

UC Berkeley

Working Papers

Title

What if the United States were still governed under the Articles of Confederation? : non-centralized versus federal systems

Permalink

<https://escholarship.org/uc/item/56x783bv>

Author

Wildavsky, Aaron

Publication Date

1993

A1458
no. 93-10

2-11-94

**What if the United States were still Governed
Under the Articles of Confederation?
Non-Centralized versus Federal Systems**

Aaron Wildavsky
Department of Political Science
University of California, Berkeley

Working Paper 93-10

INSTITUTE OF GOVERNMENTAL
STUDIES LIBRARY

FEB 10 1994

UNIVERSITY OF CALIFORNIA



UNIVERSITY OF CALIFORNIA AT BERKELEY

What if the United States were still Governed
Under the Articles of Confederation?
Non-Centralized versus Federal Systems

Aaron Wildavsky
Department of Political Science
University of California, Berkeley

Working Paper 93-10

Working Papers published by the Institute of Governmental Studies provide quick dissemination of draft reports and papers, preliminary analysis, and papers with a limited audience. The objective is to assist authors in refining their ideas by circulating research results and to stimulate discussion about public policy. Working Papers are reproduced unedited directly from the author's pages.

A staple thought among historians of the years immediately preceding the American Revolution was how little revolutionary sentiment there was in the decades before. Through the 1740s, 1750s, and early 1760s colonists continually professed loyalty to the crown, if not to Parliament itself. Thoughts about the existence and/or desirability of an American nation did exist, but they were scattered. Early efforts to establish such a union were rejected on all sides, as we shall see, not only by the British executive but by all the American colonies. No doubt a slew of modern public opinion polls would have provided food for thought about national consciousness. In their absence, it is useful to discuss ideas that were written into colonial and later state constitutions.

Colonial Consciousness

A background feature stressed by Jack Rakove is worth keeping in mind: travel was exceedingly slow and most people did not move much further than their native province. When the revolutionary leader Samuel Adams left the city of Boston in order to take part in the First Continental Congress, for instance, it was the first time he had left his native province in his almost 52 years of life.¹ It took time for currents of thought to develop.

It is also well to note, as Onuf reminds us, that the republican-oppositionist ideology that fueled the Revolution was about getting rid of British power, not about establishing what in America might

¹Jack N. Rakove, The Beginnings of National Politics. An Interpretive History of the Continental Congress (New York: Alfred A Knopf, 1979), p. 19.

take its place or even whether there ought to be such a unified national power to take the place of the British king.² Indeed, I would add, opposition to executive power far away might readily be transferred to disapproval of national executives at home.

Let us, for the moment, place ourselves in the position of American revolutionaries engaged in a tactical struggle with the British. The revolutionaries' main point was that they had been denied the rights of Englishmen. How impolitic for them, then, to proclaim their own national union, a claim that would at once have convicted them of a gross contradiction and created needless controversy on a matter about which their supporters would have been divided.

Indeed, as Jack Greene has it, and many authorities agree, "Right down to the actual break with Britain, colonial national consciousness had been intensely British. All over the colonies, Americans took pride in their incorporation into the larger Anglophone world."³ Benjamin Franklin commented as late as 1760 that the people of the colonies "all love[d] Britain much more than they love[d] one another."⁴ If they looked to go anyplace, they looked to London and not to New York or Boston. Until the late 1600s, Virginia was the only royal colony on the mainland of what became the United States. The colonists placed greater store on

²Peter S. Onuf, The Origins of the Federal Republic. Jurisdictional Controversies in the United States, 1775-1787 (Philadelphia: University of Pennsylvania Press, 1983), pp. xiv-xv, 23.

³Jack P. Greene, "The Background of the Articles of Confederation," Publius: The Journal of Federalism, Vol. 12, No. 4 (Fall 1982): 15-44, at p. 22.

⁴*Ibid.*, p. 23.

charters they wrote themselves. These included the West Jersey Concessions and Agreements of 1667, the Pennsylvania and New York Charters of Liberties of 1683, the Fundamental Orders of Connecticut of 1639, and various law codes in New England.⁵ These charters permitted colonists to create and administer their own local governments subject only to the proviso that they not be contrary to laws passed by the English Parliament, which was in any event preoccupied with other matters and much too far away: a return trip by sailing ship took a minimum of two months.⁶ Governments under the charters were really groupings of counties and towns, each with its own local authority, which came together to satisfy the requirement that there be a single charter.⁷ It is not so much that there were no domestic entity that stood over all the colonies, but rather more that state governments were largely created by localities rather than the other way around. This was not decentralization in which a national entity devolves its authority upon local units, but rather more non-centralization in which local units create larger ones.

Occasional plans to unite the colonies met with no support. The New England Council of 1643 was designed to deal with common problems of security. The various local governments acted

⁵John M. Murrin, "The British and Colonial Background of American Constitutionalism," in Leonard W. Levy and Dennis J. Mahoney, eds. The Framing and Ratification of the Constitution (New York: MacMillan Publishing Co., 1987), p. 26.

⁶Donald S. Lutz, "The Articles of Confederation as the Background to the Federal Republic," in Publius: The Journal of Federalism, Vol. 20, No. 1 (Winter 1990): 55-70, at p. 57.

⁷Ibid., p. 58.

independently of each other and the council soon fell into disuse.⁸ The Commission of the Council for Foreign Plantations, devised in Britain, aimed at a mercantilist conception of milking the colonies for revenue. Paying no attention to existing forms of government in the colonies, this scheme for treating colonies as plantations did not get far.⁹

In accord with republican principles, colonists tried to keep royal governors on a short string. The Massachusetts story was typical. Starting way back in 1702, by which time the legislature (the General Court) had been in session for a couple of decades, the Royal Governor, as he had been instructed to do, demanded a fixed salary. To this the General Court replied that its custom was not to grant salaries for more than a year at a time. Amid threats and counter-threats over the next 15 years, the British government threatening to revoke the charter and the colonists threatening to drive out the governor, a compromise was reached in which the colonists said they would vote the salary as the first item of business each year.¹⁰

A former Speaker of the New Jersey Assembly, Daniel Coxe, recommended in 1722 that a supreme governor be placed over the chief executives of the colonies, the governor having the right to veto policies made by a council consisting of two delegates each from colonial assemblies. The purpose of this body was to assign quotas of

⁸Ibid.

⁹Ibid.

¹⁰Murrin, "The British and Colonial Background of American Constitutionalism," pp. 33-34.

men and money for what was said to be the common defense. It got nowhere.¹¹

The Albany Congress

The first semi-serious effort to provide a plan of union--the Albany Congress of 1754--speaks eloquently of existing conditions. The Six Nations of the Iroquois Confederacy were the most important of the nations allied to the British who depended on them to resist what they considered French encroachments. Existing practice had led to a series of temporary arrangements with existing colonies that satisfied neither the Indians nor the British. Always the British wanted the colonists to do more for their own defense, including better treatment of Indians. Always the colonial legislatures refused.

Meetings with a view toward some sort of union had gone on for over a decade.¹² At one of these meetings, as coincidence would have it, on July 4, 1774, the Sachem of the Indian tribes, Canassatego, aside from the usual complaints about unfair treatment and inconsistent policy on the part of the British and the colonists, all of which were true, recommended confederation:

Our wise forefathers established union in amity between the Five Nations. This has made us formidable. This has given us great weight and authority with our neighboring

¹¹Robert C. Newbold, The Albany Congress and Plan of Union, 1754. Dissertation, University of Notre Dame, 1953, p. 17.

¹²Mullin, "The Albany Congress and Colonial Confederation," Mid-America, An Historical Review, Vol. 72, No. 2 (April/July 1990): 93-105, at pp. 101-102.

Nations. We are a powerful confederacy and by your observing the same methods our wise forefathers have taken you will acquire much strength and power; therefore, whatever befalls you, do not fall out with one another.¹³

This recommendation led to a lengthy controversy in which the Iroquois Confederation has been variously seen as the model of the federal system established by the Constitutional Convention and a mere historical happenstance to which colonists paid no attention. The Albany Convention reveals no reliance upon the Iroquois Confederacy. Neither does the Constitutional Convention. The Articles of Confederation, though direct evidence is lacking, has a similar model in which unanimity is required for amendments. Indeed, the history of the Iroquois Confederation would be of interest mainly to students of non-centralized systems.¹⁴

The one certainty, which is that Benjamin Franklin made use of the idea of confederation and that he knew of the Iroquois Confederation, is also ambiguous in that his plan, as we will see, did

¹³Bruce E. Johansen, Forgotten Founders: Benjamin Franklin, the Iroquois and the Rationale for the American Revolution (Ipswich, Mass.: Gambit Inc., Publishers, 1982), pp. 61-62.

¹⁴See Elizabeth Tooker, "The United States Constitution and the Iroquois League," in James A. Clifton, ed., The Invented Indian: Cultural Fictions and Government Policies (New Brunswick, N.J.: Transaction Publishers); Jose Barreiro, ed., Indian Roots of American Democracy (Ithaca, N.Y.: Northeast Indian Quarterly, 1988); Donald A. Grinde, Jr., The Iroquois and the Founding of the American Nation (San Francisco: Indian Historical Press, 1977); and Daniel K. Richter, "Ordeals of the Longhouse: The Five Nations in Early American History," in D.K. Richter and J.H. Merrell, eds., Beyond the Covenant Chain: The Iroquois and Their Neighbors in Indian North America, 1600-1800 (Syracuse, N.Y.: Syracuse University Press, 1987).

not call for unanimity. In any event, the meeting in 1774 resulted in a treaty of friendship with the Six Nations between Virginia, Maryland, and Pennsylvania. Massachusetts and New York renewed an older alliance with these same Indians in 1748. Though all the colonies or provinces, as they were variously called at the time, were invited to a meeting in Albany in 1751, only South Carolina, Massachusetts, Connecticut, and New York sent delegates. They did not succeed either in persuading Indians of their friendliness or of doing more against the French.¹⁵

As war with France loomed larger, the British Board of Trade called for a conference of American colonies in order to prepare better for common defense. Commissioners from Connecticut, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania met with chiefs of the Six Nations, who were, of course, concerned about encroachments on their lands by all concerned. Based on a plan previously suggested by Benjamin Franklin as "Hints," the conference agreed on a voluntary association of the colonies with "one general government," though each colony retained its separate existence. Administration was to be entrusted to the President General appointed by the British crown and a Grand Council made up of delegates from colonial assemblies.¹⁶ Two noteworthy provisions stipulated that there would be from two to seven delegates from each colony depending on how much they contributed to the common treasury, and that legislative decisions had to be approved both by the

¹⁵Newbold, The Albany Congress and Plan of Union, pp. 17-18.

¹⁶Lutz, "The Articles of Confederation as the Background to the Federal Republic," pp. 58-59; and Dictionary of American History, revised edition, Vol. I (New York: Charles Scribner's Sons, 1976), pp. 59-60.

President General and the crown. The jurisdiction of the Grand Council was confined to Indian affairs and to purchases of new land outside of existing colonial boundaries.¹⁷

As things turned out, the plan was rejected on all sides. And for the same reason: invasion of prerogatives they considered their own. The British government thought the Grand Council too great a power that might interfere with its rule. All of the eleven colonies of the time, some vehemently, rejected the proposal because it had direct taxing power over individuals. Though the colonies would have retained the right to decide whether they would furnish troops, the Grand Council would have been able to decide which taxes were the most convenient and how much defense expenditure was required.¹⁸ As Franklin himself put it, "The crown disapprov'd it as having plac'd too much Weight in the democratic Part of the Constitution; and every Assembly as having allow'd too much Prerogativ."¹⁹ Despite the revolutionary situation, Rakove writes, "Yet there is little evidence to suggest that any leader of resistance gave these matters ["the apportionment of power between some central agency and its constituencies"] serious thought before 1774."²⁰ Gordon Wood says the same: "Yet for all this exercise of continental authority, for all of

¹⁷Mark Mayo Boatner III, Encyclopedia of the American Revolution (New York: David McKay Co., 1976) pp. 15-16.

¹⁸Lutz, "The Articles of Confederation as Background to the Federal Republic," pp. 59-60; and Robert W. Tucker and David C. Hendrickson, The Fall of the First British Empire--Origins of the War of American Independence (Baltimore/London: John Hopkins University Press, 1982), p. 81.

