1969

Articles of Confederation: An examination of current misconceptions

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THE ARTICLES OF CONFEDERATION: AN EXAMINATION OF CURRENT MISCONCEPTIONS

By

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B.A. University of Montana, 1966

Presented in partial fulfillment of the requirements for the degree of

Master of Arts

UNIVERSITY OF MONTANA

1969

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MAY 25, 1969

Date
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INTRODUCTION

As an instrument of government, the Articles of Confederation was one of the most advanced of its time. With great care it separated local powers from those of general character. It provided dual authority; the states were sovereign in their sphere and the Congress sovereign in its national realm. Article II provided that "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."¹ These powers expressly delegated to the national sphere were: the exclusive power of determining peace and war; sending and receiving ambassadors, entering into treaties and alliances; establishing courts of equity and admiralty (Congress itself was the last court of appeals for disputes between states or citizens); regulating the currency; establishing post offices; appointing all officers of land and sea forces; and determining the requisitions of each state for paying off the national debt through a common treasury. The Confederation provided freedom of movement for its citizens, and national citizenship. Under the Articles of Confederation each individual held the same freedoms as another. Article IV states unequivocally, "... and the people of each state shall have free ingress and regress to and from any other state, and

shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."\(^2\) In print it was a national government setting up a national treasury, national citizenship, and a national debt. Article XII provided that "all bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged."\(^3\) It cannot be doubted that in these instances the Articles of Confederation was a national government.

The provision for regulating voting has been considered one of the flaws of the Confederation. Article V declared that delegates were to be annually elected, "in such a manner as the legislature of each state shall direct." They were also subject to recall any time the state demanded, and the delegates could be replaced by others. By mathematical deduction it is easy to conclude that each state would soon run out of competent delegates to fill the annual requirement. But the stipulation that "no person shall be capable of being a delegate for more than three years in any term of six years"\(^4\) allowed a delegate to be re-elected if he was considered competent. It is also worthy to note that in the state debates over the Constitution, the Antifederalists feared the number of years a senator was allowed to hold office. Such a long term in office would change the Senate into

\(^2\)Ibid., p. 43.  \(^3\)Ibid., p. 50.  \(^4\)Ibid., p. 43.
"a rich man's club," more concerned with the rich than with the poor. Meanwhile, the Continental Congress only lacked delegates because the states often did not send any at all—even before they had exhausted their supply. Secondly, those most competent to govern returned again and again to fulfill the duties a deferent society placed in their keeping.

Another flaw was in the stipulation that each state had only one vote and a majority of states—nine—must agree before legislation could become law. Moreover, all thirteen states had to agree on an amendment before it could be effective. These "flaws" shall later be taken up in detail. Here it is only necessary to mention them as potential defects in an instrument that in theory was efficient. Article XIII solidified the Confederation by declaring that "Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them." The Articles of Confederation provided for a unified, comprehensive, well-balanced government. Because the delegates of the Continental Congress strictly limited their power, these "flaws" became a subject of criticism for historians. Had the powers of the Confederation been broadly interpreted these "flaws" would never have become paramount nor even visible to the critical eye of contemporary historians blessed only with the insipid faculty of hindsight.

Almost from the beginning the Articles of Confederation met with dissatisfaction from critics. To name the more prominent, James Madison, Alexander Hamilton and George Washington found the Articles defective.

\[\text{Ibid., p. 51.}\]
After the Federal Convention, the exaltation of the Constitution became the fetish and the Articles of Confederation was consigned to the rubbish pile. Historians took up the theme which the Founding Fathers had set to harp music. William Henry Prescott, in his *Diplomatic History of the Administrations of Washington and Adams*, published in 1857, found the time between the peace of 1783 and the adoption of the Constitution in 1788 "the most critical period of the country's history." John Fiske, in *The Critical Period of American History, 1783-1789*, took up Prescott's theme and further hammered at the Articles' defects. Andrew McLaughlin, although finding the Articles of Confederation in some aspects honorable, in *The Confederation and the Constitution*, could not condone its impotence.6

Charles A. Beard, in *An Economic Interpretation of the Constitution*, upset the myth of the Constitution's infallibility. Writing as a Progressive historian, Beard's original intention was to prove the Constitution less democratic and more autocratic than what the people believed. Beard distinguished, in his *Economic Interpretation of the Constitution*, between two leading types of propertied interest—land and commerce. Commercial property was strongly represented in the Constitutional Convention; landed property was represented by those opposed to the Constitution. Despite intense opposition in certain states, the Constitution was ratified, but this ratification was not a true representation of the people. He based this argument on the prevalence of property qualifications for suffrage, which meant that only a minority

of freeholders and other owners of property could participate in elec-
tions to the ratifying conventions. As a consequence the ratifying
conventions were not truly representative. In short, there was a clash
between the mercantile and landed interests, with the mercantile inter-
ests coming out on top because of the power conferred by their economic
advantages. The Founding Fathers were, mainly, men of the aristocracy,
or men holding commercial property. The Constitution was founded for
the protection of this "elite". The great, uncanny hallowness of the
Constitution was shattered. Historians took up Beard's interpretation
and rewrote and reiterated it AD NAUSEAM.

Merrill Jensen also tried to discredit the Constitution. He
argued that the Federalist party was organized to destroy the kind of
democratic government made possible by the Articles of Confederation.
The Articles of Confederation mirrored the true expression of democracy
and the ideals set forth in the Declaration of Independence. The Con-
stitution was a betrayal of these principles. The Articles of Confed-
eration was designed to prevent the central government from infringing
upon the rights of the states, whereas the Constitution was designed to
check both the states, and the democracy that found expression within
state boundaries. Examining the Confederation period, Jensen found
that "the history of the period too often is written in terms of the
shriil cries of politicians who were seldom easy when in office and who

7Charles A. Beard, An Economic Interpretation of the Constitution

8Merrill Jensen, The Articles of Confederation: An Interpretation
of the Social-Constitutional History of the American Revolution, 1774-
prophesied doom when their opponents won elections." In this period there was not gloomy pessimism but an "exuberant optimism" everywhere. Instead of being a "critical period" in American history, the Confederation was a constructive period during which the national debt was reduced, commerce began to prosper, and manufactures were encouraged.

Forrest McDonald, Robert Brown and Lee Benson headed the vanguard of reaction against Beard. The most devastating attack was McDonald's. Examining the actual tax records of the states, McDonald found that Beard had never studied the economic holdings of all ratifying conventions. No voting patterns by the states were found to conform to Beard's thesis of personalty—there was no split in the ratifying conventions between those who owned property and those of the commercial interests. Robert Brown attacked Beard's methodology. He found that Beard had examined the economic holdings in 1780 and 1790 and not during the ratifying convention itself. Beard further distorted the picture by confining himself to the big states' fights and not probing into the motivations of small states. Brown concluded by asserting that the whole colonial society was democratic and not aristocratic.

Lee Benson re-interpreted Beard's book. Both Beard and his critics had failed to understand the difference between an "economic interpretation" and "economic determinism". What Beard had actually done in

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10Ibid.


his study was to utilize economic determinism, but since such a method had not yet been distinguished as a special method of analysis, Beard did not identify it as such. Brown and McDonald both erred when they undertook to disprove Beard by using an economic interpretation. Benson took Beard's economic determinism and applied it to a social interpretation. Through his social interpretation he re-affirmed Beard's economic statement—the crux of the conflict lay in the social clash between the commercial and agrarian elements of society.

The reaction against Beard and Jensen brought a renewed assertion of the Constitution's value and the Confederation's defects. However, the reaction against Beard never quite swung back to the post-Federal Convention adulation. J. R. Pole, in his article "Historians and the Problems of Early American Democracy," expressed the important idea that institutions should not be viewed through modern concepts of democracy. The concept of democracy in the twentieth century cannot be applied to the eighteenth century. "The idea that the great mass of the common people might actually have given their consent to the concepts of government that limited their participation in ways completely at variance with the principles of modern democracy" adumbrate contemporary judgments. Furthermore, the colonial and the early national periods were pervaded "by a belief in and a sense of propriety of social order guided and strengthened by the principles of dignity on the one hand and deference on the other. It was . . . a deferential society."

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15 Ibid., p. 646.
To argue which government was more democratic—the Constitution or the Confederation—is irrelevant. Pole suggests an even more important point: in examining an instrument of government, its "defects" must be considered in the light of the concepts of the time. The attitude of the people toward government, and the competence of those who were selected to govern, must be evaluated apropos the instrument of government.

This thesis explains the failure of the Articles of Confederation by examining the actions of those who governed, and the motivations of those who refused to be governed. The overriding focus is placed on the people and not the instrument of government. It is the contention of this thesis that any instrument of government must be judged, not on a mechanical basis, but with an eye on the men who operated that instrument and the mass of people who were affected by the policies of those men. A great many of the failures of the Articles resulted from the narrow vision of the Continental delegates, and the strict construction by which they limited the government created for the needs—no matter what those needs may be—of the people. All government, after all, requires men to mold it into what it shall become. If the delegates had been more confident of government, perhaps the government would have proved itself steadfast. If the people had found their delegates strong, perhaps they would have respected government. Confidence breeds confidence, and, conversely, fear breeds fear. A government influences all those under it. Disrespect cannot remain isolated in such cases. What begins at the top percolates downward until the entire nation is touched. The delegates' timidity affected the government; the government affected the people.
Had the delegates broadly interpreted the Articles of Confederation many of the "flaws" would be non-existent. As will later be shown, there were attempts to interpret broadly the Articles of Confederation, but these attempts failed. The "flaw" of Article IX, that no congressional resolution could become law "unless nine states assent to the same," was seen by the broad constructionalists as meaning a majority of nine, which would be five states. Had Article IX been interpreted thus many congressional resolutions that failed would have become law. A case in point was the five per cent impost which failed because only eight states approved the measure. Very often, then, the question of the efficiency of the Articles of Confederation rests upon how narrowly the delegates construed these clauses.

In the early period of the Revolution the Continental Congress held the respect of the people. But as the Revolution lengthened into years and the timidity and ineptitude of the congressional body became more manifest, this respect dissolved into a general contempt. By 1787 the manifestations of this were shown in the general anarchy of the times. People openly disregarded the mandates of Congress, and self-interest completely overcame any altruistic feelings the people might have felt in the embryonic stages of national government.

It will be shown in this thesis that many of the criticisms modern historians have levelled against the Articles of Confederation were not due to faulty government. The troubles that arose out of the Confederation period were due in large part to the attitude held by all people toward government; the inept and timid delegates who governed only with reluctance. Secondly, many of the mechanical difficulties,
such as the unprepared state of the country for a large war, the problems of finance, and the inexperience of a country just recently separated from the British colonial empire, were elements that no government—newly instituted—could have met.
CHAPTER I

A BRIEF SURVEY OF HUMAN NATURE

This chapter tries merely to demonstrate, by a few choice examples, the Introduction's assertions. The writer has selected specific, and prominent, examples of men—from Congress, the military, and business—to further emphasize a point. Selfishness, pride and greed often were prevalent in the body politic and in the military. The concern for their own private interests far over-shadowed any national interest they held.

Those who governed were all too often more concerned with their own dignity than with the dignity of the nation. A case in point is Thomas Burke of North Carolina. One fine evening Burke left the Congress in a huff and a messenger was sent to retrieve him. Burke replied, rudely, "Devil take me if I will come; it is too late and too unreasonable." As befitted a body representing the national sovereignty, the intractable member the next day was called up before Congress and charged with breach of order. When asked if he could defend his conduct, Burke replied in the affirmative. He admitted that he had "in a manner" invoked the name of the Devil in his reply to the messenger, but insisted that he was guilty of no rudeness to Congress, for Congress was then adjourned. When Congress adjourned it "ceased to be a body." He declined, therefore, to make any apology. "What power has Congress over its members anyway? If he had been guilty of misbehavior, he would
answer to his own state."\(^1\) Congress merely proved that it could not control its own members, and one member at least showed that he was quite capable of reducing dignity to a travesty.

