

ABSTRACT:

The purpose of this project is to determine in what ways the first written constitution of the United States, the Articles of Confederation (1777), influenced the drafting of the United States Constitution (1789). Covered is the background of the drafting of Articles of Confederation to how the drafting of the U.S. Constitution came to be. Examined within this paper are the similarities between the two documents and how and why the founding fathers purposefully included pieces of the Article of Confederation in the Constitution.

A quote from one of the most famous documents in American history, the Preamble of the United States 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.”<sup>1</sup> Though Americans know of the United States Constitution, many do not think of what came before or how it came. The first written constitution of the United States was the Articles of Confederation which was followed from the ratification of the document in 1781 to the ratification of the current U.S. constitution in 1789. Short-lived it may have been; however, it was a formative era for the United States as in this time it allowed for the Continental Congress to observe what aided or hindered the country in terms of governing. **Without this time of observation, the delegates at the Constitutional Convention would not have had a strong foundation to establish the Constitution; in turn, the delegates used the Articles of Confederation as an influence in drafting the United States Constitution.**

In July of 1776 after the signing of the Declaration of Independence, colonial America was in need of establishing a national government. In order to establish a national government, the Continental Congress decided to meet on July 22 of 1776 to create a document that would serve this purpose. This document was titled the Articles of Confederation. While establishing the Articles, delegates of the Continental Congress argued on an assortment of topics ranging from state-by-state issues to foreign policy. Because of the lack of agreement between delegates, the Articles of Confederation were still not completed by October of 1777. At this point, the delegates were in a rush to finish because the British had already captured Philadelphia. Finally

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<sup>1</sup> “Preamble We the People.” *National Constitution Center – Constitutioncenter.org*, National Constitution Center, [constitutioncenter.org/interactive-constitution/preamble](https://constitutioncenter.org/interactive-constitution/preamble).

finishing the Articles, delegates realized that there were many flaws within the document but decided that it was better to later fix the flaws than to have no form of a formal national government. Despite the Articles of Confederation being completed, the document still needed to be ratified by all thirteen states. The first state to ratify the Articles was Virginia on December 16th of 1777, soon after other also ratified the Articles within the first few months of 1778. Although Congress was making progress with the states, they soon learned that Maryland, New Jersey, and Delaware were refusing to ratify until the other states would relinquish their Western land claims. By early 1779, both New Jersey and Delaware decided to finally ratify the Articles of Confederation, but Maryland was still resistant until March of 1781 when the British had started to raid their communities in the Chesapeake Bay<sup>2</sup>.

A few years after the Revolutionary War against Great Britain, the United States of America was struggling to grow under the Articles of Confederation. The Articles lacked a strong central government, and the federal government struggled in conducting foreign policies. Because of these issues and many others, Congress decided to conduct a convention in order to fix the flaws within the Articles. Early on during the convention, the framers (delegates who partook in the Constitutional Convention) realized that they were not going to get anywhere if they kept trying to rewrite the Articles of Confederation, so they decided to create a new document. This time, the framers decided that in order to establish a strong central government, they needed to divide the power into three separate branches, the Legislative, Executive, and Judicial. These three branches would each be responsible for a specific part of the United States

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<sup>2</sup> “Articles of Confederation, 1776-1783.” *U.S. Department of State*, U.S. Department of State, [history.state.gov/milestones/1776-1783/articles](https://history.state.gov/milestones/1776-1783/articles).

government, this new government would also rely on a series of checks and balances in order to make sure that one branch does not gain too much power over another.<sup>3</sup>

To determine how the Articles of Confederation influenced the United States Constitution, we must first look at how the two documents compare. If one were to look at both documents, they would find that there are many parts of the Articles that are incorporated into the Constitution. Donald Lutz goes in depth on this topic in his article *The Articles of Confederation as Background to the Federal Republic*, stating

...sections 1 and 2 of Article IV in the present United States Constitution were taken almost entirely from Article IV of the Articles of Confederation, including the wording for "full faith and credit," "privileges and immunities," and the return of interstate fugitives...Toward the end of Article IX, there was a list of prohibitions on national powers similar to that found in Article I, Section 9 of the Constitution.<sup>4</sup>

As Lutz mentioned, there is much sameness between the Articles and the Constitution; hence illustrating how had the Framers not known what components of the Articles functioned properly from previous observation, then they would not have known which aspects to reuse within the Constitution.