¹⁹Peter S. Onuf, "The First Federal Constitution: The Articles of Confederation," in L. W. Levy and D. J. Mahoney, eds., The Framing and Ratification of the Constitution, p. 84.

²⁰Rakove, The Beginnings of National Politics, p. 17.

the colonists' sense of being 'Americans,' for all of their talking of choosing between 'a sovereign state, or a number of confederated sovereign states,' few in 1776 conceived of the thirteen states' becoming a single republic, one community with one pervasive public interest."²¹

The Declaration of Independence

Study of the Declaration of Independence suggests that these summary statements are correct. One looks in vain through the Declaration for an unambiguous statement either that the states alone retain sovereignty or that there was an American nation to which sovereignty would be and should be given. One way out was the common assumption that the former colonies or provinces had always been "states" and remained unchanged throughout the revolutionary period.²² True enough, the Continental Congress, established in 1774, exercised many of the attributes of sovereignty--establishing a military code of law, negotiating with foreign nations, creating and maintaining an army--that played into nationalistic sentiments. But none of that will tell us whether the states were prior to the union or came after. What we can know is what Yehoshua Areli tells us--"The concept of nationhood, then, was based not on the idea of intrinsic unity The establishment of a national government thus rested on the purely . . . utilitarian grounds of the necessity for dealing

²¹Gordon S. Wood, The Creation of the American Republic 1776-1787 (Chapel Hill, N.C.: University of North Carolina Press, 1969), p. 356.

²²Onuf, "The Origins of the Federal Republic," p. 27.

effectively with other powers."²³ As he puts it even more pungently, "In Europe the awareness of national unity created a desire for independence; in America independence antedated the will for national unity." Thus, "though the Declaration of Independence was issued on behalf of the 'United States of America,' the Thirteen Colonies considered themselves free and independent states which took over, separately and together, the attributes of sovereignty."²⁴

Its title--"The Unanimous Declaration of the Thirteen United States of America"--nicely leaves open the matter of state versus national sovereignty. Such sentences as "Nor have We been wanting in attentions to our Brittish brethren, We have warned them . . . of attempts by their legislature to extend an unwarrantable jurisdiction over us," aside from the light they cast on what the colonists meant by attentions, leave open the question of who is meant by "We." The peroration refers to "We, Therefore, the Representatives of the united States of America, in general congress assembled" and "that these United Colonies are, and of Right ought to be, Free and Independent States" and "that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do." The emphasis is surely on the colonies as free and independent states, albeit in congress assembled. The form of government envisaged, if there were one, might be thirteen independent colonies or might be a confederation like the Continental

²³Yehoshua Areli, Individualism and Nationalism in American Ideology (Cambridge, Mass.: Harvard University Press, 1964), p. 33.

²⁴Ibid.

Congress, but could not be either a unitary government or a federal government with an independent national government able to exert direct coercive authority over individuals.

Should there remain residual doubt of what was intended by the Declaration, we have John Adams writing his wife Abigail:

"Confederation among ourselves, or Alliances with Foreign Nations are not necessary, to a perfect Separation from Britain. That is effected by extinguishing all Authority, under the Crown, Parliament and Nation as the Resolution for instituting Governments, has done, to all Intents and Purposes."²⁵ States there were, foreign rule there was not to be, but a nation not yet. Historians are fond of quoting Patrick Henry's declaration to the First Continental Congress that, "The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian, but an American." There were many such sentiments. "But," as Jack Greene put it, "few Americans managed to shed their provincial identities and acquire a new national one so quickly."²⁶

"Born Again" States

Stung by barbs to the effect that "you have no government, no finances, no troops," in 1775, in May of that year Massachusetts asked the Continental Congress for explicit advice about setting up a provincial government. Eventually the word came down: resume the Charter of 1691. Soon enough Congress told New Hampshire, Virginia,

²⁵John Adams, quoted in Onuf, "The First Federal Constitution," p. 86.

²⁶Greene, "The Background of the Articles of Confederation," p. 25.

and South Carolina that they should form whatever government they thought necessary. Finally, on May 10, 1775, Congress authorized "the respective assemblies and conventions of the united colonies where no government adequate to the exigencies of their affairs have hitherto been established" to create new governments.²⁷

It is useful to record here Lutz's summary of the first 18 state constitutions thus formed:

1. Except for Pennsylvania (1776) and Georgia (1777), the states used a bicameral legislature (Georgia adopted bicameralism in 1789 and Pennsylvania in 1790).
2. In all seventeen constitutions the lower house was elected directly by the people.
3. Although the percentage of white, adult males enfranchised varied from state to state, on average the percentage was eight to ten times what it was in England.
4. Of the sixteen constitutions using bicameralism, all but one had the Senate elected directly by the people, usually by the same electorate for both houses. Maryland voters elected an electoral college, which in turn elected the Senate.
5. With only one exception (South Carolina, 1776), all constitutions provided that the lower house be elected annually.
6. Of the sixteen bicameral constitutions, ten had annual elections for the Senate, and three had staggered, multi-year terms.
7. Nine of the constitutions had the executive elected by

²⁷Rakove, The Beginnings of National Politics, pp. 81-82, 96; and Wood, The Creation of the American Republic, p. 130.

the legislature, and six more used a popular election essentially to identify the major candidates from among whom the legislature picked the governor.

8. Fourteen constitutions provided for annual elections of the governor, two for biennial elections, and two for triennial elections.
9. Twelve of the constitutions required voters to own property, usually between twenty and fifty acres or the equivalent, four required them to be taxpayers, and two had no property requirement.
10. Of the sixteen bicameral legislatures, thirteen had the same property requirements to vote for the upper house as for the lower house.
11. Of the nine states that involved the people in selecting the governor, eight required the same amount of property to vote for the executive as to vote for the lower house.
12. All but two of the constitutions required ownership of property to run for the legislature, with few exceptions requiring more property to run for office than to vote.
13. Ten of the sixteen bicameral legislatures required more property to run for the upper house than for the lower house, and usually even more property was required to run for governor.
14. Except for Massachusetts, Connecticut, and Rhode Island, which initially operated as states under colonial charters, and two states that wrote constitutions before the Declaration of Independence; (New Hampshire, 1776; South Carolina, 1776), most early state constitutions included bills of rights.
15. With only two consistent exceptions, the rights listed in the bills of rights, including the right to property, were alienable by the legislature (the exceptions were the right to free exercise of

religion and the right to trial by jury).

16. Thirteen of the seventeen constitutions were written by the respective state legislatures, usually after an election in which it was made clear that the new legislature would also write a new constitution. Only two constitutions, Massachusetts in 1780 and New Hampshire in 1784, were written by a convention elected solely for that purpose and submitted to the people for ratification.
17. Only four constitutions in the first wave mention an amendment process, and in two of those instances the legislature is the amending agent. During the second wave, an amendment process is mentioned more frequently, but except for Massachusetts and New Hampshire--which give the amendment power to the people--the power is invariably given to the legislature.²⁸

The legislative supremacy gained in earlier decades was maintained in the new constitution.²⁹ By and large, executives were elected by legislatures through a joint ballot of two houses. The idea was exactly to do what colonists had done before, namely to make the governor dependent on the legislature, especially on its lower house. The number of years the executive could continue in office was usually limited. Rotation in office was often mandated. Franchise was expanded and the lower house elected by the people. What we do not see here is genuflection to any native national authority. "Nothing has excited more admiration in the world," James Madison wrote, "than the

²⁸Donald S. Lutz, "The First American Constitutions," in L. W. Levy and D. J. Mahoney, eds., The Framing and Ratification of the Constitution, pp. 73-74,

²⁹*Ibid.*, p. 75.

manner in which free governments have been established in America
³⁰

No one, in my opinion, has effectively refuted the position taken by Claude Van Tyne in a 1907 article for the American Historical Review, which sought to show that the subjective idea of nationhood had not existed at the time. Of course, given the tools available, he is not able to show exactly that. But he is able to show the preeminent place of the states and gives many examples of state defiance of Continental Congress decisions. He shows that those men considered the best representatives were chosen to and chose themselves to serve the states.³¹ Though it is true that the Continental Congress had some sort of navy, it was also true that nine of the thirteen states had navies of their own. The states did help organize the resistance to Britain, but states also organized armies of their own for their own purposes, whether or not this was useful for the common cause. If Congress had authorized the formation of states, it had also emphasized that this authority ran only during the war.³² Although Congress undoubtedly exercised sovereign acts during that war, such as self defense, Virginia ratified a treaty with France, and South Carolina gave its government the right to make war and peace and to conclude treaties. Virtually everything the national government did, in a word, was done by many of the states. Against Irving Brant's

³⁰Leonard W. Levy, "Introduction: American Constitutional History, 1776-1789," in L.W. Levy and D.J. Mahoney, eds., The Framing and Ratification of the Constitution, p. 8.

³¹Claude H. Van Tyne, "Sovereignty in the American Revolution: An Historical Study," American Historical Review, Vol. CII (April 1907): 529-545, at p. 543.

³²*Ibid.*, p. 536.

stipulation of hundreds of statements of national consciousness,³³ Van Tyne earlier showed that specific acts indicated dominant state power.

Leaving aside the impulse for unity against a foreign foe, Greene sets out five conditions that limited expression and action of national sentiments: the considerable suspicion and mutual enmity among the colonies, the fear of a power-hungry central government, disbelief that a continental-size republic could endure, strong colonial identity as a distinct corporation "with an unquestioned commitment to preserve that identity," and "the primitive state of American national consciousness."

The View from Abroad

Before we turn to the efforts of American colonists to establish some sort of national government to carry on the war, it will be useful to visualize how arguments about sovereignty looked across the Atlantic to those who occupied the king's offices in Britain. What did Americans mean, Edmund Morgan asked, "when they admitted due subordination to Parliament and at the same time denied Parliament's right to tax them?"³⁴ Soon enough colonials argued that they owed loyalty to the King but not to Parliament. What did that leave for Parliament? Presumably, Parliament might legislate for the entire British empire, though apparently not for any of its constituent parts.

³³Irving Brant, "A Letter to the Editor," William and Mary Quarterly, Vol. XV, No. 1, 3rd series (January 1958), p. 137.

³⁴Edmund S. Morgan, "Colonial Ideas of Parliamentary Power," William and Mary Quarterly, Vol. V, No. 3, (July 1948): 311-341, at pp. 325-326.

Not until 1931 was such a view of the Empire as a Commonwealth officially maintained.

In a well known essay, Andrew McLaughlin argued that past practices under British rule actually embodied federal principles. For then the colonies almost entirely governed themselves. Were one to add "merely" the power of the central government to tax, McLaughlin claimed that government was federal in fact though not in form.³⁵ But what can be the federal element in a government described as did the freeholders of Granville County, North Carolina: "Resolved, That the executive power, constitutionally vested in the Crown and which presides equally over Great Britain and America, is a sufficient security for the due subordination of the Colonies without the Parliament's assuming powers of Legislation and Taxation which we enjoy distinct from, and in equal degree with them."³⁶ No doubt, as McLaughlin asserted, the old empire was a composite. But was it federal? My understanding is that a system in which the central government is dependent for supply upon the local or regional governments is a confederation, not a federal system. To put it the other way around, when the central government devolves powers upon local or regional governments, powers which it may take back, that is called a unitary and not a federal system.³⁷ In practice, the empire did little to assert its rule, and, when opposed, until the very end, it gave way. Then, in practice, I would say, it was a unitary

³⁵Andrew C. McLaughlin, "The Background of American Federalism," American Political Science Review, Vol. XII, No. 1 (February 1918): 215-240, at pp. 215-219.

³⁶Quoted in Rakove, The Beginnings of National Politics, p. 32.