Personal honor instead of national honor very often was the concern of military officers. Major-General John Sullivan was subjected to criticism of his ability in the Continental Congress. Critical remarks were not taken gracefully by Major-General Sullivan. In fact, in the correspondence of John Sullivan a large portion of his letters concern his egocentric preoccupation with these "smears" on his honor. George Washington was impelled finally to write a letter pleading with him to disregard such disparaging remarks, many of which were imaginary.

Do not, my dear General Sullivan, torment yourself any longer with imaginary slights and involve others in the perplexities you feel on that score. No other officer of rank in the whole army has so often conceived himself neglected, slighted, and ill treated as you have done, and none I am sure has had less cause than yourself to entertain such ideas. Mere accidents, things which have occurred in the common course of service, have been considered by you as designed affronts.\(^2\)

The Deane-Lee controversy that began in Europe succeeded in finding its way into the august halls of Congress. This controversy managed to disrupt and divide Congress while it lasted. Silas Deane had been sent to Europe on official United States business. While there he managed to involve himself in several shady business deals. Robert Morris and his nephew, Thomas Morris, were also involved. Deane had made an implacable enemy of Arthur Lee, the third commissioner at Paris. Arthur


Lee and his brother, William Lee, were determined to expose the corruption in the American agency at Nantes, where Thomas Morris was in charge of operations. Morris kept all his papers relating to his commercial agency in a strong box. Upon his death, William Lee confiscated these papers. Benjamin Franklin had befriended Silas Deane and was involved to a certain extent in Deane's business dealings. When charged, Deane and Franklin defended their actions as vigorously as the Lees attacked them. The rupture among the American commissioners was soon complete. Everyone connected with the government service in Europe was forced to take sides. "Nourished by factionalism, the squabble in Europe assumed the dimensions of a major political trial which divided Congress into hostile camps and precipitated a struggle for control. Charges and countercharges crossed the Atlantic, reinforcing lines of division already existing." The Lees were on the side of the "Adams-Lee junto" which had long opposed Robert Morris, John Dickinson, and the Livingstons. "To the proud and influential Lee family, the ascendance of Robert Morris and Benjamin Franklin marked a drift of power into unfriendly hands." He promptly requested a hearing, but feeling ran so high that Congress could not decide to proceed with his examination. He was kept waiting for months while his accusers held the floor. Finally he published his side of the case in a Philadelphia newspaper, and the whole controversy spilled into print. The Deane affair continued to plague Congress until August, 1779. Congress was able to discover

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4Ibid., p. 95.
several business irregularities, but not much could actually be proved. Under such circumstances all that Congress could do was to refuse to grant Deane's claim for commissions and give him leave to depart.

The Deane affair had unsavory aspects, and its results were destructive. It laid bare to public view the selfish bickering that disgraced American service abroad; at one point a committee of Congress listed the offenses of which each of the foreign commissioners had been accused and suggested that all of them be recalled. Neither Arthur Lee nor anyone else gained credit for his part in it. At home, the controversy excited the deepest animosities without resulting in any important administrative reforms or constructive alterations in the balance of power in Congress. The rancor it left was for years the underlying basis of Congressional division on questions which might better have been considered on their own merits.5

While a majority of Americans sympathized with the "patriotic cause," only a small minority were actively interested and ready to sacrifice their material comfort for an ideal. A large number were staunch loyalists. Added to this number were those who were overly fond of the good things of life and not anxious about the success of either the patriots or the loyalists. They sold their produce for British money, while the American army starved. After the Revolution these groups—minus those loyalists who had fled the country—welded themselves into a general body of selfish inertia. Attempting to tax such a body proved frustrating. As Robert Morris pointed out to Benjamin Franklin: "The people are undoubtedly able to pay, but they have easily persuaded themselves into a conviction of their own inability, and in a government like ours the belief creates the thing."6 The people were not destitute. There is abundant evidence to show that at the end of the

5Ibid., p. 104.

Revolution people were living with more ease and circumstance than before the war. If nothing else, Merrill Jensen, in The New Nation, shows that prosperity was evident, if not organized. The trouble was not poverty but commercial confusion, and a native disinclination to pay taxes.

Charles Thompson of Virginia described the scene:

The population is increasing, new houses building, new lands clearing, new settlements forming, and new manufactures establishing with a rapidity beyond conception, and what is more, the people are well clad, well fed, and well housed. Yet I will not say that they are contented. The merchants are complaining that trade is dull, the farmers that wheat and other produce are falling, the landlords that rent is lowering, the speculists and extravagant that they are compelled to pay their debts, and the idle and the vain that they cannot live at others' cost and gratify their pride with articles of luxury.

The American Revolution was the incubator of the defects complained about in the Confederation, and they were in turn the product of popular reactions and political cowardice. In the early days of the

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7 In examining the Confederation period, Merrill Jensen finds that although the "New Nation" was predominantly agrarian, the farmers depended upon the shippers to export their produce to Europe and the West Indies. The farmers' prosperity was linked to the prosperity of the merchants and shippers. The merchants and shippers that exported and bought these products in turn found prosperity in depreciating currency since prices rose as a consequence. "They bought goods and held them while prices went up." After the Revolution westward expansion and the growth of cities were added evidence of prosperity. "War itself was partly responsible for the new growth. Merchants from smaller towns moved into larger ones and rapidly took the place of Loyalist merchants who had left." The newly won independence also produced growth in manufacturing, banking, and new markets for exportation. There might have been restrictions on trade by various national governments, but "... only one conclusion can be drawn regarding the paths of commerce in the eighteenth century: governments marked them out by law but provided only the weakest means of enforcement. Merchants and shipowners followed the paths if they seemed profitable; if not laws be damned. There is nothing in the knowable facts to support the ancient myth of idle ships, stagnant commerce, and bankrupt merchants in the new nation." Jensen, The New Nation, pp. 177-233.

8 MacLaughlin, The Confederation and the Constitution, p. 78.
Confederation the prestige of the Continental Congress was high. But from the outset the members of Congress failed to utilize that prestige to set up a government that worked efficiently, and with authority. Why, then, should the people have confidence in a government afraid of its own shadow? Ineptitude and timidity breed only contempt, not respect. For a government to act on its own tenets it must have delegates who have faith in those tenets. By the end of the Revolution the people had found the Continental Congress wanting in all the characteristics that instill respect. The Confederation fell, not through the weakness of its structure, but through the weakness of those men who were to uphold that structure.

The Revolutionary War was undertaken without adequate preparation, and handicapped by a general shortage of funds. The national government of the Confederation has been found contemptible in the eyes of contemporaries. The states ignored its requisitional demands, and it was incapable of enforcing these demands. It has somehow been overlooked, however, that the states were as poor as the national government. Most often the states were incapable of meeting the requisitional demands. Instead of ignoring Congress, they were as impotent as Congress in trying to meet the expenses of a major war without the financial basis to do so.
CHAPTER II

BETTER "IN THE RED" THAN DEAD

A chief criticism of the Articles of Confederation concerns its lack of coercive powers. As a consequence of this defect taxation proved difficult, if not impossible. The states rarely produced their full quotas on requisitions. The problem, however, did not result or even start with the Confederation. An early source of irritation between the colonies and the mother country concerned paper currency. The use of paper money was a solution to the problem created by a shortage of coin and the absence of banking institutions. As E. James Ferguson points out, all hard money brought in by commerce flowed outward in the purchase of British commodities.

An undeveloped country, America could not produce enough to buy goods needed for its economic development; more was always imported than American cargoes of tobacco, wheat, furs, and naval supplies could procure; hence an unfavorable balance of trade with Britain.  

\[\text{\color{red}1}\]

The lack of coercive powers was a constant complaint among politicians of the time. George Washington incessantly lamented the inability of Congress to enforce its resolutions. James Madison, Alexander Hamilton, Robert Morris, John Sullivan—to name the more prominent—found congressional impotence a matter of continual concern. The Founding Fathers, quick to justify the newly instituted Constitution, pointed to the coercive powers of the new government as a means of greater efficiency. Historians, such as John Fiske, William Henry Prescott, George Bancroft, and Andrew MacLaughlin, found the Confederation inadequate and the Constitution a decided improvement. Their justification for this position inevitably brought out the Confederation's impotence in the face of state opposition. "No power to enforce, merely to request" constantly was the argument used to demonstrate the Constitution's merits and the Confederation's great flaw. To the Founding Fathers and the early historians of the period, such impotence was the cause for all the evils of mismanagement and disobedience.

\[\text{\color{red}2}\]

Ferguson, Power of the Purse, p. 4.
The flow of hard money was toward Britain rather than America. Hard money in America was more of a "commodity" than a medium of exchange. There were no banks to enlarge the money supply by employing the available specie to back a paper medium. During the colonial era, the legislatures of each colony printed paper money as needed to meet war expenditures. The legislative acts which authorized these emissions almost always assigned specific taxes for their redemption. If import duties produced about five thousand pounds a year, the income for four years ahead was allocated to redeem twenty thousand in bills of credit.¹

Taxes for years ahead were appropriated to withdraw money emitted in a single year. Begun in war, currency finance was then adapted to the ordinary functions of government in time of peace. In short, a basic financial pattern emerges out of the colonial era: governments met expenses by issuing a paper medium directly to the people; they then redeemed this paper—not by exchanging it with hard money—but by accepting paper money for taxes or other payments.

That paper money had a tendency to be unstable did not bother the colonists. The sole test of currency was not its constancy of value. Another criterion is suggested by Thomas Pownall, a New England merchant, "it was never yet objected that depreciation injured them in trade."² One of the greatest merchants in America, Thomas Hancock, was not convinced that paper money was an unmitigated evil. When Massachusetts passed an act, putting it on a sound money basis, Hancock complained, "This d---d Act has turn'd all Trade out of doors and it's impossible to get debts in, either in Dollars or Province Bills."³ To an expanding

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³Ibid., p. 10. ⁴Ibid., p. 15. ⁵Ibid.
country whose people seldom had fixed incomes "it is possible that a constant and continuing inflation was not entirely injurious." During the Revolution Americans were merely pursuing a tradition "with no thought of unorthodoxy or innovation." In colonial times their governments had used "fiat" money; in fact, their "whole system of public finance was based on it."6

The unfavorable balance of trade between the colonies and Great Britain did not improve with independence. To a great extent, it worsened. With the Navigation Acts, the colonists had enjoyed lucrative trade under the auspices of the British Crown; with independence this disappeared. Merrill Jensen makes the apt observation that while the American merchants did not like the bonds of the Empire when a part of it, "they had enjoyed its privileges and after the war was over many did not think they could survive without them."7

The worsening condition of trade during the Revolution was a matter of concern to Richard Henry Lee. In 1776 he expressed his anxiety to Patrick Henry.

The War cannot long be prosecuted without Trade, nor can Taxes be paid until we are enabled to sell our produce, which cannot be the case without help of foreign ships, whilst our enemy's navy is so superior to ours. A contraband sloop or so may come from foreign parts, but no authorized, and consequently sufficiently extensive Trade will be carried on with us whilst we remain in our present undefined unmeaning condition.8

Trade was further hampered by the confiscation of ships for war purposes.

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6Ibid.


Thomas Thompson of Massachusetts wrote an irate letter to the Massachusetts Committee of Safety complaining about the confiscation proceedings against the ship Raleigh.

