

## **The 2026 Anniversary of the United States of America\***

In 2026, U.S. Americans from all U.S. states will celebrate the 250<sup>th</sup> anniversary of the Declaration of Independence, which was adopted on July 4, 1776. It is often said that by declaration of independence the United States of America was established, thus 2026 being its 250<sup>th</sup> birthday. As we will see, that is not quite precise, or, to be more precise, that this is wrong.

### **America, states, united.**

When Christopher Columbus (re-) discovered the New World, he did not assume to have found a new continent, but to have found a new route to India. At least he officially claimed the latter; only by that point of view he had fulfilled his mission for the Crown of Castile. Amerigo Vespucci, who had been commissioned with the further exploration of the New World, was the first to prove it to be a new continent. In his honor, German cartographer Martin Waldseemüller named the new continent "America" on his 1507 world map, choosing the female form of his Latinized first name "Americus", as all previously known continents had female names: Europa, Asia and Africa. The widespread use of this map significantly contributed to the establishment of "America" as the new continents' name.

At that time, however, there were no states in America: The communities of the indigenous peoples were not regarded as states, and the European settlements were colonies of European states. Among these were the English – from 1707 on: British – colonies on the Atlantic coast of North America. After the Seven Years' War, which was also fought between British and French colonists in North America, the British Parliament passed several acts introducing taxes in the British colonies to help covering costs for British troops deployed in the colonies during war. Some of the British colonies thereupon rebelled against the British Crown, as they did not want to bear the costs of a war that was ostensibly a European conflict. Even less so, as the colonists were not represented in the British Parliament by members of parliament they had elected. Under the slogan of "no taxation without representation", the conflict between the colonies and Great Britain deepened.

In 1774, twelve of the British colonies organized themselves on the First Continental Congress. The delegates did not yet call for independence, but rather thought to achieve a compromise. Following the outbreak of the American Revolutionary War in 1775, the Second Continental Congress convened. On July 4, 1776, delegates of now thirteen colonies adopted the Declaration of Independence. In this "unanimous Declaration of the thirteen united States of America", the thirteen colonies declared themselves free and independent states. Since these colonies were able to assert themselves – Great Britain finally did not win the war, and in 1783, the Treaty of Paris was signed, ending the war (art. 7) and recognizing the thirteen United States of America as independent states (art. 1) – in 1776 thirteen new states had come into being at the Atlantic coast of North America: Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina and Virginia. However, besides the Continental Congress, there was no joint political-administrative organization of these individual states in 1776, especially not a union of states with its own legal personality (confederation or federation) in addition to the ones of the thirteen states. Therefore, the year 1776 was not the founding year of such union named United States of America.

### **Union as confederation, union as federation.**

It had been clear for quite a while that cooperation between the colonies would be beneficial to all of them. Additionally, during American Revolutionary War the need to coordinate colonial warfare arose. Initially, this task was performed by the Second Continental Congress, which created the Continental Army for this purpose. The perpetuated meetings of the Congress to some extent compensated the non-existing joint government of the thirteen states. To establish a union with its own legal personality, however, a treaty was drafted: the Articles of Confederation and Perpetual Union. In 1777, the Congress adopted the draft and released the treaty for ratification by the individual states. In the absence of any other agreement, the treaty required ratification by all thirteen designated contracting states in order to enter into force. In 1781, this condition was fulfilled, the Articles of Confederation entered into force, and the union under the name of the United States of America (art. I) came into

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existence, with the Confederation Congress assembling shortly thereafter. As the sovereignty of the individual states was preserved (art. II), this union was indeed a confederation, hence being a legal person of public international law, but – unlike its member states – not being a state itself. There was no (federal) people of the U.S. yet, just the peoples of its member states (art. IV para. 1; art. IX para. 1).

It became apparent, though, that the Confederation suffered from fundamental flaws. Generally, the confederal government was designed weak. Especially, it lacked the power to raise funds through taxation and thus was dependent on payments from the member states. Furthermore, any alteration of the Articles of Confederation besides agreement by the Confederation Congress also required confirmation by every single member state (art. XIII). After conclusion of peace in 1783, and thereby the end of immediate external threat, however, the thirteen states again began to pursue their own individual interests, that often conflicted with the common interests. To address these problems, a convention of delegates from member states was held in Annapolis in 1786 and another in Philadelphia in 1787. While initially in accordance with their mandates wanting to reform the existing confederation by revising the Articles, the delegates from the twelve participating states – Rhode Island had not sent delegates – soon agreed to go beyond that mandate and draft a constitution for a better, a "more perfect" union, ultimately a federation with a federal people and a stronger federal government, making the convention become a constitutional convention. On September 17, 1787, the Constitutional Convention in Philadelphia adopted the Constitution of the United States. This event, however, commemorated on Constitution Day, was not yet the founding event of the present-day United States. For the Constitution to enter into force, ratification by the individual states was still required. Unlike with the Articles of Confederation, entry into force did not require ratification by all thirteen then-potential contracting states, as article VII stipulated that ratification by nine states would suffice. The subsequent ratification process in the individual states was accompanied by fundamental public debates between proponents and opponents of that federal Constitution. With the ratification by the ninth state on June 21, 1788, the aforementioned condition was fulfilled, the Constitution of the United States entered into force, and the new union under the full previous name of the United States of America (this name was not expressly stipulated, but implied by the preamble and several articles) came into existence, even though the first Congress of the United States did not convene until March 1789 and the first president of the United States did not assume office until April 1789. The new union was a federation; it was not only being a legal entity under public international law, but also – like its federal states – a state itself.

Despite both the Confederation and the Federation possessing legal personality in public international law and bearing the same name – United States of America –, they were not the same legal person, as only the latter was a state. Indeed, both coexisted for nearly two years. The nine states that first ratified the Constitution – Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania and South Carolina –, upon its entry into force became the first federal states of the United States. Virginia, New York, and North Carolina followed, and as the last of the thirteen states Rhode Island on May 29, 1790. It was not until the ratification of the Constitution by this last of the Confederation's thirteen member states and thus the accession of all of its member states to the Federation, that the Confederation ceased to exist. For although art. XIII of the Articles of Confederation permitted unanimous alterations of the Articles, but determined the union created by the Articles to be perpetual, its member states could, expressly as well as implicitly, unanimously dissolve that union. Moreover, the Constitution forbid the federal states to enter into any confederation (art. I, sec. 10), which also meant they could not stay in any confederation. By all of its member states becoming federal states, the Confederation had been deprived of its membership base. As a result of Confederation and Federation being different entities, the Constitution stipulated that all debts contracted and all engagements entered into before the adoption of the Constitution should be as valid against the United States under the Constitution as they were under the Confederation (art. VI, sec. 1).

The conclusion from all this is that the federation by the name United States of America, which still exists today, came into existence neither in 1776 nor in 1781, but in 1788, therefore 2026 being its 238<sup>th</sup> birthday and the 250<sup>th</sup> anniversary in 2026 solely applying to the Declaration of Independence. The state was born free and independent twelve years after Declaration of Independence, without its birth having a dedicated public holiday to commemorate. The reason for this may be due to the fact that political events are of greater importance for the formation and conservation of a sense of national identity than legal events.