³⁷Kenneth Wheare's book on federalism[get from diZeregal].

government with a high degree of decentralization in which the central government gave what it thought necessary and the regional governments withheld whenever they could.³⁸

Both victory and defeat have their problems. In victory, it is often hard to know whether to be grateful or fearful. At the end of the seven years' war, from 1756 to 1763, Great Britain emerged with an immense empire. From the French it had taken India and much of North America, and from the Spanish and French their commercial advantages. However, this victory committed the British to hold onto its conquests in the North American continent and to press ever further westward. How would it do so?³⁹ Always Britain was made hesitant by the fear that the French and perhaps the Spanish would take advantage of a war in North America.⁴⁰

At the same time, "A look at the national debt in 1763," Robert Middlekauff tells us, "would have sent any minister's heart down into his shoes." The political limits of taxation within England had apparently been reached. Beer and cider taxes were hardly popular.⁴¹ How surprising is it, in these circumstances, that Chancellor of the Exchequer Townshend proposed modest taxes. Together with public opinion in England and virtually all members of Parliament, he

³⁸I have adopted here the argument of Tucker and Hendrickson in The Fall of the First British Empire. The argument is also consistent with my earlier essays in this volume.

³⁹Charles R. Ritcheson, British Politics and the American Revolution (Norman, Okla.: University of Oklahoma Press, 1954), pp. 3-4.

⁴⁰Robert W. Tucker and David C. Hendrickson, Th Fall of the First British Empire--Origins of the War of American Independence (Baltimore/London: John Hopkins University Press, 1982), pp. 55-56.

⁴¹Robert Middlekauff, The Glorious Cause. The American Revolution 1763-1789 (New York/Oxford: Oxford University Press, 1982), p. 57.

believed that actions intended to secure the defense of the colonies should be supported in part by their own revenues, and that Parliament had the right to impose them.⁴²

There followed British efforts to tax a variety of commodities, all of which were resisted. The British insisted on the parliamentary right to impose taxes because, without that, they would lose such control over the colonies as they still exercised. Lord Mansfield claimed that the colonial position of denying sovereignty to Parliament and claiming attachment only to a king who, however, could not rule, was to make of the British monarch a "cypher." It would be a long time before the British monarch of the 1700s became converted into the constitutional monarch of today.⁴³ Tucker and Hendrickson argue that the conflict between the colonies and the king was intractable. It was not a case of misunderstanding one another but of having positions too contrary to be reconciled. Indeed, they deny the colonists' sentiment of attachment to Britain, asking of what did it consist if they were not willing to contribute to their own defense?⁴⁴ The one strategy that might have succeeded, had it been tried earlier, a strategy of sucking colonial elites into the vortex of government in the center of the empire itself so as "to channel their natural aspirations to an authority and status commensurate to their growing economic and social power" does not appear to have been considered.⁴⁵

⁴²Ritcheson, British Politics and the American Revolution, pp. 100-101.

⁴³Ibid., pp. 218-219.

⁴⁴Tucker and Hendrickson, The Fall of the First British Empire, pp. 201-202.

⁴⁵Ibid., p. 150.

The Continental Congresses

Study of the First and Second Continental Congresses offers an extraordinary opportunity to observe a noncentralized government at work, albeit under adverse conditions. Whereas the Founding Fathers claimed to have devised a government by study and reflection, the founders of the Continental Congresses can make no such claim. Theirs was a spasm response. Faced with the British Parliament's Boston Port Act, which demanded indemnities for the tea lost by the East India Company (closing the facility until the demand was met), acts radically altering the government of Massachusetts, amending the Quartering Act so as to require putting up and providing for the empire's military, on and on, colonists soon realized they had to concert a response so as to achieve consensus in their opposition to rule by the British.⁴⁶ On the one hand, it is easy to spot many deficiencies in their jerry-built response; on the other hand, Congress did win the war. After describing what Congress did and did not do, I shall have a few words to say about how the centralized system of Great Britain handled the war. It will be fair to say that Congress did not do wonderfully, but Parliament and the king did worse.

The First Continental Congress quickly decided that each colony should have one and only one vote, though it did also insist that this not constitute a precedent. It lacked information about the wealth and population of each colony that might have provided some arithmetic

⁴⁶Rakove, The Beginnings of National Politics, pp. 21-22.

mode of apportionment, and its members did not wish to engage in this sort of disputation faced with a common enemy. They acted, as might be expected, on the principle of achieving as much unity as possible, and one mode of achieving this end was not to discuss disputatious subjects.⁴⁷

Even in 1774 and lasting into 1775, the instructions diverse colonies gave to their delegates included restoration of harmony and union with Britain. Several instructions were merely to attend the Congress and report back. Only North Carolina bound its delegates to accept whatever Congress decided. It is hard to make a plan of union out of typical instructions, such as those given to delegates in New Hampshire:

To devise, consult, and adopt measures, as may have the most likely tendency to extricate the Colonies from their present difficulty; to secure and perpetuate their rights, liberties, and privileges, and to restore that peace, harmony, and mutual confidence which once happily subsisted between the parent country and her Colonies.⁴⁸

Like the Stamp Act Congress that preceded it, the First Continental Congress was united by its opposition to the parliamentary acts, which is why it confined its proceedings to statements of its case and appeals for mitigation.⁴⁹

⁴⁷Ibid., pp. 140-141.

⁴⁸Edmund Cody Burnett, The Continental Congress (New York: The Macmillan Company, _____ DATE), p. 35.

⁴⁹Van Tyne, "Sovereignty in the American Revolution," pp. 530-533.

A feeling for an assembly in which every man had not only a right but felt a duty to speak his mind is captured in John Adams' diary: "The business of Congress is tedious beyond expression. This assembly is like no other that ever existed. Every man in it . . . must show his oratory, his criticism and his political abilities." Consequently, meetings were interminable.⁵⁰ The Second Continental Congress met in 1775 and lasted throughout the Revolutionary War was, not surprisingly, concerned over all with war. When the war went badly, it was consumed with ways and means of salvaging the effort; when the war went well, with some surprise Congress found itself dealing with other issues, including the form of government that would emerge after the war. As Congress surprised itself and its people by rapidly organizing the war effort, voices were heard urging a national union but of unspecified character.⁵¹

Within a week, Congress approved a request by Massachusetts to carry on with legal government. The collection and manufacture of ammunition provided occasion for a series of speedy recommendations. Soon enough there were resolutions forming a Continental Army. The next day George Washington was made commanding general, following by a plan for making staff appointments. The next week bills of credit were issued for the first time, and later that month there was issued a set of military regulations.⁵²

⁵⁰Ibid., p. 45.

⁵¹Greene, "Background of the Articles of Confederation," pp. 15-16.

⁵²Burnett, The Continental Congress, pp. 1-60 inter alia.

The one item that seemed to cause controversy, strangely enough in retrospect, was George Washington's appointment. But this has much to teach us about sectional issues.⁵³ What on earth could have occasioned objection to the desire of New Englanders to appoint George Washington commander in chief in June of 1775? Evidently, they thought that recommending a Southerner would enhance national unity. But Southerners were fearful that they might suffer at the hands of a senior army staff dominated by Northerners. At the beginning, only three of fourteen senior officers were from the South. Congress overruled seniority in order to prevent domination of the army by northern officers. Jibes to the effect that Massachusetts men make good soldiers but Southerners better officers did not help.⁵⁴

For their own part, the New Englanders envisioned the war fought by citizen generals in command of volunteer local militias who enlisted for relatively short periods and were free to withdraw at almost any time. Private benefits as a motive were anathema compared to moral fervor. The slavery of the South did not seem virtuous to them. How might a republic based on citizen virtue be created there under such conditions?⁵⁵ The Southerners feared a strong national government directed by people who looked down on them and who might interfere with their plans for extending their way of life to the west.⁵⁶

⁵³Rakove, The Beginnings of National Politics, pp. 78-79.

⁵⁴Joseph L. Davis, Sectionalism in American Politics (Madison, Wisc.: University of Wisconsin Press, 1977), pp. 10-11.

⁵⁵Calvin C. Jillson, "Political Culture and the Pattern of Congressional Politics under the Articles of Confederation," Publius (Winter 1988): 1-26, at p. 25.

⁵⁶*Ibid.*, pp. 25-26.

By 1780, after many frustrations, Congress moved toward a more efficient mode of administration. Instead of debating and discussing matters large and, alas, small in infinite tedium, Congress began to create executive departments. The numerous boards and commissions to deal with every subject under the sun were rationalized and placed under the supervision of department heads responsible to Congress. It devoted less time to trying individual cases of malfeasance or corruption. The hope was that the previous rapid change in administrative appointments would slow down and lead to more responsive and responsible administration.⁵⁷ Self-interest was given greater reign. Efforts were made to create and nurture allies abroad rather than rely on republican virtue alone at home. A professional military was to be created with conventional, i.e. material, rewards. And the self-denial of patriots was supplemented by the self-regard of businessmen.⁵⁸

It would have been better for Congress to pay commissaries, i.e. purchasing agents, high salaries and attempt to keep them honest. But Congress initially thought otherwise. It denied the commissaries regular commissions, which might have substituted status for income; it demanded elaborate records, including not only the number but the birthmarks of cattle and, in an excess of frugality, it paid below market prices for wagons and supply trains, a practice not appreciated by owners who found more lucrative trade.⁵⁹ Even when Congress decided to divide the functions into a commissary of purchases and

⁵⁷Rakove, The Beginnings of National Politics, p. 283-284.

⁵⁸Jillson, "Political Culture and the Pattern of Congressional Politics under the Articles of Confederation," pp. 13-14.

⁵⁹Middlekauff, The Glorious Cause, pp. 515-516.

one of provisions, problems of supply did not end. Congress felt that individuals should not profit from the war. Thus they rejected the practice of giving a commission of 1-1/2 percent of the value of all supplies, a provision that had the effect of encouraging considerable activity on the part of the agents.⁶⁰ Quartermasters themselves did work on a commission basis and generally performed ably, even if partly for themselves.⁶¹

It should be understood that throughout history military officers have demonstrated high-handed ways, including taking whatever they needed wherever they found it without regard to proper procedure. The supply sergeant of modern lore who can find nearly anything is one such individual, much appreciated, at least in American movies, but little understood. Back then, looting of supply trains was a normal condition.⁶² The problems of supply were, in any case, difficult. How were Southern products to get to Northern armies? One of Robert Morris's contributions was the policy of selling supplies contributed in the South so they could be purchased nearer where the armies were fighting in the North.⁶³

It was not long before questions of national versus state authority came up through the mechanism of decisions about how to carry on the war. How about the apprehension of deserters? Could Congress, acting solely on its own authority, direct local agencies to capture deserters? Was James Wilson right in arguing that there was an implicit authority in Congress to deal with matters of continental-

⁶⁰Ibid., p. 514.

⁶¹Ibid., pp. 516-517.

⁶²Ibid., pp. 517-518.

⁶³Ibid., p. 518.

wide concern? Such arguments represented American rephrasing of the British claim that Parliament had sovereignty over empire-wide matters that it alone could define. Was Thomas Burke right in protesting that legitimating this use of coercive authority would alter the form of government?⁶⁴

In the midst of a rather difficult and demanding debate about the regulation of prices, a larger question supervened: should Congress give its approval to a meeting of four New England states to discuss this matter? Given that the subject of price regulation was continental in scope, Benjamin Rush argued they should not have met at all without congressional approval. In the end, Congress decided not to decide by stipulating that, under prevailing conditions, the meeting was all right.⁶⁵

Failure in supply is now, as it was then, the crucial complaint levied against the Continental Congress. For it raised the key question of whether the national entity had the right and the ability to levy taxes directly on citizens without going through the states. This was no small matter, representing the difference between a national and a confederal government.

Washington fought a defensive war. His aim was not so much to secure victories as to avoid defeats, and if defeat was inevitable, to retreat. Washington and his army did suffer defeats, but they also learned and survived. The major difficulties they encountered, aside from the sting of defeat and melting away of troops, came from insufficient supply and pay. A defensive war had certain advantages

⁶⁴Rakove, The Beginnings of National Politics, p. 166.

⁶⁵Ibid., pp. 165-166.

when the defenders knew the terrain and had the support of local people. But it did depend crucially on supply.

The Impost

Financing large-scale war has never been easy. It was not easy for Great Britain during the Revolutionary War. It was doubly difficult for thirteen separate colonies whose financial capacities and financial administration were far from brilliant. Before going into the grave difficulties the Continental Congress faced in attempting to finance the war, it is essential to understand the conditions of the time. The war produced episodic fluctuations in revenue and expenditure for the states. The lore on which taxes might produce the most revenue in the fastest period of time, state by state, was underdeveloped. Who could say which type of tax would serve the purpose while stirring the least political opposition, and who could say what those taxes were, state by state, given the considerable disparities among them? If to these uncertainties one were to add the difficulties of apportioning the burden among the states, it is no wonder Congress faced horrendous difficulties. Were colonies to resist British taxation only to impose much heavier burdens upon themselves, not from their own legislatures, but from a distant Congress? No wonder everyone's first thought was to leave it to the states to figure out what sort of taxes would best suit their conditions.⁶⁶

⁶⁶Ibid., pp. 206-207.