All Privateers are stopped for the purpose of manning the Continental Ships of War and filling up the army. The State of Massachusetts Bay strictly keep to their first intention, inso- much that the same owners concerned in the Privateer now in Portsmouth were obligated to bring two of their ships up from the Castle, which had been victualled and manned some time and ready for sea: they have petitioned and remonstrated to the Council several times since urging the Damage and great expense they have been at, but to no effect: they only received for answer, the public good must be preferred to the private interest.9

Under normal conditions the money problem of the Confederation would not have achieved such enormous proportions, but the Confederation was forced to fight a war with very little specie. The issuance of paper money was the only way to finance the war. Since any scheme to support widespread military operations with thirteen state currencies would have created insuperable difficulties, Congress adopted a Continental currency. Congress pledged the faith of thirteen states to its redemption. Each state was made responsible for the withdrawal of a certain quota of the total emission. Paper emissions required some sort of balance between issuing and withdrawing, but Congress had little power to control either. Because Congress could not control the expenditures of war, nor effect the withdrawals of paper money, Continental currency depreciated beyond control. But Congress continued to print money until its value was almost gone, convinced that the only alternative was to abandon the war. As the President of Congress put it, the

Congress was convinced that "any quantity of brown paper would serve the purpose."\(^{10}\)

If the Continental Congress found the states falling behind on their requisitions it was often because the states did not have the money either. The states could levy taxes, but, as Benjamin Franklin observed, they had not in the early years of the war "the Consistency for collecting heavy taxes."\(^{11}\) State governments were new-born and sometimes wracked by internal disorder. Their legality was not firmly entrenched, and they were more concerned with gaining popular support than with levying rigorous taxes. Such rigorous taxation would also dangerously suggest an onerous comparison with the enemy. Secondly, state governments suffered from the general war. Normal incomes from import and export duties were cut off, and it was hardly possible to lay taxes on property when men were leaving their occupations to join the army. Therefore, the states did not levy any taxes of significance in 1775 and 1776. As Gouverneur Morris declared, it would have been "madness."\(^{12}\)

By the time state governments were firmly entrenched and politically able to collect taxes, all paper money—Continental as well as state currency—had "gone into decline." Before taxes could be collected, the income expected from them was eroded by depreciation. State governments could function only by issuing more quantities of paper money, and with each new emission they realized less and less income. "Unable to avoid spending every dollar they could lay their hands on, they put Continental money back into circulation as fast as it came

\(^{10}\) Ferguson, *Power of the Purse*, p. 27.

\(^{11}\) Ibid., p. 30.  
\(^{12}\) Ibid., p. 31.
into their treasuries."\(^{13}\) The obvious lack of money is evidenced in the correspondence of the time. In a letter to James Madison, Edmund Pendleton of Virginia wrote,

... the Executive, having an empty Treasury have circulated a request for a prompt advance of half the land tax payable some months hence for the purpose of recruiting our line. Our country ... appear to be willing to comply, but from conversing on the Subject with several gentlemen it is the general opinion that there is not in the country Specie sufficient to pay one-fourth of that tax and I see no prospect of our being able to pay it at the time.\(^{14}\)

David Jameson of Virginia wrote to Madison,

There is but little Specie in the State—not any in the Treasury—and those whose services are required by the state, will not take certificates, so that the meanest Coblar can now obtain Credit where the state cannot. How humiliating! While the tax payable in Tobacco continued in force, the state had some Credit, but that being set aside we are now quite bankrupt. I write this only to yourself.\(^{15}\)

The State Treasurer of Virginia, Jacquelin Ambler, was forced to write a letter to James Madison explaining why Virginia was unable to pay Madison's expenses at Philadelphia. In exasperation he concluded the letter, "It is in vain for the Assembly to pass resolution after resolution directing the Executive to make remittances, unless they will put Means in their hands also."\(^{16}\)

The necessity for taxation was emphatically stated by Major-General John Sullivan. According to General Sullivan the prosperity of the United States depended on resolutions of the assemblies "to

\(^{13}\)Ibid.

\(^{14}\)Ibid., p. 176. \(^{15}\)Ibid., p. 176. \(^{16}\)Ibid., p. 185.
proceed to tax the people, as deep as they can bare"; the only hurdle
to be overcome was convincing the people of "this Sacred Truth, that it
is in their Interest to pay high Taxes." But, as Richard Henry Lee
pointed out in a letter to John Adams, taxation was not the cure-all
for the chronic money problems. "... I fear that the slow operation
of Taxes, which indeed are pretty considerably pushed in many States,
will not be adequate to the large emissions of paper money which the war
compels us to make." 18

When it was found that the states could not meet requisitions by
paying money, in 1780 Congress adopted a general requisition asking
delivery of specific commodities such as beef, pork, flour and tobacco.
But during the year or two in which this kind of requisition operated,
it proved to be no more than a stopgap arrangement. Without money for
purchasing, the states had to collect or seize the supplies from their
citizens. Seizures of produce had to depend on the seasons, and deliv­
eries to Congress were spasmodic rather than constant. Frequently goods
were not ready in time and the quantity needed for the army could not
be obtained. The condition of the country was summed up well by Robert
Morris: "A Revolution, dissolution of government, 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." 19

The disorder of finances is clearly portrayed in a New Hampshire
letter to the Continental Congress in 1782. The Continental Congress

19Ferguson, Power of the Purse, p. 25.
had passed a resolution in March, 1780, requesting each state to call in all the Continental currency. Part of the money was collected, but it was generally thought that "at the time which said Tax was granted there was not half the Sum which was called for then in possession of the Inhabitants of this State." The state then passed an act for raising the sum of 120,000 pounds for the support of the War and for defraying the charges of the state. The people were allowed to pay the tax in new bills or in Continental currency. The Continental currency was allowed for payment since it was unanimously assumed that "the whole quantity of Continental Currency then in this State would not amount to near the proportion assigned them by the Resolution of Congress." But New Hampshire had also assumed that this resolution of Congress would be complied with by all states. The tax of 120,000 pounds was payable at different periods, and while the tax was being collected Continental currency "depreciated rapidly" in the states to the South. Large quantities of depreciated currency were pushed into New Hampshire and the Treasury found itself with five million dollars over and above the proportion assigned it, "by which means the principal Intention of the State in granting said Tax of 120,000 pounds was in a great measure defeated, many debts which were determined to be discharged by said Tax are now unpaid . . . and the State will be unable to pay any considerable Sum to the United States." An initially simple solution resolved itself into a complicated dilemma. After such "historical facts" one can well understand Milton's meaning when he said, "My way of joking is to tell the truth."

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20Bouton, Documents and Records of New Hampshire, X, 579.
The Act that Congress instituted in March, 1780, was an attempt to issue new currency by revaluing the old currency. Under this plan Congress revalued the old Continental money at forty to one of specie. The states were called upon to tax this money out of existence at a rate of $15,000,000 per month. Their deliveries of the old currency to Congress would release the new emission for use. Forty dollars of the old money, brought in, would release two dollars of the new money, of which four-tenths would go to Congress and six-tenths to the state delivering the old. 21

The problem New Hampshire faced with an excess of old Continental bills was largely due to the Congressional use of certificates. Certificates were drafts which federal officers drew upon their respective departments. They were issued by all departments in place of money, but the Quartermaster and Commissary departments used them in overwhelming numbers. Certificates were issued to inhabitants of all states when the Continental army agents confiscated their produce. The massive certificate debt which resulted foredoomed Congress's efforts to restore its currency. Loaded down with Quartermaster and Commissary notes, the people refused to pay the state taxes levied for Continental purposes unless certificates were accepted. It was politically impossible for the states to refuse to accept certificates for any taxes, especially since military impressments were still putting them into the hands of their people. Since state taxes returned certificates, the bulk of outstanding Continental currency remained untouched. Even with the best of intentions, the states found it extremely difficult to comply

21 Ferguson, Power of the Purse, p. 33.
with the procedure set forth in the plan of March, 1780. The states could not realize the expected income from the emission of the new bills since they could not withdraw the old currency. 22

Money conditions in New Hampshire reached such a condition of paucity that, in one instance at least, the state could not send a delegate to Congress. The Continental Congress was constantly in need of enough delegates to compose a forum to carry on business. This was another short-coming of the Confederation, but in this particular instance New Hampshire simply could not gather enough funds to send a delegate. As the New Hampshire Governor explained to the President of Congress, "It has not been in our Power to furnish him with a sufficiency of hard money and none other will answer." The people were left "desti­tute of any Medium" and the scarcity was such that nothing "will produce it" and "we have not been able to supply the Treasury with any Specie to answer any Demands." 23

In fact, the financial condition of the country was such that John Hancock, President of the Continental Congress, could use "the unprepared state of the Colonies on the commencement of the War . . . and the almost total want of everything necessary to carry it on" as an argument against the accusation that Revolution had been the original intent of the colonists. "Had such a scheme been formed, the most war-like Preparations would have been necessary to effect it." 24 This obviously was not a well-planned, well-equipped Revolution on this side.

22 Ibid., p. 51.
23 Bouton, Documents and Records of New Hampshire, X, 575.
24 Ibid., VIII, 122.
of the Atlantic. Major-General Sullivan complained constantly to the Board of War about the lack of supplies for the army. In reply the Board of War explained that the staff department had almost insuperable difficulties in their way, "among these may be reckoned the want of men and proper materials; of the former the country is much drained; and of the latter the old stocks are generally worked up or used, and no provision made for future wants." 

The tremendous problems of depreciation both on the state and national level reached the realms of absurdity. For example, in 1779 the cost of six pounds of snuff reached the height of $72; a pound of tea cost $35; two and a half pounds of tobacco cost $8.33; a pistol cost $115 (all new recruits for the Continental army and state militias had to supply their own weapons—which might in part explain their lack of enthusiasm for volunteering). However, Irving Brant makes the startling suggestion that printing money was in itself a form of taxation. Question: How could Congress tax dollars that weren't worth a Continental? Answer: Currency inflation is taxation upside down. The paper currency Congress emitted was in itself a tax, "a tax of terrific weight, bearing directly on the people." As the value depreciated beyond hope of redemption it had the effect of "a capitol levy upon creditors, virtually wiping out the value of promissory notes and mortgages." The implication is clear—the leaders knew, even if the people did not, that during the Revolution when they appeared to be conducting a war

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against taxation, Congress was actually taxing more heavily "by means of
the printing press than Parliament had done in all history." Analyzing
the years of 1775 to 1779, Robert Livingston, Secretary of Foreign
Affairs, declared that through the depreciation of continental bills of
credit "the states that received them paid a tax equal to all the ex-
penditures of the army and a very considerable one beyond it ... and
this tax too was most unjust and partial than can be conceived." Colonial practice became Revolutionary policy. In wars past,
all colonial governments utilized fiat money as the only way of meeting
the expenses. The Revolution was a much larger enterprise, and the
common need precluded any nice regard for a stable currency. The colonists had no hard coin, nor banking institutions which could provide a
stable currency. If depreciation was an evil of the Revolution it was
an evil that resulted from necessity. The Continental Congress and the
thirteen states were both in a sinking ship with only paper money to
throw overboard. If requisitions were a failure it was largely due to
the poverty of the country. The states were unable to meet the finan-
cial demands of a major war. For example, from December, 1779, to June,
1780, Congressional drafts amounted to approximately $40,000,000. And
must here be noted that the states made unusual efforts to discharge
the drafts. They accepted and eventually paid $35,000,000 and in later
months discharged nearly $2,000,000 more. Under the stress of poverty,
Congress in 1780 attempted to delegate further responsibility to the
states by turning over the burden of paying the army, both the arrears

28 Ibid., p. 324.
of salary and the pay due for the current service.\textsuperscript{29} If the states failed it was not from a lack of effort. A request is no different than a demand when neither method can produce what is not there. Even had Congress used coercive powers, the financial history of the Revolution would have been no different.

