brochure, (2) 1963 Congress Take-Home Kit, (3) this August-September issue of the DAR Magazine, and finally, (4) an Omnibus DAR Mailing, scheduled for receipt August 10.

These materials, used in combination, provide full up-to-date information necessary for the year's planning. It is hoped each Officer and Chairman will use these items to the fullest extent. Only in this way can your Chapter keep abreast of current activities and, in turn, convey information to the membership.

Your President General's most earnest wish at the outset of the second year of this administration is that YOUR CHAPTER experience a PRODUCTIVE, HARMONIUS YEAR. National Headquarters stands ready and desirous of assisting you in every way possible, but the realization of this goal—the degree to which success will be achieved—rests with EACH DAUGHTER and her assumption of INDIVIDUAL RESPONSIBILITY as a CHAPTER MEMBER!

Constitution Week Observance—Many Chapters appropriately initiate the year's program with ceremonies observing Constitution Week. Recognition of the fact that the NSDAR originated this week-long celebration is cited in the 1963 "*Citizenship Day and Constitution Week Bulletin*," published by the U.S. Department of Justice, Immigration and Naturalization Service, page 3, which states:

In 1955, the National Society, Daughters of the American Revolution, originated the idea of devoting an entire week to the Constitution by extending the period of observance beyond the one day of September 17. The outstanding success of this undertaking led to the approval by Congress of a joint resolution authorizing the designation by the President of "Constitution Week," beginning September 17 of each year. It is a period for thoughtful study and consideration of the events that led to the framing of the Constitution, and of the means for preserving it from those who would destroy or weaken it.

Do strive to make your Chapter's Constitution Week project an outstanding community endeavor. Again, may it re-emphasize the importance of our Constitution as the fountainhead from which American freedoms spring and are guaranteed.



A Little-known DAR Fact: Then: In 1890, although Miss Mary Desha, a DAR Founder, wrote, "Washington is the deadest place in the United States in the summer," it is evident that much preliminary work preparatory to organizing the National Society was accomplished during that summer 73 years ago. Many potential members were contacted—outstanding among them, the then First Lady, Mrs. Benjamin Harrison, who consented to permit her name to be placed in nomination for the office of first President General.

Now: Today, Washington society columnists continue to imply "from June to October, everyone who can flees the Capital's high temperatures and humid days." . . . At DAR Headquarters activities have not let up, as you will immediately recognize upon receipt of this Magazine, the Omnibus August mailing, the new Directory and revised 1963 Handbook yet to follow—all compiled for you during "recess" time!

Cordially,

(Mrs. Robert V. H. Duncan)
President General, NSDAR

istrative power is necessary. Locke believed that the Legislative Branch must rule according to the "laws of nature" and must not violate the written laws; that the legislative cannot take any of a man's property without his consent and under no condition can transfer to any agency the power to make laws. Locke pointed out that "*the State was the servant of the individual and not the individual the servant of the State.*" These principles are embodied in the Constitution of the United States.

Montesquieu, in his *Spirit of Laws*, gave the world the doctrine of separation of powers and the preservation of liberty by dividing the government into three departments: Executive, Legislative, and Judicial.

In 1765 Blackstone published his *Commentaries on the Laws of England* in which he gave his view on civil government with an analysis and explanation of the common law of England. This is the basis of our laws. He said:

The principal aim of society is to protect the individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature . . . the first and primary end of human laws is to maintain and regulate these "absolute" rights of individuals.

He defined civil liberty as "natural liberty so far restrained by human laws (and no farther) as necessary and expedient for the general advantage of the public." These objectives were for the purpose of preserving life, liberty, and property. Hence our Constitution is based on the Magna Carta with the Bill of Rights and the philosophical teachings of these three great scholars.

Colonial Governments

All the 13 Colonies had distinct and organized governments by 1776. Virginia, being settled in 1609, was the first English Colony, Massachusetts was the second (the Pilgrims



on the Mayflower in 1620 and the Puritans in 1630⁽¹⁾). All the Colonies were originally settled by British sub-

jects under the authority of Great Britain, except New York, which was originally settled by emigrants⁽²⁾ from the Netherlands, and Delaware, which was inhabited by Netherlanders and Swedes. However, the British Government claimed all territory by virtue of discovery. The governments of all the Colonies were of the Royal, proprietary, or charter types. All the Colonies had a Governor or Council and a Representative Assembly consisting of delegates chosen by the people.