The system Congress first adopted was expedient: it made requisitions upon states and hoped they would supply the funds. The common cause aided in this effort. But there were also interests dividing the states. Higher taxes in one state might mean that citizens would move to another or to the frontier. Each state had an interest in keeping its taxes low. How could the disparate abilities of the states to pay, including their greatly varying populations, be made compatible with policies that would not disadvantage one compared to the others?

The heart of the problem, Tucker and Hendrickson rightly tell us, "lay in the tendency of the requisition system to depress the contributions of the participants to the lowest common denominator. It made the action of the least zealous the effective standard for the action of all."⁶⁷

When we realize that in 1781 Congress requisitioned \$8 million for the next fiscal year but the states paid less than half a million, the size of the problem becomes apparent. During the entire period under the Articles of Confederation, "the cumulative amount paid by all the states hardly exceeded what was required to pay the interest on the public debt for just one year."⁶⁸ Reports on unmet needs of the army prepared during the autumn of 1780 and the winter of 1781 resulted

⁶⁷Tucker and Hendrickson, The Fall of the First British Empire, pp. 101-102. A statement by Robert Morris, the financier who tried to put finances on a better footing, will help set the stage: "But what else could be expected from us? A Revolution, a War, the Dissolution of Government, the creating of it anew, Cruelty, Rapine and Devastation in the midst of our very Bowels, these Sir are Circumstances by no means favorable to Finance. The wonder then is that we have done so much, that we have borne so much, and the candid World will add that we have dared so much" (quoted in Rakove, The Beginnings of National Politics, p. 292).

⁶⁸Leonard W. Levy, "Introduction: American Constitutional History, 1776-1789," p. 7.

in two major recommendations. One, passed on February 3, 1781, requested states to enable Congress to collect a duty (an impost) on foreign goods to the end that the confederation might at long last obtain an independent source of revenue. Adopted a few days later, the second created three executive departments--War, Marine, and Finance--to add to the previously-approved Department of Foreign Affairs. Until his departure in 1783, Robert Morris became the head of finance.⁶⁹

Approval of the impost under the existing form of government required an amendment to the Articles. In the end, all the states but Rhode Island ratified the impost. But under the unanimity rule for amendments to the Articles, the impost was defeated.

Congress might try to negotiate treaties to protect American shipping, but it was quite another matter to have the states ratify them. An amendment authorizing an embargo against ships of nations which had not signed a treaty with the United States was ratified by only four states.⁷⁰

It was not long before the impost became converted from an ameliorative measure to meet immediate needs to a question of who had the power to do what. No one doubted the desirability of raising revenue. As Congress debated the matter, the text changed from its confederal form--asking states individually to pass statutes enabling them to collect the impost to pass along to Congress--and became instead a request to the states to vest this power in Congress. Moreover, the purpose for which the revenue was to be spent was

⁶⁹Rakove, The Beginnings of National Politics, p. 282.

⁷⁰Ibid., p. 7.

narrowed to one of reducing the interest and principal on the national debt.⁷¹

Before leaping to conclusions, it would be well to consider Rakove's considered judgment "that any different result would have occurred had Congress rather than the states been vested with the power of taxation."⁷² It is one thing to cry out against the inability to support the war and soldiers' pay, and another to claim that had Congress been given that power it would have been more successful than the states in collecting the money. Mann writes in accord with observation of the time that had Congress allowed the revenues collected to be credited to the colony in which the goods were consumed, as well as collection by state officers, the measures would have been approved.⁷³ But then there could have been no guarantees that Congress would have received the funds or even that they would have been applied to the conduct of war. State governments might have considered retaining public support more important than reducing the debt.

Burdened and frustrated by Congress's inability to collect revenues, Robert Morris let it be widely known that he would resign unless things improved. This angered many without furthering his cause. Just when it appeared that financial matters would get even worse, the Articles of Peace containing the British surrender, appeared as a sign of happier days to come.⁷⁴ An interesting sidelight

⁷¹Rakove, The Beginnings of National Politics, pp. 282-283.

⁷²Levy, "Introduction: American Constitutional History," pp. 207-208.

⁷³Jackson Turner Mann, The Antifederalists. Critics of the Constitution (Chapel Hill, N.C.: University of North Carolina Press, _____ (DATE), p. 84.

⁷⁴Jillson, "Political Culture and the Pattern of Congressional Politics," p. 18.

to the story is provided by the fact that, after Morris left office in 1784, he was succeeded on the Board of Treasury by republican-minded delegates, Richard Henry Lee and Samuel Osgood, who came full of belief that honesty and frugality would conquer all. With prospects of selling Western lands, they as well as others thought the debt might soon be extinguished. As life would have it, however, within a couple of years they were writing nasty letters about feckless and unreliable states much in the style of Morris.⁷⁵

The war was over, it had been won, and both Congress and states were left with debts for their pains. The presenting problem was the demobilization of the army, much of which had not been paid or paid too little or with certificates whose value was uncertain. But for Washington's intervention, the situation might have become nasty. In the event, the army followed his lead and returned to the plough.⁷⁶ By then, however, tired of narrow scrapes and feelings of impotence, the nationalists in the colonies who had once hoped to rejoin the British now saw they could make a strong case for a national government.

The Unitary State at War

The advantages of a unitary state at war lie in its ability to raise resources, maintain armies and navies, and concert force. These advantages depend on certain assumptions that are not usually unearthed. One of these is that revenue raising is painless or not

⁷⁵Rakove, The Beginnings of National Politics, p. 340-341.

⁷⁶Middlekauff, The Glorious Cause, pp. 584-85.

sufficiently painful to cause resistance. Another is that there is in fact, as well as in form, unity of direction at the top. If, by contrast, its governments are internally divided, they will be weak or aimless, and their capacity to suffer adversity small, all of which conditions were met in the British empire, these advantages turn into dust. It is true that the criticism unleashed in a noncentralized system may inhibit action and delay worthwhile remedies. It is also true that lack of criticism, at least in public, may permit evils to go on far longer in unitary governments than in those polities where harms are more readily brought to light.

In addition to the advantages brought by its large size and, according to the norms of the times, its considerable military prowess, the British empire faced a number of disadvantages in dealing with unruly colonials. The North American continent was far away, thereby creating severe problems of supply. Great Britain's military strategy depended on control of the seas, a control that could be fragile were the French and/or Spanish to intervene in force. Its homeland was not threatened, whereas the colonials' was. This meant that colonials were likely to fight more fiercely and to be willing to endure more sacrifice than those for whom the difficulties were remote. With responsibilities in India and in other points around the globe, furthermore, the British government could hardly be insensitive to how developments in one part of the world might affect its position in the others.⁷⁷

⁷⁷Piers Mackesy, The War for America (London: Longmans, Green & Co., 1964), pp. xiv, 5.

What were its objectives in regard to the colonists? Was it to beat down the rebellion so that the empire's ties to the colonies might be reinstated as they were of old? Was it to defeat them decisively so as to establish a British government over a subject population? Was it to put American royalists in power?⁷⁸ The British could not decide, perhaps because they thought there was no need to decide until they had subdued the colonists' will to fight on.

To say that there was a government in Parliament was not to say that it commanded a decisive majority on all questions or even necessarily on any single one, apart from its retention in office. Lord North ministry's majority was slim and subject to dissipation. Nor would the king provide whatever leadership was necessary. He would jolly up the ministers and tell them to hang together, but he would not or could not tell them what to do. In that case, no failure in policy could unseat the king. By the same token, telling ministers to put more steel in their spines was not quite the same as telling them in what direction to aim it.⁷⁹

The British part in the Revolutionary War was a classic case of administrative inefficiency. In its time, this was par for the course, but it hurt especially far from home where supply lines were long and cries for attention unheard. Behemoths may roll over opposition, but they are not easily bestirred. Though the rebellion was long seen to be coming, little was done except to dispatch a few regiments. To

⁷⁸Middlekauff, The Glorious Cause, p. 576.

⁷⁹Mackesy, The War for America, p. 23.

do more, the cabinet would have had to face up to the fact that it needed a much larger army and therefore much more money.⁸⁰

Patronage was rife. By great good fortune, a patron might have recommended someone with talent and energy, but that was not the usual case. Consequently, British officers did not have to depend on their superiors but on those who appointed them, discipline was lax and inefficiency rampant. For instance, out of six people appointed as commissaries, whose performance was vital to the war, only one had previously experience. One had as his chief qualification that he had been an acquaintance of Lord North, others that they were loyalists who preyed on the king's sympathy. A man with the right connections, despite complaints, might be appointed to one position, dismissed for incompetence, and then appointed to a similar position elsewhere.⁸¹

Added to patronage was amateurism, the belief that any generalist could do any task. Disaster soon followed. Even worse, perhaps, was the effort to slough off responsibility on others or on no one in particular. When it became known that subordinates would be held to task if they took unauthorized actions. It became commonplace to demand justification in cabinet minutes before actions could be undertaken.⁸² Yet without taking action on the spot, the cause in America would be lost.

⁸⁰Ibid., pp. 2-6.

⁸¹R. Arthur Bowler, Logistics and the Failure of the British Army in America 1775-1783 (Princeton, N.J.: Princeton University Press, 1975), pp. 247-253. Now I understand better the Jane Austin novels in which, whatever the merits of the deserving young man he does not advance without a patron.

⁸²Ibid., pp. 248-249; Mackesy, The War for America, pp. 13, xv.

During the first four years of the war, provisions were supplied through the Treasury. This was a grave error as that department was in no way prepared for the task. Its officials didn't know the business and, worse perhaps, many did not care to know. There were neither proper warehouses nor accounts.⁸³ Only when the navy (which knew what it was doing, more or less) took over supplies did the situation begin to improve.

Often supply ships were delayed. Always those who sent them made no allowance for delay. Often ships were sent without adequate consideration for facilities for unloading and transport to wherever armies were.⁸⁴ General Pattison wrote to his superiors in a despairing, half-mocking tone: "I presume if we are to continue here it is not intended to be in a state of nakedness."⁸⁵ General Clinton had General Darlrymple sail back home complaining that ". . . we have no small arms and are so much in want of powder that I scarcely dare fire a salute or permit the troops to practice."⁸⁶

The lack of supplies was particularly unfortunate because it helped prevent the British from undoing Washington's strategy by seeking decisive battles. When an army has to live off the land, it cannot pursue and fight but must go wherever it can provision itself.⁸⁷

Mackesy gives us an odyssey of shipping problems. Here was a force of supply ships ready to sail on the first of December. Alas, the Ordinance Department could not supply the necessary guns and

⁸³Bowler, Logistics and the Failure of the British Army in America, pp. 249-56.

⁸⁴*Ibid.*, pp. 256-257.

⁸⁵Quoted in *Ibid.*, pp. 246-247.

⁸⁶Quoted in *Ibid.*, p. 246.

⁸⁷*Ibid.*, p. 241.

munitions so the ship was delayed for two weeks. Another two weeks were spent fighting adverse winds, so the ships were more or less back where they started. Another week was lost in getting to Ireland, so what with one thing and another, the flotilla did not set sail until February 12th. When the ships finally did get under way, General Howe wrote to call off the expedition.⁸⁸

Of course, one hand did not know very much about what the other was doing, especially when that hand was 3,000 miles away. Thus did the Treasury discover that in some short period of time the army had consumed 3-1/2 million pounds more of bread and flour and 2 million pounds more of meat than had been expected. One reason supplies ran short was that far away in England there was no knowledge of thousands of extra mouths to feed, including prisoners of war, Indians, relatives and camp followers.⁸⁹

A few words about General Burgoyne's transport problems should complete the picture. Though he ordered officers to reduce their baggage to minimum proportions, his orders were not obeyed. It was not just a few but many officers who found it advantageous to acquire more horses and even wagons for themselves, as the fortunes of war provided. The king's carts, as they were called, often fell into the wrong hands, albeit supposedly on one's own side.⁹⁰ Though Burgoyne issued orders to hire all the wagons his people could find, and he assumed they could find them, they either were not available or the officers were derelict in their duty. Nor were the local people

⁸⁸Mackesy, The War for America, p. 63.