\textsuperscript{29}Ferguson, Power of the Purse, p. 52.
CHAPTER III

DEDICATED TO THE IDEAL OF INTEREST, NOT PRINCIPLE

Aside from money headaches there was the problem of governing a people who were suspicious of statecraft. It must be remembered that the Articles of Confederation took two years to draw up and three years to ratify. It established a government which would rule with carefully limited powers. It was weak because the delegates reflected the attitudes of constituents who wanted weak government. The reaction against the British experience produced a government of strict construction—not from oversight—but from a conscious fear of strength. Citizens and delegates alike watched warily the functioning of government, and any sign of power was greeted with accusations of tyranny. Suspicious of government, citizens were also far too concerned with their own self-interest. Self-interest opposed to national interest created problems in counterfeiting, illicit trade and even in recruiting soldiers for the army.

By 1782 illicit trade had become so widespread that Congress finally produced a resolution against it. Before going into the resolution, it is well to note here the Congressional style of writing. It is characteristic of the timid to couch their language in melodramatic phrases; to accuse by distortion—thereby hopefully achieving the same effect that a simple command would produce. Congress in most of its resolutions took on the form of a timid father direfully portraying the consequences of the son's transgressions instead of striking at the seat
of the matter, thus ending further dissent. In melodramatic phrases did Congress couch resolutions. Illicit trade was portrayed as the enemy's arch weapon. The enemy was "resorting to every expedient which may tend to corrupt patriotism . . . or to weaken the foundation of public credit" and in pursuance of such policy the British encouraged illicit trade between the colonists and those who lived within the places in British possession. Those in the American camp who fraternized thus with the enemy were indeed the traitors who were "prompted either by a sordid attachment to gain or by a secret conspiracy with the Enemies of their country." As a consequence, "payment of taxes is rendered more difficult and burdensome to the people at large, and great discouragement occasioned to honest and lawful commerce." Congress, after direfully portraying the results of this nefarious trade, handed the entire sticky mess over to George Washington. He was given full authority to do whatever he thought proper to end such trade. Congress was very explicit in describing the evils, but very vague in authorizing a plan of action.

"A Plain Farmer," in the New Jersey Gazette, declared that during the past "few weeks" no less than forty to fifty thousand pounds in specie, otherwise available for payment in taxes, was drained out of New Jersey by "moonlight peddlars." The Virginia delegates wrote to Governor Harrison that "illicit trade with New York under the encouragement of the enemy, and the obstruction of foreign trade has increased of late so far as to threaten great injury to the public finances." Edmund

1Hutchinson and Rachel, Papers of Madison, IV, 352.
2Ibid., p. 354.
3Ibid., p. 364.
Randolph of Virginia found that illicit trade was exciting general indignation in New York and threatened the loss of hard money. "The continued drain which it makes from the bank must at least contract its utility, if it produces no greater mischief to it."\(^4\) Although the legislature of New Jersey and a Committee of Congress were devising a remedy for this "disgraceful and destructive traffic," Randolph held little hope that any adequate cure could be applied, "whilst our foreign trade is annihilated and the enemy in New York make it an object to keep open this illicit channel."\(^5\)

Public officials did not separate their private affairs from the business of government. "Merchants viewed it as no breach of propriety if, as public officials, they were linked in a dozen secret partnerships with persons who sold goods to the government."\(^6\) The Secretary of Finance, Robert Morris, is an excellent example of this business ethic. E. James Ferguson finds that Morris and his partner, John Bingham, found "money, ships, and cargoes" for their own enterprises but were "apparently" unable to do as much when their private business was not involved. Bingham was sent to Martinique to handle West Indian trade. There was a problem in raising money to put the firm into operation. Morris wrote to Bingham that a "certain" cargo would be sent on private rather than public trade, "as we want to throw Funds into your hands." As Ferguson comments wryly, "When a choice could be exercised, it would appear that personal concerns sometimes got priority over those of government."\(^7\)

\(^4\)Ibid., p. 350.  \(^5\)Ibid.  
\(^7\)Ibid., p. 80.
The Deane-Lee controversy that ended on the floor of Congress began its sordid history in Europe. Silas Dean was first sent to Europe as an agent for the Secret Committee, an office for procuring goods for the United States. His mission was to obtain loans in France and buy military supplies for Congress. While sent on official business, Deane found time to profit personally. "The Indian Contract," which Robert Morris and five other members of the Secret Committee concocted, stipulated that Deane was to buy goods to the amount of $200,000—on credit if possible—while the other partners used committee money to buy and ship American products to pay the debts Deane contracted in Europe.

Deane was next appointed to the post of Political Commissioner at the French Court. His new post involved dispatching French loans to the United States. Privy to the sailing schedules of ships, Deane knew when government cargoes were not completely full and shipped private goods. Within limits he could delay or hasten Continental warships to provide convoys for ships with private goods aboard. He and other Continental agents also had liberal freedom to dispose of booty taken by American privateers and ships of war. But Deane's greatest indiscretion concerned the refitting of a ship in which the United States held a half-interest, and private companies the rest. The ship's captures did not pay the expense of its refitting and Deane turned over the public's share to the private interests without requesting payment or an estimate of the ship's value. A ship bought and equipped largely at American expense fell into private hands. It would seem that private and public interests were shuttled back and forth according to the prospects of profit. Criticism was also aroused by these secretive maneuvers.
because the cruise seriously compromised French neutrality and brought protests from the French Court.  

As early as 1777 states were beginning to complain about the problems of counterfeiting. The effects on the paper currency issued by the states were disastrous. Counterfeiting was difficult if not impossible to trace to its source. A petition was sent to Congress from the Assembly of New Hampshire asking for aid, since counterfeiters had successfully demoralized the state.

Very lately certain wicked and designing men, no ways regarding the Welfare and Happiness of the said State, but from Base and sordid Motives have Fabricated and Uttered within the said State, great numbers of Counterfeit Bills in imitation of the paper bills Emitted as Aforesaid, by Reason whereof trade and intercourse are nearly at an end to the very great Damage of the said State.  

Richard Henry Lee, in 1778, wrote to Patrick Henry about the chaos in state emissions from counterfeiting.

Already the Continental emissions exceed in a sevenfold proportion the sum necessary for medium; the State emissions added, greatly increase the evil. It would be well if this were all, but the forgeries of our currency are still more mischievous. They depreciate not only by increasing the quantity, but by creating universal diffidence concerning the whole paper fabric. In my opinion these Miscreants who forge our money are as much more criminal than most offenders, as parricide exceeds murder.

Recruiting soldiers was a duty delegated to the states. That the states had trouble raising the number Congress and General Washington requested is witnessed by the method of enlistment New Hampshire devised. Finding herself destitute of new recruits owing to Massachusetts' enticing offer of forty pounds bounty, New Hampshire, fighting principle with

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8 Ibid., pp. 86-90.
9 Bouton, Documents of New Hampshire, VIII, 598.
interest, offered a larger bounty. Complaint then followed from states bordering on New Hampshire, for their ranks were suddenly depleted—the line forming on the right side of the New Hampshire border. As New Hampshire explained to the rankled Governor of Connecticut, "Nothing, but being reduced to the alternative of giving a larger bounty than was advised by the Committee at Providence or not raising the men proportioned, would ever have induced this State to depart from their recommendation."¹¹ Meshech Weare of New Hampshire replied to General Sullivan's entreaties that soldiers were scarce because of this battle of the bounties.

Much pains have been taken to compleat the Quota of this State Allotted for the defence of the State you are in; but unforeseen embarrassments have been thrown in the way, chiefly by the Neighboring State of Massachusetts, who have within a few weeks... hired 500 men in this State at the Enormous rate of 100 pounds and 125 private bounty per man for nine months, and taken away a considerable number that was engaged to Serve under you.¹²

New York could not gain enough men for their quota through other reasons. Their particular trials were related in a letter from the New York Council of Safety to the Committee of Safety of New Hampshire. Five counties of the state were in possession of the British, and three others were "disunited by malcontents who mediate a Revolt and are attempting to avail themselves of the present troubles to advance their interested Purposes." Of the remaining six counties, "a third part" of three of them—Orange, Ulster and Dutchess—"has been in actual service ever since May last and are yet in the field"; Westchester had been so harrassed by the "incursions of the Enemy from New York" that its militia

¹¹Bouton, Documents of New Hampshire, VIII, 497.
was forced to provide for its own defence. Add to this the number of inhabitants "constantly employed on the Communications, in transportation, etc.; and the still greater number who, tempted by prospects of ease and profits have quitted this invaded State and sought inglorious quiet among our more peaceful neighbors; and you Sir, will perceive how greatly our strength is exhausted."\(^{13}\) In short, New York was unable to provide its quota for the army, and New Hampshire was on her own in raiding enough to satisfy General Sullivan.

Governor Trumbull of Connecticut complained to Meschech Weare that "the Supineness and languor that seems to take place and pervade every order and degree of men through our State" must be of great concern to everyone who observed it, "and if continued much longer will without the special interposition of Heaven be followed with the most unhappy consequences." Instead of fighting in the field, the Continental Officers were "wasting their time in ineffectual efforts to gain Recruits in the Country." Governor Trumbull admitted that his state was as guilty as the rest, "tho' we are now using our utmost efforts to compleat our Battalions and send them into the Field, by detaching our Militia to fill up vacancies where they do not procure a sufficient number to Inlist voluntarily."\(^{14}\) States were having difficulty finding fighting men. The solution, according to Richard Henry Lee, was to utilize the suggestion of Congress.

I really believe that the numbers of our lazy, worthless young Men, will not be induced to come forth into the service of their Country unless the States adopt the mode recommended

\(^{13}\)Bouton, Documents of New Hampshire, VIII, 648.

\(^{14}\)Ibid., p. 490.
by Congress of ordering Drafts from the Militia. This may induce the young and lazy to take the Continental Bounty, rather than serve for nothing of that sort.  

Analyzing the temper of the people at that time, Irving Brant maintains that in "the early period of high continental power" impressment was formally authorized by Congress. At this time Congress was more ready to utilize power than was General Washington. The failure of impressment was not due to "Constitutional qualms," but to the lack of power to make such an order effective. The army alone could make seizures, and it could do so only within the range of foraging expeditions. Outside this range the states had to take up the call for arms. "but in Virginia, where the state had the military forces capable of making impressments and where the governor and council hated profiteers, the state shared the powerlessness of Congress. Public opinion at this time was too hostile, or too lethargic, for state action." Federal impotence was not caused by "the theoretical division of authority, nor was impotence confined to one government." In short, Congress and the states "ran into two angles of the same rock—the unwillingness of the people to sacrifice private gain for the public good."  

The people found it more profitable to sell their produce to British troops. The enemy had solid coin, and the United States a flood of depreciated bills. Many states found it necessary to pass laws restricting the sale of cattle and sheep. New Hampshire found the supplies for the army so scarce that they issued a law in which each town was to have a "selectman" examine all sheep and cattle passing through


16Brant, Life of James Madison, II, 364.
their town. If the sheep or cattle were found to be contraband, and not destined for the digestion of Continental soldiers, they were to be confiscated and sold "by said examinants at private sale for the most they will fetch to any person and the money arising by such sale . . . shall be paid into the hands of the receiver-general of this State for the use of the same."  