Not only are there parallel aspects between the Articles and the Constitution, but the founding fathers actually cited the Articles. In the article *The United States and the Articles of Confederation: Drifting toward Anarchy or Inching toward Commonwealth?* The Yale Law Journal explains how many parts of the Constitution were 'descendants' of provisions of the Articles and states, "Madison cited the Articles provision giving Congress the power to defray from the common treasury all expensess, that shall be incurred for the common defence or

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<sup>3</sup> "Constitutional Convention and Ratification, 1784-1800 ." *U.S. Department of State*, U.S. Department of State, [history.state.gov/milestones/1784-1800/convention-and-ratification](http://history.state.gov/milestones/1784-1800/convention-and-ratification).

<sup>4</sup> Lutz, Donald S. "The Articles of Confederation as the Background to the Federal Republic." *Publius* 20, no. 1 (1990): 55-70. <http://www.jstor.org/stable/3330362>.

general welfare" when he argued in support of the general welfare clause of the Constitution empowering Congress "to pay the Debts and provide for the common Defence and general Welfare of the United States."<sup>5</sup> This proving that the similarities between the Articles of Confederation and the Constitution were not just a coincidence, but a purposeful gesture from the previous small success that the delegates knew would continue to succeed if they rewrote it into the new Constitution.

Although the Constitutional Framers found ways to reuse fragments of the Articles of Confederation, there were other aspects that the framers precisely knew that they did not want to use. Max Farrand provides a list of defects within the Articles of Confederation which was written by congressional delegates before they had come to the conclusion of drafting a new document in his article *The Federal Constitution and the Defects of the Confederation*. In response to the list, Farrand states:

An examination of this list of defects reveals two very obvious limitations. In the first place, there is no discrimination between the defects noted, with reference to their relative importance: Some defects were more serious than others, and must of necessity be remedied if the new government was to be effective; the correction of others was more or less optional. Some defects might be mentioned by a single writer, and but once in his whole correspondence; others might be mentioned by nearly everyone, and not once, but many time<sup>6</sup>

Farrand's statement shows that the delegates knew exactly what they did and did not want within their new draft of the Articles which helped for when they later realized they wanted to start a completely new document.

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<sup>5</sup> "The United States and the Articles of Confederation: Drifting toward Anarchy or Inching toward Commonwealth?" *The Yale Law Journal* 88, no. 1 (1978): 142-66. doi:10.2307/795680.

<sup>6</sup> Farrand, Max. "The Federal Constitution and the Defects of The Confederation." *The American Political Science Review* 2, no. 4 (1908): 532-44. doi:10.2307/1944478. <https://www.jstor.org/stable/1944478>

The Framers already having an idea of what they wanted to change out of the Articles of Confederation, the main flaw that was on the agenda was fixing the lack of a ‘strong central government’. In his article *The Legacy of the Articles of Confederation*, Jack Rakove goes into detail about how the Framers came upon the decision to form a government with three central branches. Rakove states,

On one of these subjects--separation of powers--the Articles could offer little useful instruction for the simple reason that all the notable powers of the confederation had been concentrated in Congress itself. The administrative departments that had been created coincidentally with the ratification of the Articles in 1781 were merely executive and lacked any independent prerogatives. The appellate jurisdiction which the confederation asserted in matters of admiralty law and interstate conflict could hardly be said to constitute a meaningful exercise of judicial power.<sup>7</sup>

With this information, it shows how when forming a new government, the delegates chose to completely avoid using the Articles as a guide. The delegates would not have known which parts of the Articles to not use in the Constitution without the knowledge from the developmental period of time where the United States functioned under the Articles of Confederation.