⁸⁹Bowler, Logistics and the Failure of the British Army in America, p. 231.

⁹⁰Ibid., pp. 229-230.

friendly and disposed to give aid and comfort.⁹¹ Tacticians may differ over whether Burgoyne demanded the transport of too many big guns. Nevertheless, as Bowler puts it, "the artillery employed 400 horses that not only ate up large parts of the supply of hay and oats, but might have been used to carry provisions or even to mount the German Dragoons."⁹² For mercy's sake, I omit mention of the many times ships sailed into the wrong ports.⁹³

Daring and resolve were not necessarily qualities sought or found in British high command. Its generalship was poor, and it hesitated or, when more daring, failed to get sufficient support. A security- and seniority-oriented army, whose name at the top was Patronage, was not suited to wars far away. Whatever happened, they could always return to their privileged life. No British general ever outlined a plan designed to bring victory. They fought catch-as-catch-can, some better, some worse, until loss of naval support at Yorktown and a generally wearing down of their armies compelled them to submit.

There is no way of knowing whether the inconveniences and inefficiencies of a noncentralized form of government were equal to, lesser than, or greater than those that attended the prosecution of the war in America by Great Britain. What seems reasonable to say is that, given considerable inefficiency on both sides, those committed by the British had worse effects on their military position than those that

⁹¹Ibid., p. 228.

⁹²Ibid., pp. 228-229.

⁹³Middlekauff, The Glorious Cause, p. 512.

afflicted George Washington's armies, which experienced better treatment at the hands of local populations.

Republican Egalitarian Ideology

Before we can understand the debates about either the Articles of Confederation or the Constitution, it is necessary to know something about the republican ideology of the period. Thinking of the struggles in England between what was called the Party of the Country versus the Party of the King over whether the monarch's patronage would undermine representative government, the radical part of the Whig opposition, sometimes called republican, put forward ideas that found only modest resonance within England but a ready audience among American political activists. The most important things to know about this ideology, in my opinion, are that it was strongly egalitarian and that its adherents believed that the national government (as distinguished from state and local governments) was a feared source of artificial inequality. By artificial they meant inequalities not inherent in human character and talent but imposed by governmental action in providing privileges to some citizens that were denied to others.⁹⁴ Though equality in the sense of social leavening, Wood informs us, was not seriously conceived of in 1776, there were

⁹⁴Though one could hardly call the Whig opposition "pro-American," Ritcheson tells us, "Yet the Americans and the Opposition shared much common ground: a belief that King and ministers had somehow--mysteriously though corruptly--come to dominate the political scene free of any constitutional check. Both groups detected in the reign of George III an insidious attempt to re-create old Stuart despotism." (Ritcheson, British Politics and the American Revolution, pp. 217-218.)

adherents of reducing what they called unnecessary and unwarranted distinctions. As suited their purposes, they were ambiguous in their thought in refusing to distinguish between equal opportunity and equal conditions. On one side, according to Wood, their doctrine "stressed equality of opportunity which implied social differences and distinctions; on the other . . . it emphasized equality of condition which denied these same social differences and distinctions."⁹⁵ What the Whig opposition and their American followers meant by what "Cato" called "a relatively equal division of property" cannot be accurately stated. But there was a wider agreement that a country like the United States, where property was fairly widely distributed compared to the usual European condition, had a better chance of forming a representative government.⁹⁶

Mann quotes the writer called "Democritus" who warned that "only those could be trusted who earned their living by 'honest industry' and who were men 'in middling circumstances.'"⁹⁷ Who can fault here the egalitarian protests of the people of Farmington:

Because it is founded on Principles Subertive of a
Republican Government Tending to Destroy that Equality
among the citisans which [is] the only permanent
foundation on which it can be supported to throw an

⁹⁵Wood, The Creation of the American Republic, p. 70.

⁹⁶Mann, The Antifederalists, pp. 10-11. See also Aaron Wildavsky, The Rise of Radical Egalitarianism (Washington, D.C.: American University Press, 1991), ch. 2, "Resolved, That Individualism and Egalitarianism Be Made Compatible in America: Political Cultural Roots of Exceptionalism," and ch. 3, "The Internal Transformation of the Major Political Parties: Democratic Activists Are Increasingly Egalitarian, Republicans Individualist and Hierarchical."

⁹⁷Ibid., p. 10.

excessive Power, the constant attendant of property into the Hands of the Few, to cherish those anti-republican Principles & feelings which are now predominant in many of the states, and finally to dissolve our present Happy and Benevolent Constitution & to erect on the Ruins, a proper Aristocracy: wherein the Body of the People are excluded from all share in the Government, and the Direction & management of the state is committed to the Great & Powerful alone.⁹⁸

I follow Wood in his important summary: "The republican aversion to artificial distinctions was being broadened into a general denunciation of all differences, whether economic, social, intellectual, or professional."⁹⁹

In sum, the Whig ideology saw two great threats to liberty, one the moral decay of a people that ought to be dedicated to public virtue and disinterestedness and instead became corrupted by wealth and unmerited distinction, "and the encroachment of executive authority upon the legislature, the attempt that power always made to subdue the liberty protected by mixed government."¹⁰⁰ One need only connect these sentiments to those of a man of Whiggish bent from Delaware who claimed that "the executive power is ever restless, ambitious, and ever grasping an encrease of power" to understand the

⁹⁸Quoted in Ibid., pp. 108-109. See also Wood, The Creation of the American Republic, p. 399.

⁹⁹Wood, The Creation of the American Republic, p. 400.

¹⁰⁰Middlekauff, The Glorious Cause, p. 47.

republican desire for legislative supremacy.¹⁰¹ The repeated calls for separation of powers may be interpreted, as Banning does, as "essentially a demand for an end to executive influence upon and interference with the other branches of government."¹⁰² They feared that inequality within government would surely lead to the destruction of republican government as inequality in society. The Articles of Confederation was a republican construct.

The Articles of Confederation

"Throughout the 1770's," Wood informs us, "there was remarkably little discussion in the press or pamphlets of the nature of the union being formed. What debate there was . . . was very limited and intellectually insignificant in comparison with the exciting and sweeping debates over the formation of the state constitutions--a graphic indication of the relative importance Americans attributed to their central and state governments."¹⁰³

Had there been no sentiment for a national entity in addition to states, there would have been no Articles of Confederation. A unitary state was out of the question. Could there, however, have been a federal state with both national and state governments exercising direct authority over citizens as provided for in the Constitution? Though not directly discussed as such, the idea of a national

¹⁰¹Wood, The Creation of the American Republic, p. 135.

¹⁰²Lance Banning, The Jeffersonian Persuasion, Evolution of a Party Ideology (Ithaca/London: Cornell University Press, 1978), p. 85.

¹⁰³Wood, The Creation of the American Republic, pp. 353-354.

government did come up and was explicitly rejected in favor of a confederate form of government.

The short life of the Articles of Confederation began in March 1781, though the drafting took place in the years 1776 and 1777. It was over by 1789 when the Constitution came into force. The very fact that there was virtually no opposition to the Constitution after it began tells us that its principles cannot have been considered outrageous by many. It would be equally valid to say that, until then, the idea of dual sovereignty had very little currency in the United States.

In 1780 and '81 a number of amendments to the Articles were considered with the idea of giving Congress an independent source of revenue, as we saw in discussing the impost. The impost failed because of the unanimity requirement, which may well be regarded the single and most signal failure of government under that document. There was widespread agreement that the Articles needed improvement but, when faced with the stark choice of no improvement or radical change, change--what we now call the American federal system--won out. I shall end this paper with brief speculations about how life under the Articles might have developed had sufficient change been made to increase the efficacy of that confederal government. Here, before we examine how well governments and peoples fared while living under a noncentralized form of government, we must attend to the actual provisions of the Articles.

On one side stood those like John Adams who believed that "the Confederacy is to make of us one individual only; is to form us like

separate parcels of metal, into one common mass. We shall no longer retain our separate individuality, but become a single individual as to all questions submitted to the Confederacy." On the other side, people like Roger Sherman and John Witherspoon argued that such matters relating only to individuals neither could nor should come before the Congress, there was no need of a union to incorporate the states into one. Stephen Hopkins contended that "the Safety of the whole depends on the distinctions of Colonies."¹⁰⁴ The vital difference was that one side saw the defect of the Articles as its incapacity to act on individuals, and the other side saw that very same thing as protective of liberty.¹⁰⁵

Everyone at the time understood, Merrill Jensen asserted, "that most of the state governments would never knowingly accept a superior government over them."¹⁰⁶ He is certainly accurate in pointing out that radicals of the Whig-republican persuasion in the 18th century "looked upon the desire for office as a disease which fed upon office-holding."¹⁰⁷ Such views were clearly written into the Articles: delegates were selected by state governments that could recall them at any time; the presidency of the Congress could be held by the same person no longer than one year out of three; nor could (*pace* term limits nowadays) a member of Congress serve for more than three years of the six-year term. Zuckert concludes that "the

¹⁰⁴Quoted in *Ibid.*, p. 357.

¹⁰⁵See Lutz, "The Articles of Confederation as the Background to the Federal Republic," p. 62.

¹⁰⁶Merrill Jensen, "The Articles of Confederation: A Re-interpretation," *Pacific Historical Review*, Vol. VI, No. 2 (June 1937): 120-142, at p. 133.

¹⁰⁷*Ibid.*, p. 142.

delegates were agents of, appointed by, sent to serve at the pleasure of, and paid by their states."¹⁰⁸

The issue was joined in the difference between John Dickinson's draft of the Articles and the successful amendment, which became Article II, offered by Thomas A. Burke of North Carolina.

Dickinson:

Each Colony shall retain and enjoy as much of its present Laws, Rights and Customs, as it may think fit, and reserves to itself the sole and exclusive Regulation and Government of its internal police, in all matters that shall not interfere with the Articles of Confederation.¹⁰⁹

Burke:

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.¹¹⁰

Dickinson's prohibition of states interfering with the government of the Articles was rejected. The phrase "expressly delegated to the

¹⁰⁸Michael P. Zuckert, "A System without Precedent: Federalism in the American Constitution," in L.W. Levy and D.J. Mahoney, eds. The Framing and Ratification of the Constitution, pp. 136-137.

¹⁰⁹Quoted in "Sovereignty over Seabeds," p. 1062.

¹¹⁰Quoted in *Ibid.*, p. 1063.

United States" became in the Constitution the "necessary and proper" clause, a world of difference.

An Irish immigrant, with virtually no political past and not much of a future, Burke regarded his role entirely as a servant of his state and, in that capacity, kept a barely willing governor informed daily of events.¹¹¹ Essentially, Burke argued "That the states alone had Power to act coercively against their citizens, and therefore were the only Power competent to carry into execution any Provisions whether Continental or Municipal." Thus he got John Adams, among others, to admit that, if a declaration of war were to have effect, the "Articles of War must be enacted into Laws in the several States."¹¹² It is worth hearing what Rakove has to say:

With these qualifications, it is nevertheless unquestionable that Burke made a critical contribution to the evolution of American notions of confederation. He was the first to ask how conventional ideas of sovereignty were to be reconciled with the establishment of a confederation. And once this question, hitherto surprisingly ignored, was posed, there could be little doubt that the states were a more appropriate repository for sovereignty than was the union. The states were the constituent parties of the union: they elected and instructed the members of Congress, and their consent was indisputably necessary for the ratification of confederation. The states possessed

¹¹¹Rakove, The Beginnings of National Politics, pp. 167-168.

¹¹²Ibid., pp. 166-167.

governments constructed in the normal meaning of the term, exercising legislative, executive, and judicial functions, while Congress remained, so to speak, structurally anomalous.¹¹³

The first three Articles created "a firm league of friendship" for the security and general welfare of the states. The fourth promised to end various discriminatory actions of one state against another, allowed for the extradition of fugitives, and contained a clause adopted by the Constitution that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Whether, as Lutz argues, this was tantamount to acceptance of dual sovereignty in that each individual was simultaneously a citizen of a state and of the nation is an open question.¹¹⁴

In addition to the conditions of appointment of delegates from the states we have already discussed, Article V stated that "Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states."¹¹⁵ A clearer statement of state supremacy could hardly be given. The most national of the Articles, VI, held that states were prohibited from making alliances or treaties with other governments or entering into such between any two states or keeping war vessels without congressional consent or engaging in war or contravening treaties

¹¹³Ibid., p. 172.