Richard Henry Lee described the smuggling trade in Virginia to Governor Thomas Johnson of Maryland:

"Passing thro' this Country on my way from Congress, I find it the common talk here, that many avaricious, inconsiderate, and ill-designing people, have practiced largely the carrying live stock and other provisions to the enemies ships of war, now in the Potomac River opposite Boyds Hole. In particular, I am told of many boats loaded with provisions going to these ships from your shore . . . It appears to me of much consequence to the common cause, as well as to the reputation of our respective government's, that this pernicious traffic should be prevented in the future."

When the states prohibited exportation of provisions from their territories another problem then arose: the high prices charged for these goods by their own citizens. Caesar Rodney explained the dilemma, "... Prices have not only increased very rapidly but there is a general Indifference almost amounting to Disinclination to sell even those Commodities most necessary for the army."  

To John Dickinson, Caesar Rodney spoke of the proliferation of speculators—in this instance, flour speculators. Writing to Dickinson for instructions on what method he was to use in procuring flour, Rodney warned that the price of flour might prove exorbitant. "You may Assure them I shall do everything in

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17Bouton, Documents of New Hampshire, VIII, 696.
my power to forward the business, but expect the flower will come high, as those termed Speculators are as thick and as industrious as Bees, and as active and wicked as the Devil himself."

A great deal of the Confederation's troubles came not from the government, but from the governed. Viewing the turmoil from a distance one is tempted to rest the case on Mark Twain's explanation: "The evils of life are the eternal cruelties, hypocrities, and stupidities of mankind which have nothing to do with time or place but result from our Heavenly Father's haste in experimenting when he grew dissatisfied with the monkey."

\[\text{Ibid.}, \text{p. 299.}\]
CHAPTER IV

THE TIMID DARE NOT

The impotence of the Confederation was also caused by the ineptitude of the delegates. The delegates' refusal to utilize any of the Congressional powers and their excessive loyalty to state welfare greatly decreased the prestige of the Congress. The Congressional "slump" of 1779 was explained by a contemporary of the time as the result of public disaffection with the Congressional delegates. "The public believes that the states are badly represented, and that great, and important concerns of the nation are horribly conducted, for want either of abilities or application in the members, or through discord and party views of some individuals."\(^1\) Caesar Rodney wrote of this disaffection to Henry Laurens, then President of Congress: "I am sorry to say, the suspicions Congress entertains of the disaffection of the people is too well founded, but as the people at large are generally directed by those at the Helm, Hope they will soon mend."\(^2\)

Many delegates became disgusted with their fellow members. John Sullivan wrote to George Washington,

Plans of finance and all other matters go on so slowly that I tremble at the consequence. I am mortified at the useless harangues which consume our time to no purpose. I fully agree with your excellency that Congress ought to have more power but I also think the old members should be in heaven or at home before this takes place.\(^3\)

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\(^1\)Brant, *Life of James Madison*, II, 345.
\(^2\)Ryden, *Letters to and from Caesar Rodney*, p. 263.
\(^3\)Hammond, *Letters of John Sullivan*, II, 293.
Pressing business was often left undecided while members indulged in vacuous oratory. Since there were no public audiences, the delegates were evidently trying to impress one another. John Banister first hinted the worst concerning the desires of the delegates to get down to business. Referring to the Congressional question of half-pay measures for the army, he noted that "the greatest ignorance in every occurrence [sic] of that kind mixed with an inactivity that permits affairs of greatest magnitude to lie dormant and give place to trifles"\(^4\) was the predominant characteristic of Congress. Richard Henry Lee wrote in disbelief, "The delay producing powers of some men, the destruction of time under pretext of order, and by long confident speeches, that I have never seen less business done in any Assembly than has been with us the last six or eight months."\(^5\) A man evidently used to activity, Thomas Rodney grumbled in writing about Congressional indolence.

In reference to the problems of finance, his chief complaint was in the inability of the members to arrive at a plan of action after agreeing on the "pernicious" practice of Tender laws. "A very long debate ensued" because some were against recommending to the states the repeal of Tender laws, thinking it would give "a fatal stab" to the new money; all the rest were in favor of having this done, "but could not agree in the manner of doing it," so that "the whole day was taken up in debating about the form of the resolution suited to the occasion and one form after another was voted out till all parties got bewildered in


the debate and at length adjourned desiring that some member would have one ready in the morning." ^6

Writing to John Iredell, William Johnson of Connecticut declared, "The great delay in deliberative councils of so numerous a body as Congress must necessarily take place . . . but much time is too often spent in debate, and there is no man of sufficient credit or influence to take the lead, or give tone to business." ^7 John Mathews of South Carolina wrote to George Washington, "Congress has not a single means in their power to remedy the accumulated evils, and what is worse, there does not appear to be a disposition to endeavor at it. Whenever the subject is brought up, men shrink from it as if the case was desperate." ^8

Too often the Continental Congress became an exclusive debating club rather than an efficient body of men dedicated to the duty of governing the society of the nation. Thorny problems were debated, re-debated and tabled until months and even years passed before final solution. The solution often resolved itself, without aid from Congress. For example, consider a dispute between Vermont and New York—

The origins of the dispute between Vermont and New York began in colonial times. The conflict was between New York and New Hampshire because both claimed the right to grant lands in the territory that is now Vermont. As early as 1749 the Governor of New Hampshire granted the first township west of the Connecticut River. In granting this territory he had assumed that it was within the jurisdiction of New

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^7 Ibid., p. 51.  

^8 Ibid., p. 63.
Hampshire. By 1764 the Governor had granted approximately three million acres of the best lands in Connecticut Valley, the Champlain Valley and the Southwest, chiefly to New England land speculators. The opposition in New York against these New Hampshire grants came mainly from a class of men known as speculator-proprietors. They were successful in gaining a decision against the New Hampshire grants. In 1764 the Privy Council declared the west bank of the Connecticut River "to be" the boundary between New York and New Hampshire. The decision was received with satisfaction by New York speculators, but with apprehension by other speculators in New England. If the Privy Council decision had declared only that the grants were transferred from the jurisdiction of New Hampshire to that of New York, the speculators in New Hampshire titles would have had little to fear. However, the wording of the decision enabled New York to state that the lands in dispute were under the jurisdiction of New York and had been since 1664. The titles granted by New Hampshire were therefore illegal. From this moment land speculators who claimed grants under New Hampshire began their long struggle against New York over these lands.

The dispute over land grants, however, was only part of the drama which in the end produced an additional state to the Union. Back-country versus Seaboard produced friction which eventually begat a separist movement. In the 1760's and 1780's the backcountry inhabitants felt themselves greatly exploited by New York. The struggle

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10 Ibid., p. 11.
entered its final phase after the passage of the Intolerable Acts of 1775. The overthrow of New York's authority was prompted by the protests of the backcountry merchants against these acts. They held conventions to demand redress of grievances, and to demonstrate inter-colonial solidarity by coercing Great Britain with non-import and non-consumption agreements. Seaboard New York sought the cooperation of the "inhabitants of the Grants" in these retaliatory measures. This gave the inhabitants of the Grants an opportunity to protest not only against Great Britain but also against New York. The radicals gained strength rapidly. By 1775 they were able to control a Cumberland County convention and more protests were levelled against New York than Great Britain. Among their protests were: (1) the great expense the courts charged; (2) the large increase in the number of lawsuits tried in these courts; (3) and the inconvenience and expense of attending them; (4) lastly, the excessive salaries of their representatives in the New York Assembly and the extravagantly large fees charged by attorneys—all of which were "very burthensome and grievous."  

The first step toward independence was taken in 1775 when a call was issued by the leaders on the west side of the Green Mountains for a convention to determine whether the laws of New York concerning land titled should be enforced, whether a method for suppressing their opponents in the Grants could be agreed upon, whether to send an agent to the Continental Congress, and "whether the Convention will consent to Associate with New York, or by themselves in the cause of America."  

The Dorset Convention, as it was called, made clear to the other states

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Ibid., p. 45.  
12Ibid., p. 55.
that it drew a sharp distinction between the dispute with New York and
the cause of the states in their dispute with Great Britain. It also
made the decision to appeal for aid east of the Green Mountains. In
the Connecticut Valley rebellion was simmering. The grievances of this
region were partly due to the land controversy, but more especially to
the inequalities between seaboard and backcountry. By 1776 both east
and west had coalesced under one pledge—the independence from New York
and the establishment of a new state.

The significance of this movement is two-fold: It demonstrates
the problems of integration faced by the new nation, and secondly, the
refusal of Congress to face and solve such a problem. Vermont had made
clear at the Dorset Convention the distinction between their dispute
with New York and the general dispute of all the colonies against Great
Britain. To the Vermonters there seemed to be no contradiction in this:
a separist movement that claimed unity to the whole. That contradiction
was a problem the Continental Congress faced with all the states. A
nation in the sense that all were united for the common cause, the
states were separate from one another in every other aspect. Not only
did the backcountry feel distinct from the seaboard, the North was dis­tinct from the South, and each state was a separate entity unto itself.
Unification was achieved out of a common need, integration was a long
drying cement that only time, and custom, could solidify. The Contin­ental Congress, aware of the frailty of such a watery base, undertook
to solve such problems with reluctance. Congressional tactics, never
too efficient, often in such cases became sluggish to the point of
"sleeping it off." In such instances the problem resolved itself,
helped only by the sighs of relief issuing forth from Congressional chambers.

Having early in the War declared their independence, with the name of New Connecticut, the inhabitants of the Grants sought admission to the Union as a distinct state, but because of the opposition of New York, Congress shied away from the problem. The Vermonters therefore declared that, if Congress was unwilling to receive them, there were other alliances they could make. Vermont began to make encroachments upon New York on the one side and New Hampshire on the other. In 1780 John Sullivan wrote a letter to Meschech Weare criticising the delay tactics of Congress. "Congress have not yet come to a single resolution respecting Vermont, though it has been five days on the Tapis." By 1781 evidence showed that Vermont was actually in negotiations with agents of the British Crown. Congress was then forced to notice the dilemma and went so far as to produce a resolution calling for a committee to investigate Vermont's claims. But in 1782 Samuel Livermore, President of Congress, reported: "Nothing material has occurred since my last. Congress are come to no determination concerning Vermont." They are such divided in opinion about the Steps that ought to be taken." Vermont proceeded to set up a separate government, despite Congressional reprimands, and eventually was accepted into the Union as a separate state, almost by the process of osmosis.

Congressional indolence was a fault among many. The delegates viewed one another with distrust, and looked with suspicion on any sign

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13Bouton, Documents of New Hampshire, X, 375.