Without the period of observation leading up to the Constitutional Convention, the delegates would not have had a foundation to establish the U.S. Constitution; in turn, the Framers used the Articles of Confederation as an influence while drafting the constitution. This being demonstrated when comparing the two documents as there are many parts that coincide with each other.

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<sup>7</sup> Rakove, Jack. "The Legacy of the Articles of Confederation." *Publius* 12, no. 4 (1982): 45-66. <http://www.jstor.org/stable/3329662>.

### Annotated Bibliography

“Articles of Confederation, 1776-1783.” *U.S. Department of State*, U.S. Department of State, [history.state.gov/milestones/1776-1783/articles](http://history.state.gov/milestones/1776-1783/articles).

The United States Department of State provides a summary of the history of the first written constitution of the United States, the Articles of Confederation. First discussing the drafting of the document in 1777, and then the ratification in 1781. Also discussed was how the Articles gave more power to the states which in turn made it difficult for Congress to control them thus resulting in Shays’ rebellion which led to the calling of the Constitutional Convention.

“Constitutional Convention and Ratification, 1784-1800 .” *U.S. Department of State*, U.S.

Department of State, [history.state.gov/milestones/1784-1800/convention-and-ratification](http://history.state.gov/milestones/1784-1800/convention-and-ratification).

The United States Department of State provides a summary of the Constitutional Convention and the Ratification of the U.S. Constitution. Starting off with discussing what led up to the calling of the constitutional convention which was called originally to fix the issues within the Articles of Confederation. Next, discussed are the occurrences that happened at the convention including the decision to write a new document instead of fixing the Articles. The last topic discussed was the ratification of the U.S. Constitution in 1789.

Farrand, Max. "The Federal Constitution and the Defects of The Confederation." *The American Political Science Review* 2, no. 4 (1908): 532-44. doi:10.2307/1944478.

<https://www.jstor.org/stable/1944478>

In this article, Farrand argues that the general public fails to recognize that the Constitutional Convention was called to fix the faults in the Articles of Confederation and that the current Constitution more than fixed those flaws. Farrand discusses a list of defaults within the Articles of Confederation that the federal delegates had decided that they wanted to fix. He also goes into depth on discussing the events that occurred during the Constitutional Convention. Also mentioning which parts tended to be more difficult for the Framers to discuss.

Lutz, Donald S. "The Articles of Confederation as the Background to the Federal Republic."

*Publius* 20, no. 1 (1990): 55-70. <http://www.jstor.org/stable/3330362>.

In this article, Lutz argues that the Articles of Confederation were an important part of the Constitution and that the U.S. Constitution was an extension of the Articles. He also presents a new perspective on the terms “Federalist” and “Anti-Federalist” for when arguing about the Constitution. Then discusses how certain aspects of the Articles were brought into the Constitution.

“Preamble We the People.” *National Constitution Center – Constitutioncenter.org*, National Constitution Center, [constitutioncenter.org/interactive-constitution/preamble](http://constitutioncenter.org/interactive-constitution/preamble).

The National Constitution Center provides an excerpt from the beginning of the official United States Constitution, the Preamble.

Rakove, Jack. "The Legacy of the Articles of Confederation." *Publius* 12, no. 4 (1982): 45-66.

<http://www.jstor.org/stable/3329662>.

In this article, Jack Rakove argues that the failure narrative of the Articles of Confederation needs to be changed and that people need to start viewing the Articles as a document that also had a positive continuing impact on today's government. He first addresses how it was decided on what to put in the Articles of Confederation during the drafting of the document. Then discusses how the constitutional Framers incorporated the Articles into the United States Constitution.

"The United States and the Articles of Confederation: Drifting toward Anarchy or Inching toward Commonwealth?" *The Yale Law Journal* 88, no. 1 (1978): 142-66. doi:10.2307/795680.

The Yale Law Journal presents the argument that the United States under the Articles of Confederation was beginning to become unfunctional as it could not even handle situations such as Shays' Rebellion. They go on to discuss the drafting of the Articles and provisions that were created that are still used today. Next, discussing in what ways the Articles had hindered the United States during and after the Revolutionary war leading up to the drafting of the Constitution.