¹¹⁴Lutz, "The Articles of Confederation as Background to the Federal Republic," p. 66.

¹¹⁵Winton U. Solberg, ed., The Federal Convention and the Formation of the Union of the American States (New York: The Liberal Arts Press, 1958), p. 43.

"entered into by the United States and Congress."¹¹⁶ Articles VII and VIII held that expenses of war for the common defense should be determined by the land within each state as well as the improvements on it. But "the taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within a time agreed upon by the United States in Congress assembled."¹¹⁷ What was to be done should the states fail to pay was not discussed.

The ninth Article provides an elaborate procedure for dealing with disputes among the states and makes clear again that foreign policy and war belongs to Congress. The rest of the Articles allow Canada but no other entity to enter the Confederation, and that nine of the thirteen states shall be sufficient to pass ordinary laws.

Ratification of the Articles of Confederation was held up for three years due to Maryland's refusal to ratify. A number of its leading citizens held title to lands that were variously claimed by Virginia and New York. Only when these two states recognized they could not acceptably govern the vast tracts of land they claimed, and ceded them to a national domain in return for clearer title to lands they still held, was Maryland persuaded to sign on March 1, 1781.¹¹⁸

The Articles of Confederation sought to draw a line between internal and external affairs. In regard to internal matters, states were sovereign and Congress could act only through them. In foreign affairs, however, Congress, composed of a committee of the states, held

¹¹⁶Ibid., p. 44.

¹¹⁷Ibid., p. 46.

¹¹⁸Rakove, The Beginnings of National Politics, p. 88a.

a ruling hand, though how it might enforce its will on the states remained unstated. The states retained their internal police powers while Congress hoped that in matters of war and peace and foreign affairs, as well as those unspecified of a continental character, the whole would prevail over the parts. This is largely a confederal, not a federal, government.

No wonder that men who sought power and distinction would rather serve in their states than in the Congress. No wonder that much time was consumed in fruitless quorum calls as seven states were required to be in attendance. No wonder that proceedings were stymied when certain delegates were absent and when their views were opposed so that their state vote did not count.¹¹⁹ It would appear that nothing good could come of this. But it did. The claims of the nationalists of the day that trade was Balkanized, that states made economic war on each other, that debtors seized control of state legislatures and inflated the currency--in short, that anarchy reigned, as exemplified by Shay's Rebellion--was well publicized at the time and continues to this day. Historians reexamining these episodes, however, have come to contrary or at least to mixed conclusions. Let us turn now to experience.

Life under the Articles

It is now too late, and records kept at the time are too scanty, to arrive at definitive conclusions about the nature of the American

¹¹⁹Ibid., pp. 355-56.

economy during the period of the Articles. There is no doubt that during the scant few years under the Articles there were economic difficulties. How could there not be? Commerce had been disrupted and resources diverted into the Revolutionary War. It would take some time to build up the productive capacity of the economy. A recession, judged by economists to be of a cyclical kind, occurred at more or less the same time; and the colonies no longer had what today we would call imperial preferences. But there was also a brighter side. Self reliance during the war led to an increase in domestic manufactures. Trade with European nations other than Britain increased.¹²⁰ Exports increased moderately, prices generally were higher, and the condition of the people, when reported upon, generally appeared good.¹²¹ Whether the substantial increase in tonnage on American ships as well as the increase in exports reflected merely the considerable growth in population or increased economic growth remains in doubt.¹²² No one in those days imagined the positive effects on trade of the Napoleonic wars or on manufactures of Eli Whitney's invention of the cotton gin. It is also worth noting that there was a considerable base in terms of resources and human talent for commerce before the Revolutionary War.¹²³ What we can say is

¹²⁰James F. Shepherd and Gary M. Walton, "Economic Changes after the American Revolution. Pre- and Post-War Comparisons of Maritime Shipping and Trade," Explorations in Economic History, Vol. 13, No. 4 (Oct. 1976): 397-422, at pp. 419-20.

¹²¹Gordon C. Bjork, "The Weaning of the American Economy: Independence, Market Changes, and Economic Development," Journal of Economic History, Vol. XXIV, No. 4 (Dec. 1964): 541-560, at pp. 542-560.

¹²²Shepherd, Economic Changes, pp. 415-19.

¹²³*Ibid.*, pp. 420-21.

that the picture of a prostrate America caused by the absence of strong central government is overdrawn.

Readers of the Federalist Papers will recognize the many complaints against interference with commerce in the form of special burdens placed by one state on another. They will also recall, if pressed, that the matter is not discussed in any depth or detail but rather assumed. Certain background factors, as usual, will be helpful in guiding interpretation.

Except for tobacco and cotton, most commerce occurred not between states, given the primitive transportation modes of the day, but rather from the export of raw materials to Europe and the import of finished goods and manufactures. Trade from individual states to Europe and back was the largest kind. What is today called interstate commerce was relatively small.¹²⁴

It will be helpful to consider the general objectives to which tariffs and regulations were directed. One was revenue, another was protection of local industries, and a third was retaliation against other states and nations.¹²⁵

One of the common allegations of the time was that states having ports where goods would be unloaded would raise fees and other obstacles to their shipment to the states for which they were intended. The most egregious case was New York's duty on imports destined for

¹²⁴Edmund W. Kitch, "Regulation and the American Common Market," in A. Dan Turlock, ed., Regulation, Federalism, and Interstate Commerce (Cambridge, Mass.: Oelgeschalger, Gunn & Hain, Inc., ____ (DATE?), pp. 15-16.

¹²⁵William Frank Zornow, "The Tariff Policies of Virginia, 1775-1789," The Virginia Magazine of History and Biography, Vol. 62, No. 3 (July 1954): 306-319, at pp. 307-308.

other states.¹²⁶ But a study of that provision discovered that, upon submission of a sworn statement that these goods were destined for individuals in other states, they passed duty free, though they did have to be sent in the same package though not the same vessel. This was a common feature of policy throughout the states.¹²⁷ There were also a number of small quarrels that led to a round of retaliations from one state to another, but they were cleared up by new legislation. The nub of the difficulty was that New York and Massachusetts wanted to discriminate against British goods in retaliation for the Navigation Acts. The amounts involved were small and, after some haggling, the difficulties resolved.¹²⁸

In a study of tariff policies in Virginia, which occasioned much criticism at the time, William Zornow shows that an act of 1788 provided that virtually all goods produced in the United States were able to enter Virginia duty-free. Criticisms that had been true up to that time were no longer correct.¹²⁹ Virginians had never been afforded special tariff rates unavailable to other American citizens. By the time the government under the Constitution assumed office, there was very nearly free trade.¹³⁰ There were, of course, protective tariffs in Virginia, but that was as common then for states as it is now for nations.¹³¹ In a further study of Massachusetts tariff legislation in practice, Zornow explains that at no time were American goods from

¹²⁶Kitsch, "Regulation and the American Common Market," p. 17.

¹²⁷Ibid., pp. 17-18.

¹²⁸Ibid., p. 19.

¹²⁹Zornow, "The Tariff Policies of Virginia," p. 313.

¹³⁰Ibid., p. 350.

¹³¹Ibid., pp. 315-316.

other states discriminated against. By 1789, the trend was entirely toward free trade among the United States, and increasingly greater efforts were made to bring policies in one state in accord with others.¹³²

Experience in South Carolina reveals a strong tendency to discriminate against foreigners, a weaker but still palpable tendency to discriminate against residents of other states, and a growing tendency toward freer trade. Whether one chooses to focus on the discriminatory policies or on the tendency to move away from them is a matter of judgment. To place South Carolina's policies in perspective, it is necessary to understand that many states sought to regulate economic activities in a way they believed would be favorable to their interests. Thus, South Carolina gave bounties (now called subsidies) for those who would make flour out of wheat, grow hemp and flax, and manufacture thread or saleable linens. This practice died after the Revolutionary War. It was replaced by tariffs against the importation of these very same materials and manufactures. Duties of all kinds against non-American citizens were common. In the midst of such regulatory policies, South Carolina caused modest harm and considerable outrage in other states by placing duties on goods in transit to American locations and placing duties on tonnage of American but not South Carolinian ships.¹³³ In addition, there were numerous small but cumulatively burdensome charges for lighthouses,

¹³²William Frank Zornow, "Massachusetts Tariff Policies, 1775-1789," The Essex Institute Historical Collections, Vol. XC (April 1954): 194-216.

¹³³William Frank Zornow, "Tariff Policies in South Carolina, 1775-1789," The South Carolina Historical Magazine, Vol. 56, No. 1 (January 1955): 31-44, at pp. 37-39.

hospitals, storage, pilotage and tonnage for non-South Carolinian ships. This sort of thing made the charges levied by Tenche Coxe of Pennsylvania (and picked up by nationalists of all kinds) seem valid. Looked at over time, however, the trend was toward freer trade. South Carolina went along with efforts of the Congress to impose uniform duties. Tariffs and charges against goods from other American states were gradually reduced, and were nearly eliminated by the time the Constitution came into force.¹³⁴

A government with the power to control interstate commerce undoubtedly would have suffered fewer of these difficulties. But this is not to say that a noncentralized system could not have evolved in a similar direction and was not, in fact, in process of doing so. Were the inconveniences of the period from the end of the Revolutionary War through 1789 serious enough to condemn government under the Articles? I think not. Opposite breaches in modern times, which allow the central government to regulate commerce wholly within a single state on the grounds that it places a burden on interstate commerce, might not have taken place.

Shay's Rebellion

Was George Washington right when he wrote Richard Henry Lee that "to be more exposed in the eyes of the world and more contemptible than we already are, is hardly possible" or when he told

¹³⁴Ibid., pp. 39-43. See also Charles Gregg Singer, South Carolina in the Confederation, dissertation from the University of Pennsylvania (Philadelphia, 1941).

James Madison that "we are fast verging to anarchy and confusion." Was Lee in turn in touch with the situation when he asserted that "we are all in dire apprehension that a beginning of anarchy with all its calamities is approached, and have no means to stop the dreadful work." John Jay wrote Thomas Jefferson that he smelled more than a redress of grievances in the Shayites.¹³⁵

In the spring and summer of 1786 courts charged with the duty of collecting debts were forcibly shut down in a number of localities in Massachusetts. The government of Massachusetts, its General Court, refused to accede to the twin demands of relief from debt and lower taxes. When the rebellion grew, government offered the carrot of an amnesty together with the stick of raising an army. Early in 1787 Shay and his followers were routed; the leaders left the state, the followers went home. A small occupying army was stationed in the areas of greatest rebellion and court officers were empowered to collect what was due.¹³⁶

Whereas the use of force to put down the rebellion had widespread support, the occupying army and its minions did not. Increasing calls came for lenient governmental policy. From being a traitor to law and order, Daniel Shay "quickly became an object of pathos," especially when he went around begging for financial support. Had a lenient policy not been followed, it is possible that the anti-

¹³⁵Richard B. Morris, "The Confederation Period and the American Historian," William and Mary Quarterly, Vol. XIII, No. 2 (April 1956): 139-156, at p. 140.

¹³⁶Richard D. Brown, "Shay's Rebellion and the Ratification of the Federal Constitution in Massachusetts," in Richard Beeman, Stephen Botein, and Edward C. Carter II, eds., Beyond Confederation--Origins of the Constitution and American National Identity (Chapel Hill/London: University of North Carolina Press, NO DATE GIVEN), pp. 115-116.

federalist fervor stemming from the repression of Shay's rebellion might have succeeded in getting Massachusetts to reject the Constitution.¹³⁷ Were one to compare Shay's rebellion with the Whiskey Rebellion that occurred during the presidency of George Washington, which was put down by the mobilization of an army greater than that which fought the Revolutionary War and ended in the temporary imprisonment of very few people, it would be hard to say which form of government was more vigorous in putting down this refusal to obey the law. It is possible to conclude that there was a lot less to these rebellions than there seemed to be.