14Ibid., p. 478.
of power in Congress. George Washington made the mistake of voicing his concern for the need of "tracing up the Confederation" by monetary means to Samuel Osgood. Osgood's reply was not agreeable to Washington's view. "Our danger lies in this—that if permanent Funds are given to Congress, aristocratic influence, which predomina tes in more than a major part of the United States will finally establish an arbitrary government." The specter of "aristocratic influence" was even more feared than the tangible forms of the Congressional body. A carefully limited government was instituted to thwart aristocratic influence. Yet because of the ambitious tenacles of such a specter all men dedicated to the principles of the Revolution must ever be on guard against its encroachments. A poor government was raised to withstand the strength of wealth. Richard Henry Lee voiced the fear of such strength, and at the same time asserted the security of poverty. Speaking out against the five per cent Impost, then before the states for ratification, Lee wrote,

I am sorry to be compelled to think so, to me it seems too early and too strong an attempt to over leap those fences, established by the Confederation to secure the liberties of the respective states. Where the possession of power creates as it too frequently does, a thirst for more, plausible arguments are seldom wanting to persuade acquiescence. The Impost proposal would sap the authority of the states to levy taxes, which would leave "the all important power of the purse invested in an Aristocratic body." Fearing the power of the purse, many delegates preferred to keep the government in its floundering position rather than to

\[\text{15} \text{Burnett, Letters of Members of the Continental Congress, VII, 144.}\]
\[\text{16} \text{Ibid., p. 146.}\]
create an efficient funding system for the effective operation of government. Stephen Higgenson of Massachusetts voted against the five percent Impost for just this reason. "The Impost I always was opposed to, and being now confirmed in my opinion, as to the danger of too great an influence resulting from it to individuals, already too influential by far."\(^{17}\) By giving the power of the purse to Congress, the sword would soon follow. "Let us be cautious how we introduce such radical defects into our system, as may furnish the most distant pretext for foreign troops to interpose in favor of the Government against the people."\(^{18}\)

Suspicion was rampant. An unknown member of Congress feared a conspiracy between Morris, Livingston, the French ministers, Spanish agents and "some other wealthier Citizens." Such men formed a "phalanx" attacking with "great force" those delegates in the Congress who dissented from the policies. "It is their practice to hunt down every man that can't be brought over to their views and so many Engines are set to work to depress every individual Opposer, that a Man must have more than a common Share of good fortune to escape them, so that an independent Spirit here is in constant state of Warfare."\(^{19}\) To Henry Laurens, Richard Henry Lee prophesied ruin to the country if trustworthy men were not found. "I am decided in my opinion, that if the U. States do not get into their public councils such of their Men as possess the greatest abilities and most integrity, in place of the number that now they

\(^{17}\)Ibid., p. 167.


\(^{19}\)Burnett, *Letters of Members of the Continental Congress*, VII, 618.
trust; our liberties will be greatly endangered indeed." 20

The delegates were afraid of any sign of power in the government; the people, in turn, distrusted their delegates, and in consequence, they disregarded the resolutions of the delegates. A sort of "round robin" was instituted, beginning at the top and percolating downward. Disobedience was so rampant Caesar Rodney found it necessary to recommend some kind of force to "reduce the people to a due subordination to Government," but he also thought that this disaffection among the citizens was founded in "that kind of Careless, Indifference in too many who are appointed to the Civil line of Duty, which Created the like Indifference and Even Neglect" 21 in the citizens.

In analyzing the defects of government, Alexander Hamilton attributed them to three causes: (1) an excess of the spirit of liberty, "which has made the particular states show jealousy of all power in their hands—and this jealousy has led them to exercise a right of judging in the last resort of the measures recommended by Congress, and of acting according to their own opinions of their propriety, or necessity"; (2) a diffidence in Congress of their own powers, "by which they have been timid and indecisive in their resolutions, constantly making concessions to the states, till they have scarcely left themselves the shadow of power"; (3) an insufficient means at the disposal of Congress to answer the public needs, and "a vigor to draw forth their engagements with the army";—the consequence of which "has been to ruin their influence and credit with the army, to establish its

21Ryden, Letters to and from Caesar Rodney, p. 409.
dependence on each state separately, rather on them—that is, rather than on the whole collectively." It is noteworthy that one of the greatest critics of the Articles of Confederation blamed the inefficiency of government on those who operated it and not on the structure of that instrument itself. To George Washington, Congress, as representatives of the states in their united capacity, might properly have buttressed its own powers, vaguely defined as they were; instead Congress had persistently catered to the hesitancies of the states and thereby "broken the staff in its own hands."23

Vacillation, suspicion, narrow vision and timidity—all were elements making up a national legislature. All important resolutions of Congress were issued after long delay. Strongly worded statements were revised, edited and re-revised until their strong content was replaced with pleadings. "Urgent requests, earnest solicitations, forceful pleadings, eloquent appeals from Congress to the states, had become as commonplace as changes of the moon, and about as effective for military purposes, whether the appeal were for men, for money or for supplies."24 Time after time resolutions framed in the Congress had more of a pleading tone, than one of command. Strong words were inevitably watered down by the more timid among the delegates. When resolutions reached the states the tone was that of a mendicant, and who respects the wishes of a beggar?

23Burnett, Continental Congress, p. 448.
24Ibid., p. 474.
Congress was hardly energetic in conducting its business, but often there were not enough delegates represented to conduct business at all. The correspondence of the time shows that much of the writing consisted of requests to the various states pleading for enough representatives to form a quorum. The President of Congress sent out a general circular to the several states.

I am now to inform you that six states are attending, namely, Massachusetts, New Jersey, Virginia, North Carolina, South Carolina and Georgia and from the state of Pennsylvania, Mr. Gardner. It is the most earnest desire of the states attending that your Excellency would urge Delegates appointed to represent your State to come forward with all possible expedition as any longer delay may be injurious to the Union.  

James Tilton wrote in mortification to his state, Delaware:

Congress are about to send off another express to urge forward, if possible, a representation from the delinquent states. It is mortifying to me, to find Delaware again on the list. But sir, the situation of congress is truly alarming; the most important business pending and not states enough to take it up; whilst those present are fatigued into resentment and almost despair, with loitering away their time, to little purpose.

Richard Henry Lee portended ominous consequences if representation did not soon become adequate.

We are remote from having a Congress, as we were nineteen days ago—with the southern delegates at Philadelphia and those of your State [Thomas Lee Shippen] inclusive, we have but Six States and a half represented. But one delegate as yet from the eastward whence formerly proceeded the most industrious attention to public business—I do not like . . . this strange lassitude in those who are appointed to transact public affairs.

However, if the Continental Congress was having difficulty, there was a

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26Ibid., p. 443.  
perverse satisfaction in finding that the states were also having a difficult time. Richard Henry Lee found it as difficult to gather a quorum for business in Virginia as he did in the national government. In 1780 he wrote to Theodoric Bland, "It is now sixteen days since our Assembly ought to have met, and yet to this day we have not members enough to make a house, altho' the invasion of our country calls loudly for legislative aid." To Caesar Rodney's appeal for legislative action, James Booth replied, "No Urgency or Importance of any Business can, I believe induce them to continue here longer than this week." The disorganization of Congress was another cause of impotence. All matters of importance were referred to committees. Although small in size when originally appointed, these committees gradually grew larger as the delegates had second thoughts about the safety of such matters in the hands of a few. The more members, the more numerous and diverse were the views. When a committee failed to reach a decision on a problem, the problem was transferred to another committee. By this method, Congress hoped to achieve a solution by introducing more opinions. As a consequence, many important issues—those issues hardest to solve—were bandied about from one committee to another, sometimes lost in the shuffle or conveniently forgotten until some force greater than inertia compelled them to bring it up again. Most of the administrative departments of Congress, such as War, Treasury and Foreign Affairs departments, began as standing committees of Congress. But little by little these committees were transformed into

28 Ibid., p. 209.
29 Ryden, Letters to and from Caesar Rodney, p. 409.
boards composed partly of members of Congress, partly of non-members. Because of the fluctuating membership of Congress the conduct of these departments came into the hands of the non-members. They were more often than not merchants or businessmen who remained in private enterprise while they pursued their official duties, almost without supervision. For instance, overseas supplies were administered until 1781 by committees of Congress whose functions overlapped and whose membership continually changed. The merchants who dominated these committees either did the work themselves or assigned it to agents appointed for special missions. In domestic supplies these same casual arrangements were also applied. The Quartermaster and Commissary departments were supervised—but not administered—by shifting committees composed of members of Congress and appointed officers. In charge of each department was a single executive officer, such as the Quartermaster-General. However, in practice the Quartermaster-General neither controlled his organization nor was responsible for it. He did not appoint his subordinates, and, in the absence of a bureaucratic system, it was not possible for him to direct the numberless agents who "swarmed over the country." These agents acted on their own initiative. "With public money in hand and a task to perform, they sallied forth to accomplish it by their own devices." 30

Regardless of the inefficiency of such practices. Congress still persisted in operating under this system. Even more inefficient was their practice of placing their own members on these boards, even though these members were likely to remain on a short-term basis. Even more

30Ferguson, Power of the Purse, p. 73.
questionable was the Congressional resistance to "the demands of the more business-like members to go a step further and replace these boards with executive departments having a single responsible head."\(^{31}\) (My emphasis). Perhaps it is superfluous to suggest that business in these departments would have been much more efficient if new members were not continually replaced—before they had time to learn the operations of the department. Perhaps it is even more superfluous to suggest that responsibility is acquired only if those appointed believe they will be held accountable for any action or inaction they take. As Edmund Cody Burnett points out, Congress had the widest latitude in curing the miasma prevalent in its departments. But efforts made to reform their departments were thwarted by the hesitant members who feared that "by the touch of these new-constructed instruments of power, virtue would go out of the body of Congress."\(^{32}\)

At no time until the end of the war was Congress an efficient body. Although looked upon with suspicion, the appointments of a separate Secretary of War, a separate Secretary of Finance, and a separate Secretary of Foreign Affairs added much to the efficiency of the Congressional body. It is especially ironic that not until the last did Congress create a separate Secretary of War. Although the predominant preoccupation in Congress was the business of war, until a Secretary was appointed the war was handled through an anomalous body entitled "The Board of War". The chaos prevalent before the appointment of the Secretary of War can be evidenced by examination of the Commissary-

\(^{31}\)Burnett, Continental Congress, p. 500.

\(^{32}\)Ibid.
General. It was a puzzlement to Caesar Rodney why prices were so high "when there is no other market for those articles"; and, writing to John Dickinson, Rodney suggested reform in the Quarter-Master and Commissary departments.

I must beg leave to submit to you Whether every purchaser in the Quarter-Master's and Commissaries departments, being obliged to submit his accounts to, and obtaining the Certificates of their having passed the Inspection of the Supreme Executive Authority comprehending the district to which they belong, or such other as they or Congress might constitute for that purpose—would not in some measure be a remedy—for tho' the people in general are not willing to become informers, they are generally free to say the Truth when called upon. Especially where they are known and can have easy access. This suggestion was never acted upon.

The disorganization of the war effort was in part the cause for lack of supplies. Richard Henry Lee was surprised to find that "their should be a want of flour . . . and proves great want of attention to the Commissary General because I well know that any quantity might have been got in Virginia at a reasonable price." Perhaps if better organization and better men had staffed the War departments, supplies would not have been so scarce, and less odium cast upon the states for their lack of patriotism. General Sullivan, at least, cast some of the odium where it belonged. Referring to the Commissary-General department, he wrote a strongly condemnatory letter to General Washington.

If their Impudence as well as Indolence did not Baffle all Description they would have paid some little attention to this Post after the Extravagent promises they made to your Excellency and myself. We have been led on From Day to Day by their false promises till our Stores are again Completely Exhausted. . . . There is neither Faith, honor, or Integrity in the

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33 Ryden, Letters to and from Caesar Rodney, p. 299.

Suppliers of this Department and if some Speedy and Effectual
Remedy is not applied the same consequences which they brought
on the Army last winter must take place here.35

A great deal of the fault lay in an administrative system which
failed to distinguish between public and private functions. These
supposedly diverse functions were merged in the normal duties of offi-
cers who served their country by pursuing their private interests. In
a sense, administrative positions existed to be exploited, and in many
instances it would have taken superhuman will power for men not to
avail themselves of these opportunities. With such opportunities ripe
for the taking it was inevitable that public offices would be abused.
It should be noted that, after the Revolution, procedures were changed.
The army was supplied by contract rather than direct purchase by govern-
ment officials.36

The continuous demand for pay by soldiers was not always caused
by the scarcity of money. Caesar Rodney suggested that a paymaster
could straighten out some of the chaos. It appeared to Rodney that a
paymaster was "absolutely necessary" in every Battalion, especially
when they were separated from the army. "The want of such an officer,"
whose particular business would be to pay the wages of the soldiers,
added immeasurably to the general confusion. As it was, "the money
... having to go thro' so many hands at present," prevented the regu-
larity of wage disperson. "... as the officers have sufficient to
employ them in their own departments, it is a pity but they were re-
lieved of this task."37 Had there been a paymaster what money there was

36Ferguson, Power of the Purse, p. 195.
37Ryden, Letters to and from Caesar Rodney, p. 84.
would have been paid regularly, instead of by the intermittent, haphazard method that was employed. Samuel Chase, in 1776, composed a plan of reform for carrying on the operations of war. "If we expect to succeed in the present War, We must change our Mode of Conduct. The business of the Congress must be placed in different Hands, distinct and precise Departments ought to be established, and a Gentleman of the military must be of the Board of War." Such simple solutions found difficult passage through the labyrinthine channels of Congressional thought. As a wry old sage once said, "Simple solutions often are so simple that a fool can't learn them; so hard that a lazy man won't."