The town in New England was the center of government. In Virginia and the southern Colonies the population was rather scattered, owing to



the size of plantations, and the unit of local government was the county. In the Middle Colonies there was a combination of both town and county government.

The political experience of the Colonials played an important role for the framers of the Constitution. They had had some experience in government from 1607 to 1776. All these factors crystallize in the development of the Constitution.

The charters of all the Colonies stated that the immigrants to the Colonies were considered English subjects, and their children born therein were declared to have and possess all liberties, franchises, and immunities of subjects within any dominion of the Crown of England, to all intents and purposes, as if they were born and abiding within the realm of other dominions of that Crown. The original grantees or patentees were to hold the lands and other territorial rights in Colonies of the King, his heirs and successors, in the same manner as the manor of East Greenwich in the County of Kent in England.⁽³⁾

Hence the Colonies at the time of the Revolution were legally entitled to enjoy the same general rights and privileges as Englishmen.

Union of the Colonies

The idea of a union of the Colonies grew out of the menace of the Indians and the French and Indian Wars. The establishment of a permanent union and a constitution was not due to accident.

It was the result of the evolution of the idea of unity which was finally established under the system that reserved all governing powers to the States except those surrendered to effect a union.⁽⁴⁾

Four plans of union were proposed: The New England Confederation of 1643, the New England Dominion in 1688, the Penn Plan in 1696, and the Albany Plan in 1754. All failed to unify the American Colonies.

But after 1754, England's attempt to regulate colonial commerce through the navigation acts, and her efforts to levy taxes on the Americans drove the Colonies more and more to united action against the mother country's oppression.

The Colonists, claiming their God-given rights, were fighting centralization of government and realized the necessity of decentralization to preserve their inalienable rights. Thus we have the concept of dual government — states' rights — as the foundation of Federal and State Government in our present Constitution.

The Revolution had broken out at Lexington and Concord on April 19, 1775. George Washington was made Commander-in-Chief of the Continental forces, and another petition was sent to England. The Continental Congress convened again on September 13; and the Colonial leaders, who had been for appeasement, were now convinced that separation from England was inevitable. States were instructed to set up their own governments and constitutions. These State constitutions served as patterns to the framers of the Federal Constitution.

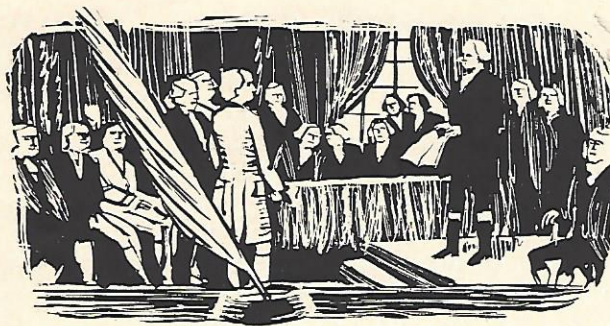
The Virginia Constitution gave the world the first American Bill of Rights which emphasized PROPERTY rights and asserted that all governing power is vested in the PEOPLE. It also stated that three departments of government are necessary: Executive, Judicial, and Legislative. It called for free elections. It proclaimed the inalienable rights of



man: Freedom of speech, of religion, of the press, of trial by jury, etc.

The Colonial charters of Con-

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necticut and Rhode Island were adopted as State constitutions. In New England and New York, Governors were elected by the people. In other States they were elected by the legislators. There were six outstanding characteristics of the first constitutions:

First, all recognized the people as the sole source of political authority; second, rotation in office was recognized as necessary to good government; third, all recognized the doctrine of separation of powers; fourth, all guaranteed the rights and liberties of the individual; fifth, there was a limitation of the franchise based upon property and other qualifications; sixth, the representative republican principle of government was recognized by all.