Western Lands

Among the many difficulties faced in trying to govern diverse peoples recently emerged from a revolutionary war, with many ups and downs, the signal success of the Articles was its engineering of a land policy to which all the states would adhere. This was one problem the government under the new Constitution would not have to inherit. The key to settling this question lay in Virginia's cession of its claims under the old royal charter for immense tracts of land north of the Ohio River. Around the same time (March 1784) Congress passed the first ordinance on western lands that provided for self-government in these territories. Observing rather barbaric tactics in the territories, Congress adopted another ordinance in May 1785 dividing the land into townships six miles square. First the land was

¹³⁷Ibid., pp. 117-127.

to be surveyed and then it was to be sold at not less than a dollar an acre, with governmental certificates accepted as specie. As each township was divided into 36 lots, lot 16 in each town was reserved for public schools, and other land was to be used to pay off bounties promised soldiers during the Revolutionary War. As for the Confederation, it received one-third of all silver, gold, and copper discovered and four sections in each town.¹³⁸

Thomas Jefferson played a large part in arranging these matters. He served on the committee of Congress which was placed in charge of devising policy for the western lands. His desire was to virtually give away the land so that it could be settled by small farmers, the sturdy yeomanry he so much admired. Give-aways, however, had little appeal when the public debt seemed so large and land was reserved for paying up its principal as Congress might decide. Jefferson's idea did succeed with the new states that would be formed out of the new territories and would be able to enter the union under the same conditions as the original thirteen.¹³⁹

The greatest of all these acts, the Ordinance of 1787, later called the Northwest Ordinance, was passed on July 13, 1787. Territories were to be administered by a governor, a secretary, and three judges who were appointed by Congress. After there were 5,000 free inhabitants in that territory, they might create a general assembly to consist of a house of representatives, a legislative council, and the governor. The Ordinance also specified relatively easy rules for the

¹³⁸Middlekauff, The Glorious Cause, pp. 588-590.

¹³⁹Ibid., pp. 588-589.

admission of new states into the union. It represented a great act of statesmanship.

Sinking the Debt

Among the numerous accusations leveled at the government under the Articles of Confederation, the failure to sink (that is, retire) the debt was foremost. In significant measure, this was an unfair accusation. From the earliest times, the settlers of the united colonies suffered from a lack of specie, hard coin in which to conduct their transactions. With so little money in supply, it became easy to acquire debt and difficult to pay it off. By the time a farmer bought land and equipment, the sum was too high to be paid for out of savings and required going into debt. When anything went wrong, farmers found themselves unable to pay and at risk of losing their land. Debtor prisons were a growing industry. And debtors' riots became common.¹⁴⁰

Debts connected farmers to politics. To get at one aspect of the problem, they sought to keep expenses and salaries in government very low so as to pay less in taxes. They also sought the issue of paper money, the deferment of charges, the levying of taxes payable with securities rather than specie, and the payment of interest in paper money.¹⁴¹ Common practice in states was to issue paper money which was then withdrawn from circulation via proceeds from taxation. This

¹⁴⁰See Aaron Wildavsky, "On the Balance of Budgetary Cultures," in Ralph Clark Chandler, ed., A Centennial History of the Administrative State (New York: Macmillan, 1987), pp. 379-413.

¹⁴¹Mann, The Antifederalists, pp. 6-7.

was called "currency finance." The whole point was to get around the need for specie. "For over half a century before the Revolution," Ferguson observes, "colonial governments regulatory issued and withdrew paper money, alternately creating and redeeming public debt."¹⁴²

It would help the reader also to know that during the war Congress sold a kind of bond called "loan office certificates," worth about \$11.5 million in species. Presumably they were held for individuals who had performed some special service in loaning money to Congress. Yet more complicated, interest was paid on face value though certificates were bought with depreciating currency and the interest was paid in what were called "bills of exchange" drawn on banks in France. These bills were especially valuable because they could be redeemed in specie. Interest rates ran as high as 25 percent. These certificates were often given to merchants in lieu of cash, and therefore came to be held by people of means. These loan office certificates were often referred to as public debt.

In addition to debt being a threat to the viability of the American union, it was also looked upon as an aid to that very union. Holding debt would give people of property a stake in the success of the new government. Moreover, and perhaps most important, according to Ferguson, "Congress intended to use the debt for a political purpose. Payment on the terms Congress proposed involved a grant of taxing power to the central government."¹⁴³

¹⁴²E. James Ferguson, "State Assumption of the Federal Debt during the Confederation," The Mississippi Valley Historical Review, Vol. 38, No. 3 (December 1951): 403-424, at pp. 409-411.

¹⁴³*Ibid.*, p. 424.

It is fair to say that the picture passed down through the generations and perpetuated in our time is one of Congress struggling to pay off the public debt but not succeeding due to improvident and unwilling state legislatures. Not quite. Most of the some \$200 million issued in paper money by states depreciated over time so that it was essentially wiped out. In an effort to straighten out these finances, Congress revalued the currency so that one unit of specie equaled 40 units of currency, and asked the states to withdraw the paper from circulation. Nearly \$120 million was withdrawn. By 1790 it was estimated that only \$6 million in certificates or \$60,000 in specie remained in circulation, not a small but certainly not an overwhelming amount of debt.¹⁴⁴

During the war the revolutionary armies, receiving so little from the Continental Congress, lived off the land. Mostly they were decent about it, giving merchants and farmers certificates. Estimates of the total value range over \$100 million, but nobody knew for sure. In any event, Congress asked the states to accept these certificates in lieu of payment of taxes. Northern states redeemed part of them, and in the South, where they grew largest, state governments accepted them as equivalent to state debt and arranged to pay them off.¹⁴⁵

There were also arrears in pay due to soldiers who fought in the Continental army. Several years of pay amounted to millions of dollars, especially considering that some soldiers enlisted for three years or the entire length of the war. Not only was there failure to pay these salaries at all, but payment was sometimes given in

¹⁴⁴Ibid., p. 405.

¹⁴⁵Ibid., pp. 405-406.

depreciated currency that now had to be made up. In different ways, states stepped in and paid soldiers either in new certificates or in cash.¹⁴⁶

In sum, the bulk of the public debt had been depreciated or paid off or substituted for by 1783. When the impost failed by 1786, states stepped in to assume their share of the debt, leaving only interest here and there and loan certificates to be redeemed.¹⁴⁷ One could say either that Congress and the states separately and together had put together a patchwork of expedients that retired most of the debt, or that the government of the Articles had failed to retire the entire debt in a systematic manner. In any event, insofar as we can discover, a crisis did not exist. Yet, if it is a crisis of perceptions we are talking about, then a significant element of American political elites decided there was a crisis that could be resolved only by what they had believed was necessary all along, namely, a stronger national government.

Whereas von Holst spoke of "the contemptible impotence of Congress . . .,"¹⁴⁸ David Humphreys wrote to Jefferson in 1786 that "to judge by the face of the country; by the appearance of ease and plenty which are to be seen every where, one would believe a great portion of the poverty and evils complained of, must be imaginary."¹⁴⁹

¹⁴⁶Ibid.

¹⁴⁷Ibid., p. 421; and Richard B. Morris, "The Confederation Period and the American Historian," William and Mary Quarterly, Vol. XIII, No. 2, 3rd series (April 1956): 139-156, at pp. 151-152.

¹⁴⁸Ibid., p. 144.

¹⁴⁹Wood, The Creation of the American Republic, p. 395.

The vital fact, not less vital for being obvious, that the American states (though they might have behaved, as some said, as if they were in a state of nature toward each other) did not in fact go to war and had no expectation of doing so. What one might say today of the relationships among Western industrial and democratic nations--that they may struggle hard economically but they will not invade or threaten each other's sovereignty¹⁵⁰--was true then as well. Though it runs counter to conventional understanding, Onuf's explanation goes in the right direction:

But it was easy to exaggerate the impact of popular discontent and to impute it to "imbecile" government. The success of the American state system--in avoiding interstate warfare and in containing popular discontent--was less conspicuous, because it defied conventional logic. Defects in state power were integral to this success. The combination of limited state power, a general acceptance of a congressional jurisdiction that was rarely invoked, and the actual resolution of disputes by continuing negotiations between or among states and between states and their citizens guaranteed the survival of the American state system.¹⁵¹

¹⁵⁰See Max Singer and Aaron Wildavsky, The Real World Order. Zones of Peace/Zones of Turmoil (Chatham, N.J.: Chatham House, forthcoming 1993).

¹⁵¹Onuf, The Origins of the Federal Republic, p. 6.

It is not only the presence but the absence of coercive authority that may prove useful. States could not do much about the acts of other states, and the Congress lacked the ability to force states into line. This was as true for states' inability to coerce settlers in the outlying areas of their territories as it was for their inability to force compliance with their wishes on other states. Since they would not go to war, they were obliged to wheedle, cajole, and bargain, all of which led to more acceptable outcomes than the coercive alternative.¹⁵² "What is truly remarkable about the Confederation," I agree with Wood, "is the degree of union that was achieved."¹⁵³

The Constitution

Much ink has been spilled over the Framers' construction of human nature as sufficiently virtuous to permit republican government but sufficiently immoral to demand controls over insuperable egoism. Too much ink. For if human nature had a tendency toward evil, then it was not possible to trust the people's representatives or, for that matter, the people themselves. How then was government, any government, to be trusted? The nationalists' problem was to create a government that had independent taxing and regulatory powers. The barrier to this effort had been the belief that the states were sovereign and that, therefore, the liberty of the people depended on requiring that any national entity exercise its power through and not apart from the states.

¹⁵²See Ibid., pp. 11-12.

¹⁵³Wood, The Creation of the American Republic, p. 359.

But if state governments were also tainted with the inherent corruption of human nature, the only repository of authority that remained, however suspect it might also be, was the people themselves. How easy it was, in this conception, to argue that representatives not only sought to aggrandise themselves through their inevitable and invariable lust for power, but that they committed the opposite but equally venal sin of giving in to popular passions that extended from common human depravity. Why, then, not put a national government over states to constrain their wickedness, claiming all the while that the separation of powers between executive, legislative, and judicial functions would suffice to limit evils of the national entity? If separation of powers was desirable so as to limit the evils of human egoism, why not go a step further and divide the powers in some sense between national and state entities, thus reducing the capacity for self-aggrandisement even further? Thus a national government became the answer to two problems at once--not only the lack of a strong central government but also a barrier against real and alleged harms perpetrated by the self-same self-aggrandizing state legislatures that had thwarted royal governors. Republican ideology served well in opposition, but without a strong executive to counter, it disintegrated. No orthodoxy, no heterodoxy.¹⁵⁴ Only the existence of a national executive under the Constitution revived their political fortunes.

¹⁵⁴See the chapters on egalitarians in Mary Douglas and Aaron Wildavsky, Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers (Los Angeles/Berkeley: University of California Press, 1982).

Hoisted by their own petard! Historians have pointed out that the anti-federalists were poorly organized and did not appear to be very good politicians. Though some were concerned that the Annapolis convention of September 1786, formed explicitly to revise the Articles of Confederation, might undermine state sovereignty, they had no alternative to offer. As the South Carolina Antifederalist, Aedanus Burke put it, "We had no principle of concert or union."¹⁵⁵ The concerns of the Antifederalists lay in state and local politics, not in a national entity that could act outside of state approval they did not want. Their egalitarian rhetoric had become antigovernmental as well.

The genius of the Framers consisted in turning republican rhetoric upside down. Suddenly, the great beast, as Hamilton once called the populace, became the source of sovereignty investing a national (henceforth called "federal") government with the authority it needed. Of course, state governments were also vested with the same authority but, by the same token, they were created simultaneously with the national government so they had no precedence and therefore no preference over it. Just as Madison turned around the argument that liberty could not exist in a large republic by claiming that it could only subsist there, and Hamilton argued that it was lack of sufficient executive power, not a surfeit of it, that endangered liberty, so now the Federalists were able to get their way by arguing that, if the people had sovereignty, they could create simultaneously state and federal governments.

¹⁵⁵Wood, The Creation of the American Republic, pp. 485-486.