However, no matter how inefficient Congress became, it must be said that never before had such great expense been experienced in colonial wars. As Ferguson points out, while the conflict lengthened into years a business boom was stimulated, which caused a price inflation, which in turn "spurred government and private buying." Domestic products and services rose in price. Since Congress rarely had money equal to its immediate obligations, it could not economize by planning ahead. "Forced to construct the apparatus of government amidst the havoc and crisis of war, it was further handicapped by a realization that public opinion would tolerate little centralization of power. Until the end of the fighting, supply and procurement remained a hurried improvisation in the face of emergency." Furthermore, the encompassing confusion almost completely prevented public officers from effectively supervising supply and demand. Consequently, the

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39 Ferguson, Power of the Purse, p. 27.
costs were increased by inefficiency, waste and corruption. A further drain on the federal resources resulted from the excessive number of employees in the civil service attached to the army. Large numbers of personnel were kept at tasks requiring only a fraction of their time. The real expense of the war was therefore enormous. A member of Congress lamented, "The Avarice of our people and the extravagant prices of all commodities joined with the imperfect management of our Affairs, would expend the mines of Chili and Peru."^40

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CHAPTER V

"THE GREATEST NUISANCE TO MANKIND IS MAN"

The Constitution of the United States gained its flexibility and strength from its "implied powers". The Articles of Confederation was narrowly construed by the delegates, but this need not have been the case. As early as 1781 certain members of the Continental Congress tried to make use of "implied powers". The argument over what constituted a majority of states to pass legislation is a case in point. The requirement that a majority of nine states must be obtained before legislation could be passed is one of the great criticisms of the Articles. Some delegates felt—as do modern historians— that such a rule would block efficient government. These same delegates insisted that the following clause in Article IX implied that a majority of nine states could be interpreted to mean five states:

1Andrew C. McLaughlin, describing the congressional attempt to procure the five per cent Impost resolution, agreed with George Washington, "I do not conceive we can exist long as a nation without having lodged somewhere a power, which will pervade the whole Union in as energetic a manner as the authority of the State governments extends over the several states." McLaughlin, The Confederation and the Constitution, p. 88. Edmund Cody Burnett stressed, in The Continental Congress, the inability of the government to attain an efficient funding system through the process of ratification the Articles of Confederation provided. Each time this proposal was submitted it was blocked by one or another state, while yet many others accepted the proposal. Eight states might accept the Impost, but the one state that did not prevented the proposal from becoming law. Both historians maintained a midway position in their evaluation of the Articles of Confederation. The Confederation was not as heinous as some historians portrayed, but certain mechanical defects—such as the stipulation that nine states must agree to pass legislation—prevented it from being a competent instrument of government.

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The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, nor appropriate money . . . unless nine states assent to the same; nor shall a question of any point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.²

Thomas Rodney recorded the outcome of the debate in his diary. Madison, Duane, Root, Witherspoon and Wolcott first argued that the Confederation had enumerated powers which could not be efficiently utilized if it required the assent of nine states. Therefore, this Article should be interpreted to mean that a majority of nine—which was five—could decide the business of Congress. "These men stated emphatically that unless this construction was put on the clause the government wouldn't be able to do much." To Thomas Rodney, as with a majority of the members, this interpretation smacked of tyranny. "Here [we] had the opportunity of seeing the maxim 'all men would be tyrants if could get the power.' Was sorry to see such a keen struggle to increase the power of Congress beyond what the states intended so early as but the third day after completing the Confederation."³ After the debate had spent itself and the smoke cleared, it was decided that no business would be undertaken unless nine states were represented, and no vote on an issue could be passed except with the assent of seven. The broad constructionists were defeated in the first issue that confronted them, and, as we shall see, would be continually defeated—with just one exception.


In March, 1781, Madison proposed to amend the thirteenth Article, "Every State shall abide by the determinations of the United States in Congress on all questions which by this Confederation are submitted to them." This article vested the Confederation with an implied power to enforce and "carry into effect" all the Articles against "any State which shall refuse to abide by their determination." Madison realized, through previous experience, that implied powers carried no weight with the members of Congress. Therefore, he proposed to spell it out in plain language with an amendment, "In case any one or more of the Confederate States shall refuse to abide by the determinations of the United States in Congress or to observe all the Articles of Confederation as required in the thirteenth amendment the United States is authorized to employ the force of the United States to compel such states . . . to fulfill their federal engagements." Writing to Jefferson, Madison feared the outcome of his proposed amendment. Arming Congress with coercive powers was necessary due to "the deficiency of some states which are most capable of yielding their apportioned supplies." Without the necessary force in the general government "the whole confederacy may be insulted." If the states refused to ratify the amendment the government would be "in a worse position" since, as the Confederation originally stood there was "an implied right of coercion against the delinquent states and the exercise of it by Congress whenever a palpable necessity occurs will probably be acquiesced in."
Both the Articles of Confederation and the Constitution of 1789 can be subjected to strict and broad interpretations. Early in the history of the Articles of Confederation certain delegates tried to institute the principle of implied powers. Their failure produced a narrowly constructed government; a purposely weak government which would safeguard the rights of citizens against the usurpation inherent in power. A statement can be made with some validity, following the lines of logic stated above: strict constructionalists gained control of the Articles at an early date, and they developed the government along tight or state lines. Conversely, broad constructionalists gained control of the Constitution early, and developed the new government along loose or national lines. If the nationalists had controlled the government early, would the Articles of Confederation have survived? When it is considered that the delegates in Congress incessantly fought against any broad construction of the Articles, that they consistently obstructed any portent of strong government, that they purposely kept the government poor by refusing Congress a national funding system, it can be stated that the Confederation fell through the devices of strict construction. Through the timidity of delegates the Articles of Confederation became a brittle instrument. The rapidity of change cannot be bound by the letter of the law. To accommodate the changing needs of a country, laws must be elastic to meet new exigencies. A brittle institution cannot bend under the tension; narrow construction can only break under the vicissitudes of time that have gone beyond the concepts of the past.

There was only one successful attempt at a broad construction of the Articles. The attempt succeeded in part because the strict
constructionalists were notoriously short-sighted and men, such as Madison, utilized tactics that took advantage of that hitherto limiting tendency. On the very last day of 1781 Congress passed an act incorporating the Bank of North America. Not only was there no clause of the Articles which authorized Congress to create corporations, the Second Article specifically stipulated that "Each state retains its sovereignty, freedom, and Independence, and every power, jurisdiction and Right which is not by the Confederation expressly delegated to the United States in Congress assembled." The validity of the charter was challenged by several delegates, but as Madison explained to Edmund Pendleton, "When the scheme was originally proposed to Congress for their approbation and patronage," the delegates promised to incorporate it "when it was ripe for operation." When the incorporation bill was introduced on the floor of Congress, those delegates who had promised were bound to honor it, that, or awkwardly withdraw their pledge. Madison further explained, "The competency of Congress to such an act had been called into question in the first instance, but the subject not lying in so near and distinct view, the objections did not prevail." Those delegates who had pledged themselves might have thought that in the hazy future such a plan would be lost in the shuffle, but they had reckoned without the perseverance of their opponents. In the final debate there was a show of resistance. "On the last occasion, the general opinion . . . was that the Confederation gave no such power and that the exercise of it would not avail the institution."

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James Wilson then undertook the charter's defence. The Second Article of the Confederation Wilson cast aside at the outset as entirely irrelevant to the question.

To many purposes the United States are to be considered as one undivided nation; and as possessed of all the rights and powers, and properties by the law of nations incident to such. Whenever an object occurs in the direction of which no particular state is competent, the management of it must of necessity belong to the United States in Congress assembled.  

After this broadly interpreted argument it is well to note E. S. Corwin's statement, "The reflection is suggested that if the Articles of Confederation had continued to subject this [Wilson's] canon of construction, they might easily have come to support an even greater structure of derived powers than the Constitution of the United States at this moment." Instead of being an instrument of weakness, the Articles could have been a government of strength through its inherent, latent powers. Strict construction explicitly follows the letter of the law, latent powers are implicit and therefore require congressional willingness to draw them out. The people and the congressional delegates feared government. Guarding their individual rights jealously, it would seem that in the end the people could not pardon the Articles of Confederation for being a national government despite all their efforts to the contrary. The Articles of Confederation became a government, not for the people, but despite the people.

It should be noted that, once instituted, the Bank of North America performed an important service to the United States during the

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11 Ibid.
years Robert Morris was Superintendent of Finance. From 1782 to 1784, Robert Morris borrowed a total of one million and a quarter dollars from the Bank. In time the directors of the Bank decided enough money had been loaned to Congress. So Morris sold $200,000 par value of the government's shares in the Bank for $300,000 and reduced the national debt by that amount. The next year he sold the remainder of the government's shares to Dutch investors. By the time he had retired from office, the debt of Congress to the Bank had been paid, and Congress was no longer a stockholder.  

The Articles of Confederation have been subjected to inimical criticism or downright condemnation or, conversely, applauded—by those trying to justify positions adverse to the Constitution—as the true instrument of democracy. I do not agree with the Progressive historians who maintain that the period of history under the Articles of Confederation were halycon days of ideal government. In many ways it was a period of turmoil, confusion, discord, and disorganization. I insist only that the Articles of Confederation, as an instrument of government, was not the cause of the problems. Those who managed the affairs of government and those for whom that government was instituted failed to utilize well the instrument created for their well-being. No matter how grand the plan, it will always fail if a whole people refuse to abide by its tenets. The temper of the people affected the business of Congress. If Congress had difficulties during the war, ironically they had even greater difficulties during the peace. The seeds of dissipation that were sown during the war bloomed forth more profusely after

the war was ended. Stephen Higginson vividly portrayed the scene, "The habits of indolence and dissipation contracted during the war, are very much against our making a right improvement of the advantages we have in possession." The people in general had lived better than ever before, and usually in a better manner than their budgets could afford.

And their Ideas can not now be brought to comport, with their real situation and means of living . . . was there force in the government to compel the payment of Taxes, the Cure might be accelerated. But in our situation, without Energy and without Funds beside what may be drawn from the people by Taxes, it is a serious and important Question, whether our Government may not get unhinged, and a revolution take place, before the Cure can be effected, and the people at large discover, that to secure their Liberties and the great bulk of their property a certain portion of the latter must be parted with.\textsuperscript{13} 

Only through "sad experience" would the people learn that "the Sovereignty of the States must in a degree be transferred to the Union and the people at large not so violently opposed to every degree of implicit obedience."\textsuperscript{14}

Andrew McLaughlin found the theories of the day the real source of misgovernment. "Because of sinful man, government, an evil in itself, was necessary, but it should be looked upon with suspicion and guarded with jealous care." With such concepts prevalent it was difficult to argue for efficient government and "to point to the necessity of punishment and restraint." It was much easier for the people to wield power than to give that power to the nation. "Local authority was near at hand and in its new dignity was not very different from the old colonial administration. The War had begun against general govern-


\textsuperscript{14}\textit{Ibid.}, p. 760.
ment; why should implicit obedience be paid to the Congress of the United States, clamoring for power and taxes as George III?" The Articles of Confederation could have worked. That it did not was due to the temper of the times, the blatant disregard for authority, and the suspicion and distrust of the people toward all government. American thought in the eighteenth century believed the nature of man was evil. As Cecelia Kenyon points out in "Men of Little Faith," the people of the late eighteenth century thought "the dominant motive of human behavior was self-interest, and this drive found its most extreme political expression in the insatiable lust for power. This dreadful lust

15McLaughlin, Confederation and the Constitution, p. 111.