For 5 years during the war the Continental Congress, which was the only central government, existed by the implied consent of the States, but, as the Revolution progressed, States became jealous of their own sovereignty. In spite of these disadvantages, the Congress worked to create a central government. Richard Henry Lee of Virginia introduced a resolution for the formation of a central government; at the same time he introduced the resolution for the Declaration of Independence.

On July 4, 1776, the 13 States agreed to the Declaration of Independence, drafted by Thomas Jefferson, which outlined a clear statement of reasons given for the separation from England and reasons for the Revolution.

During the period between the Declaration of Independence and 1780, all the States experienced the process of reorganization in their governments and the adoption of State constitutions.

The Articles of Confederation

After long debate the Articles of Confederation were drafted. There was disagreement on representation in Congress, revenues, taxation, and western lands. An agreement was not reached until 1781, although the Articles had been submitted for ratification November 17, 1777, and all the States except Maryland and Dela-

ware had approved them by 1778. Delaware agreed in 1779 and Maryland on March 1, 1781.

The Confederation operated not upon the PEOPLE of the United States but upon the STATES. The union therefore lacked stability and centralization of power which led to its discard in 1787.⁽⁴⁾

The Constitutional Convention of 1787

The Constitutional Convention met in Philadelphia in May 1787, to correct the defects in the Articles of Confederation. The delegates soon realized that the Articles could not be remedied and a new constitution must be written.

With the Articles of Confederation as a starting point and the State constitutions as models, with the Magna Carta, the Petition of Rights, and the Bill of Rights behind the Colonial charters, and with the background of the philosophies of Locke, Montesquieu, and Blackstone, the Constitution of the United States was drafted and a confederation was converted into a Federal State.⁽⁵⁾

The legislatures of the several States named the delegates to the Convention and determined the number. Rhode Island, which was opposed to strong central government, did not send delegates.

Fifty-five were in actual attendance, but only thirty-nine signed the Constitution. More than half were graduates of Princeton, Yale, Harvard, Columbia, Pennsylvania, William and Mary, Edinburgh, Glasgow, and Oxford.⁽⁶⁾

Benjamin Franklin, who was 81, was the oldest member; Jonathan Dayton, 27, was the youngest. George Washington presided over the Convention. The Father of the Constitution was James Madison, who had made a deep study of all forms of government in the history of the world. He was only 36 years old, but he had had a long career of public service. He had an understanding of English history and constitutional law and a profound knowledge of government. The deliberations of the convention were in secret ses-

sion. No reports were made except the notes that Madison made day by day. They were not published until after his death.

A committee of rules was appointed.

Each State was given one vote in the Convention. Seven States constituted a quorum. A majority of States could rule any question and it would be binding on the rest of the States.⁽⁷⁾

There was much controversy between the large States and the small States over representation, over property and taxation, over restrictions on the slave trade (which were vigorously opposed by South Carolina). There was much argument over extremely centralized government as advocated by Alexander Hamilton.

They had to reconcile stability and firmness in government with liberty and the republican form.⁽⁸⁾

Importance of the Congress

In order to achieve a government to preserve union, it was necessary to mark off a proper line of division between the authority of the general or national government and the government of the several States. Questions between States had to be compromised. The framers of the Constitution regarded the Congress as the most important branch. Issues regarding the executive were compromised. The methods of electing the President resulted in the electoral college system legally still in force, but virtually nullified because the two parties pledge their electors in advance. The decision on consideration of the judiciary resulted in the establishment of only one court—the United States Supreme Court—with tenure of justices for life. The Congress has the power to create all inferior courts, which can also be abolished by the Congress. Neither the Congress nor the Executive can deprive the courts of their judicial powers.

The last clause of Article I, Section 8, known as the "elastic clause," confers upon Congress not only the specific powers delegated to it, but such additional powers as may be reasonably implied.⁽⁹⁾

These powers cannot be delegated by Congress to other governmental departments or to the States. They belong to Congress and can only be exercised by Congress. If Congress could delegate these powers, then the principle of separation of powers would be nullified.⁽¹⁰⁾

It should be noted at this point that the 60 present-day independent agencies with approximately 400,000