There is a long line of development in the history of American ideas arguing that the American nation existed prior to the states. Story, in his famous Commentaries on the Constitution of the United States, held that the colonies lacked essential attributes of sovereignty while they were ruled by Britain, so that whatever sovereignty they acquired came from the Declaration of Independence and then the Constitution.¹⁵⁶ This interpretation runs against the evidence presented that states (or colonies) existed prior to the nation. Yet human ingenuity knows few bounds. Essentially, the argument is that the Revolutionary War dissolved the colonies that then became states by virtue either of the Declaration of Independence or of the Continental Congress whose acts enabled them to reformulate themselves somehow as creatures of national government or on the same par with it. Furthermore, picking up hints from the Founding Fathers, theorists argued that the people through state constitutional conventions established both state and national governments so that they were at least coterminous in time and authority with one another.¹⁵⁷

In our time, Curtis Nettels held that Congress, "the United Colonies," was sovereign because the colonies existed before states were formally created. These states might have been free when controlled by Britain, but they were formed by the American Union.¹⁵⁸ This view has been taken up by historian Richard B.

¹⁵⁶3rd edition, 1958, p. 138.

¹⁵⁷N. Dane, "A General Abridgement and Digest of American Law," no. 11 (1829).

¹⁵⁸Curtis P. Nettels, The Origin of the Union and of the States, 72 Proceedings of the Massachusetts Historical Society, Vol. 68 (1957-60).

Morris, to whom "the historical evidence indicates that a national government was in operation before the formation of the states. It was the people who initiated the holding of the First Continental Congress, delegates to which were selected in disregard of the colonial assemblies and by other extralegal means, and issued the call for the Second Congress."¹⁵⁹ Morris further claims that "The colonies accepted the initiative of Congress, as well as its authority, in their transformation into thirteen states exercising only internal sovereignty."¹⁶⁰ Those who disagree Morris calls "intractable states-righters."¹⁶¹ I have argued that this view is mistaken.

One might claim that sovereignty resided in the ratifying conventions, popularly elected, who had the power to reject the Constitution. The argument would be that these conventions were not state governments but reflections of popular will, hence sovereignty remained with the people. But the conventions were created by the state legislatures. When one looks at the resolutions of the General Assembly of Virginia on October 16, 1786 ("deputies . . . devising and discussing all such Alterations and farther Provisions as may be necessary to render the Federal Constitution adequate") and the Delaware resolution of February 3, 1787 by its General Assembly ("deputies deliberating on, and discussing, such Alterations and further Provisions") the die was cast for more than mere revision of the Articles of Confederation.

¹⁵⁹Richard B. Morris, "The Forging of the Union Reconsidered: A Historical Refutation of State Sovereignty over Seabeds," Columbia Law Review, Vol. 74 (October 1974), 6: 1068.

¹⁶⁰*Ibid.*, p. 1071.

¹⁶¹*Ibid.*

"Where did sovereignty go," Forrest McDonald asked, when George III "abdicated" it? One answer was that it reverted to the states. Another was that sovereignty passed to Congress under the Articles. Those who wished to place sovereignty in a national government and that government alone, like George Reed and Alexander Hamilton, soon realized they could not get away with it. So they proposed instead that the national government be given vetos over state legislation. John Dickinson came up with the nationalist solution: one branch of the legislature, elected directly by the people, and another, representing the states (in those days, state legislatures would choose senators).¹⁶² What, for these aristocratic men, could be more popular than that? When the Framers decided to submit the Constitution not to the state legislatures but to state conventions, they created a national government along side of and in some respects superior to state governments.

American Political Cultures

A little political culture analysis will take us a long way. Colonial America fought the war against a distant hierarchy exemplified by King George III. The economy of Great Britain was mercantilist, which, for our purpose, means hierarchically organized. Though feudalism had passed, society was still highly stratified into clearly defined higher and lower strata. Though Parliament could be powerful--were

¹⁶²Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Lawrence, Ks.: University Press of Kansas, 1985), pp. 147-150, 214-215.

it unified--it most often was not. In the middle of the eighteenth century, factions within the top levels of society competed for control of British government. In short, Great Britain could be described largely as a hierarchical society with rising but by no means dominant individualism.

The colonists, by contrast, contained adherents of three political cultures. With over 90 percent of the populace made up of small farmers, it is not surprising that most Americans were competitive individualists. Their question was whether markets were free or rigged by those with governmental connections. Adherents of hierarchical culture were divided between loyalists (many of whom fled to Canada) and nationalists who sought fortune and fame at home. Then there were egalitarians imbued with republican spirit who sought to reduce differences (they would have said "privileges") of all kinds. Like Jefferson, they believed that representative government was possible in the United States, given its vast resources, provided that the national government did not confer favors (corruption, they called it) on some not available to others--debt, franchises, government banks, patronage.¹⁶³ Egalitarians like Sam Adams were in the forefront of the Revolution. With these three orienting dispositions set out, we can begin to make sense of government in America before and after the Revolution.

The war on the American side was fought by a multicultural coalition--individualists and egalitarians opposed the restrictions

¹⁶³See Aaron Wildavsky, "Resolved, that Individualism and Egalitarianism Be Made Compatible in America: Political-Cultural Roots of Exceptionalism," in Byron E. Shafer, ed., Is America Different? A New Look at American Exceptionalism (Oxford/New York: Oxford University Press, 1991).

imposed by the British monarchy. American hierarchists wished those entitled to rule in their own country, people like themselves, to take the place of their British counterparts.

With the war won, hierarchy in disrepute, and many hierarchists in Canada, the nationalists were unable to get a government to their liking. Even the modest form of national government in the Dickinson draft of the Articles was decisively defeated. For a time the running was with egalitarians and individualists who agreed to keep central government small. For egalitarians this meant protection against the corruption of privilege; for individualists, a weak central government meant fewer regulations and lower taxes.

But then hierarchical nationalists became outraged by signs of anarchy. It was not only attacks on private property, pro-debtor policies, and interference with free trade; nationalists also objected to what seemed to them a denigration of the status of all Americans when there was no political hierarchy to speak for them as a nation.

Alone, however, the hierarchical nationalists could not succeed. Though they were brilliant propagandists, they could not have succeeded without support from a section of individualists, preeminently merchants and landowners concerned about facilitating trade and protecting private property. No doubt individualists were divided by state boundaries and economic interests. And that is the point: their previous solidarity against the hierarchical system of the British began to give way to concern about insufficient national power to protect property and trade. Signs of rebellion and restraint of trade led individualists to fear they might lose all for lack of even a minimal state. Thus the individualist alliance against hierarchy became a

coalition of individualists and hierarchists against egalitarianism in the form of too democratic state legislatures. Nor could the nationalists have been as successful as they were without the aforementioned weakness of the anti-federalists. Unable to act to strengthen the Articles, because even mild changes might be too much, their characteristic denigration of all forms of authority prevented them from constructing their own forms or realizing that, in the Articles, they already had it.

What If . . .

At the time, no one could have imagined the growth of national power. The size and scope of government today would then literally have been unimaginable. States still matter because government has grown at all levels, but there is no doubt that the federal government has grown comparatively greater. Could this development have been deterred? Would there have been a different development had the Articles of Confederation remained in force?

I realize that, for some, the Constitution has assumed the status of a holy object. No disparagement is intended. My purpose is to partially reclaim some lost knowledge of what might have been had these United States of America done what it came within a whisker of doing--living under a non-centralized system of government.

One difficulty is that while we know a great deal (or at least something) about how things turned out under American federalism, we know nothing about how a non-centralized system would have

worked, except for the scant few years under the Articles. What have we learned?

Non-centralized systems take a while to get organized. Different elements sometimes move in different ways. But they begin to see advantages in cooperation, first on a basis of bilateral bargaining, then in larger circles of mutual advantage. Whether we are talking about retaliatory tariffs or interferences with commerce or war-time debts, the trend is toward larger realms of cooperation. Without putting down any state (unless, as in Shay's rebellion, it was a state of lawlessness), the cession of land by New York and Massachusetts, together with the sequence of events leading up to the Northwest Ordinance, set upon the path of solution the one problem--disposition of the Western lands--that could have prevented American expansion into the lower half of the North American continent.

Had there not been a unanimity requirement for amendments to the Articles, the impost would have passed. But, as we saw, there is no reason to believe that under the wartime circumstances any national government could have collected the revenue. And there is every reason to believe that the purpose of Alexander Hamilton's federal assumption of state debt--to firmly establish federal credit--was well on its way to achievement by the time he took office.

The struggle over federal assumption, which Jefferson said was the most fierce of his long lifetime, raised the question of equality and privilege in a pronounced form. Much debt had been bought up from veterans by speculators who stood to gain enormously. Hamilton presented the issue as one of getting all concerned, at home and abroad, to know that the federal government was a reliable payer. To

Americans with an egalitarian-republican worldview, however, everything they hated was summed up in their belief, not entirely unfounded, that federal assumption was not only or mainly about credit but about attaching men of means to the federal government as a replacement for the foreign hierarchy they had recently overthrown. Without much if any loss to national credit, the non-centralized Articles might have avoided this bitter struggle altogether. And the national capital might not have been established in a pestilential swamp.

With less fear of a too-powerful national government, the nation might have been better prepared for the War of 1812. In any event, it could hardly have been worse prepared than it was under the federal government.

The struggles over the establishment of a national bank might well have been avoided under the Articles. The requirement of state consent would have rendered a national bank unfeasible. Instead of today's fiat currency, there would likely have been competing currencies. Over time, the sounder currency would have spread over the country, a currency kept sounder by the threat of rival currencies.

The Civil War must remain problematic. On the one hand, efforts in the South to nullify federal laws might have been more successful. On the other hand, there might have been less need to attempt nullification because the desires of the Southern states would have had to be taken into account in a more pronounced way.

These preliminaries open up the necessarily inconclusive question of whether slavery might have lasted longer under a non-centralized system. Maybe not. Had the Southern states seceded from

the Confederation, there then might have been much the same struggle over whether the new states formed out of the territories would be slave or free. Maybe yes. Who can say whether a more protracted period of slavery, leading sooner rather than later to the abolition of slavery by the Southern states (which, in an increasingly industrial society we may treat as a near certainty), would have been better or worse for the former slaves? There is the chance that a less coerced abolition, done in the name of Southern self-interest, might have spared the nation something of the legacy of racism.

The Civil War exerted a powerful nationalizing effect. Before Abraham Lincoln's assassination, he had completed virtually the entire nationalization program of his political hero, Henry Clay, the leader of the Whig Party, which succeeded Hamilton's hierarchical Federalist (better called nationalist) Party. If we remember that the Republican Party after the Civil War was, for a time, the successor to the Clay, Lincoln, governmental interventionist party of so-called internal improvements, the ratio of national to state government activity might well have been smaller. Indeed, slavery, therefore race and civil war are closely tied. Unequal outcomes by race are even today cited as rationales for expanding governmental welfare programs.

Might the United States have avoided its occupation of the Philippines and the conquest of Cuba under a non-centralized system? If jingoism was spread equally throughout the country, nothing would have been different. If not, not. In general, going to war would have been more difficult under a non-centralized system.

Would the American welfare state have grown as far and as fast as it has? The usual question is why the United States has been a

welfare laggard compared to Western Europe. Compared to its own early traditions, however, United States welfare programs are very large and growing larger. Probably the states under the Articles would have differentiated themselves more. In Protecting Soldiers and Mothers, Theda Skocpol demonstrates that many states, at the urging of women's groups, adopted pensions for widows and other maternalist programs.¹⁶⁴ What we cannot know is whether pressures for national uniformity would have led states to adopt comparable programs.

Either institutions matter or they don't. It has been argued that the American federal system, which gives power to states, has delayed and diminished welfare programs.¹⁶⁵ If that is so, then even stronger state power could have been an even more powerful hindrance.

I do not wish further to strain the reader's credulity. The rhetoric of "it might have beens" is notoriously slippery. I merely wish to suggest that the history we Americans have had is not the only history there might have been. There is also the brief history of a non-centralized system we did have and the "might have" history we almost had.

¹⁶⁴Aaron Wildavsky, Review of Theda Skocpol, Protecting Soldiers and Mothers, Journal of Policy History (forthcoming 1993).

¹⁶⁵Theodore J. Lowi, "Why Is There No Socialism in the United States? A Federal Analysis," in Robert T. Golembiewski and Aaron Wildavsky, eds., The Costs of Federalism (New Brunswick, N.J.: Transaction Publishers, 1984), pp. 37-54.

U.C. BERKELEY LIBRARIES



C098095516