16The suspicion and distrust of the people toward all government can be amply documented from The Antifederalist Papers. As a Massachusetts Antifederalist wrote under the pen name "Agrippa", "It has been proved, by indisputable evidence, that power is not the grand principle of union among the parts of a very extensive empire; and that when this principle is pushed beyond the degree necessary for rendering justice between man and man, it debases the character of individuals, and renders them less secure in their persons and property." p. 27. Fear of government extended itself to such an extreme that the national capital was seen as the center of corruption. "The Federal Farmer" wrote, "We are not to suppose all our people are attached to free government, and the principles of common law, but that many thousands of them will prefer a city governed not on republican principles. This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution must collect there. This city will not be established for productive labor . . . However brilliant and honorable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild government, which is dear to the laborious part of a free people, we must assuredly deceive ourselves," p. 122. The fear of power that prevailed in the Confederation period did not change overnight and was still prevalent while states debated the ratification of the Constitution. The majority of men in government were Antifederalists, fearful, as the people, of strong government. Morton Borden (ed.), Antifederalist Papers (East Lansing: Michigan State University Press, 1965).
for power was regarded as the universal characteristic of the nature of man, which could be controlled but not eradicated." With such thoughts prevailing, could government be anything more than weak?

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CHAPTER VI

THE CONFEDERATION AND THE CONSTITUTION

The seeds of disaffection, dissipation and disrespect were sown during the Revolution. Habits acquired and slowly solidified into custom are not rectified by the reform of a small number of delegates sitting in a Congress no longer holding the esteem of their constituents. Respect cannot be regained by the reformation of the system that caused its loss. The Federal Convention was called ostensibly to reform the Articles of Confederation. But the movers behind the Convention believed that more than reform was necessary to rectify a situation fast becoming anarchic. Washington's alarm at the weakness of the Confederation was deepened as disorders in Massachusetts, in the Fall of 1786, seemed to portend a crisis for the nation. "I predict the worst consequences from a half-starved, limping government always moving upon crutches and tottering at every step."\(^1\) That this limping condition was the product of mismanagement was no longer the concern of Washington, as it had been during the Revolution. More drastic measures were now needed; accusations leveled against incompetent officials relieved only the spleen. No matter the decision of the leaders, the question arises: why did the people disobey the Confederation, and obey the Constitution? It would seem that the wages of sin, and the price of

\(^1\)Morris, "The Confederation Period and the American Historian," William and Mary Quarterly, Third Series, XIII (1956), 139.
excessive liberty were lessons dearly learned. "Sad experience" had taught the value of restraint.

In the debates over ratification of the Constitution it is noteworthy that arguments centered around the structure of the Constitution, not the Confederation; and the arguments against the Confederation consisted mainly of accusations of mismanagement, loss of respect, and the people's open disregard of governmental restraint. Governor Huntington of Connecticut declared, "If we look into history, we shall find that the common avenue which tyranny has entered in, and enslaved the nations who were once free, has been their not supporting the government." 2 Alexander Hamilton, in the New York debate, cast aspersions on the delegates' excessive loyalty to their states.

In my experience of public affairs, I have constantly remarked, in the conduct of the members of Congress, a strong and uniform attachment to the interests of their own state . . . The early connections we have formed, the habits and prejudices in which we have been bred, fix our affections so strongly that no future objects of association can easily eradicate them. 3

Something stronger than amendments to the Articles of Confederation was needed to "eradicate them." James Madison, in the Virginia debates, declared that the people's disobedience produced the present necessity for new government. The Constitution held no powers that had not been vested in the Confederation—the only difference was that the Confederation held them in theory and the Constitution in fact.

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3 Ibid., p. 266.
Did we not perceive, in the early stages of war, when Congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their states? Afterwards, the whole current of their affections was to the states... the powers vested in the proposed government are not so much an augmentation of powers in the general government, as a change rendered necessary for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman that this power, in theory, exists in the Confederation as fully as in this Constitution.4

It should be noted that Madison mentions the time "when Congress was the idol of America." This can also imply the Congressional inability to maintain that respect, and its fall from grace.

Throughout the state debates one is struck by the fact that arguments against the Confederation were not on its structure. All arguments against the Confederation centered on the condition of the country, the defects of the delegates, the disobedience of the people. John Marshall, later to be the arch nationalist who upheld federal power, argued that "the inability of Congress and the failure of the states to comply with the constitutional requisitions" rendered resistance to the enemy more difficult. "The weakness of that government caused our troops to be against us which ought to have been on our side, and prevented all resources of the community from being called at once into action... a bare sense of duty, or a regard to propriety, is too feeble to induce men to comply with obligations."5 Melancthon Smith of New York, arguing over the Constitutional provision for legislation, inadvertently summed up the difficulty of the Confederation:

If the people have a high sense of liberty, government should be congenial to this spirit, calculated to cherish the love of liberty, while yet it had sufficient force to

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4Ibid., III, 258.  
5Ibid., p. 288.
restrain licentiousness. Government operates upon the spirit of the people, as well as the spirit of the people operates upon it; and if they are not conformable to each other, one or other will prevail.⁶

In the Pennsylvania debate, James Wilson described in vivid detail the disgraceful situation of the country. "The commencement of peace was the commencement of every disgrace and distress that could befall a people in a peaceful state." Extravagant importations ruined the economy, "nor could we derive a revenue from their excess." Through the inability to gain trade in foreign markets, "the Confederation lost national importance. Devoid of national energy, we could not carry into execution our own resolutions, decisions, or laws."⁷

In Virginia, Madison warned that the loss of liberty was endangered more through dissensions than through the fear of tyranny. By reviewing history, "it can be found that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels . . . internal dissensions have more frequently demolished civil liberty, than a tenacious disposition in rulers to retain any stipulated powers."⁸

The important question, however, was asked by John Lansing of New York. "If the state government's have been unable to compel the people to obey their laws, will Congress be able to coerce them?"⁹

Article III of the Confederation proclaimed: "The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against

⁶Ibid., II, 375. ⁷Ibid., p. 250. ⁸Ibid., p. 431. ⁹Ibid., III, 90.
all force offered to, or attacks made upon them, or any of them, on
account of religion, sovereignty, trade, or any other pretence what­
ever." 10 This declaration of unity was a charge no state accepted; a
law on paper, but ignored in practice. Question: Why did the people
disregard the Articles of Confederation, and accept the Constitution?
Hypothesis: Freedom rampant sacrifices the common good for individual
selfishness. Individual selfishness in turn produces anarchy, and
anarchy endangers personal freedom. Instability does not produce
prosperity, and the individual's pocketbook is exposed to a competition
without rules. Stephen Higginson prophesied correctly: "Sad experi­
ence alone will fully satisfy the body of this people that the Sover­
eignty of the Several States must in a degree be transferred to the
Union and the people at large not so violently opposed to every degree
of implicit obedience." 11 Experience had taught the need for temper­
ance. It had also taught that freedom without restraint often sacri­
fices personal security. The people, in short, were ready to obey.
And just perhaps, George Washington, as first President under the
newly constituted government, held more respect than a whole Congress
of puny delegates.

The Antifederalists did not deny there were defects in the Arti­
cles of Confederation. They were merely cautious where they believed
the Federalists to be reckless. John Lansing of New York expressed the
general Antifederalist view: "... however much I may be disposed to
to perpetuate the union, however sensible of the defects of the Confed­

10Solberg, Federal Convention and the Formation of the Union, p. 43.
American Historical Association for the Year 1896, p. 741.
eration, I cannot help differing from those gentlemen who are of the opinion it is incapable of amelioration." Instead of breaking completely with the past, and aware of the historical importance of such an undertaking, Lansing wished to be cautious in reform by amending the Articles of Confederation. The form of government was not what produced the ills of the "present situation," why, then, recklessly abandon it?

That we have encountered embarrassments and are distressed for want of money, is undoubted; but the causes which could not be controlled by any system of government, have principally contributed to embarrass and distress us. Sir, the instance adduced from the history of the Jewish theocracy evinces that there are certain situations in communities which will unavoidably lead to results similar to those we experience. The Israelites were unsuccessful in war, they were sometimes defeated by their enemies; instead of reflecting that these calamities were occasioned by sins, they sought relief in the appointment of a king, in imitation of their neighbors.\(^\text{12}\)

The Antifederalists wished to eradicate the "sins" of the people without endangering their freedom. The Federalists believed correction lay in centralizing the government and insuring obedience by coercive powers. One is tempted to mention obliquely in this instance, the Whiskey Rebellion and the large force led by Hamilton, as an example of this insurance policy. With such examples of "coercive powers" one is also tempted to quote still another sage. "There is a certain relief in change, even though it be from bad to worse; as I have found in riding a horse. It is often a comfort to shift one's position and be bruised in a new place."

\(^{12}\) Elliot, *Debates in the Several States*, II, 223.
A large number of men in 1787 and 1788 were Antifederalists. Add to this the fact that history was on the side of the Antifederalist theory of republican government, and it is doubly astonishing that they went down to defeat.

Montesquieu taught that republican governments could be feasible only in small territories. At the center of the theoretical expression of the Antifederalist opposition to the increased centralization of power in the national government was the belief that a republican government was possible only for a relatively small territory and an equally small population.\(^3\)

It is therefore argued that a large republic was impossible because the center of the government was too distant from the people. The interest of the people in government would decrease; and when this happened they would grow completely disinterested in government. Before the debate over ratification required him to change his view, Alexander Hamilton was of the same opinion.

It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each state would be apt to feel a stronger bias toward their local governments than toward the government of the Union.\(^4\)

The Antifederalists centered their attack, both inside and outside the state debates, on the construction of the Constitution. The arguments against the Constitution centered mainly around these points: (1) the elections of representatives and senators were not frequent enough to insure responsibility to their constituents; (2) one representative for every thirty thousand people was too few; (3) the Senate

\(^3\)Kenyon, "Men of Little Faith," William and Mary Quarterly, p. 9.

was to help appoint certain officers and were the judges on impeachment of such officers; (4) with the Senate holding such powers, the legislature blended into the executive and judicial departments; (5) the Vice-President was a useless officer, however, he was also to be the president of the Senate, and in case of division, was to have the deciding vote; (6) there was no bill of rights; (7) the new constitution provided for a consolidation of the several states and not a confederation.

The Constitution proposed that the first House of Representatives should consist of sixty-five members, and afterwards the ratio of representation should not exceed one representative for thirty thousand people. This provision was a chief component of the charge that the Constitution was not sufficiently democratic. Sixty-five men could not possibly represent the variety of interests throughout so large a country. Those most likely to be left out were the more democratic or "middling elements" in society. Melancthon Smith, in the debate over ratification in New York, declared, "The great easily form associations; the poor and middling class form them with difficulty." The "middling class" could unite only under "some great man, unless some popular demagogue, who will probably be destitute of principle. A substantial yeoman, of sense and discernment, will hardly ever be chose."15 It was a rule of Whig ideology that participation in government was the legitimate concern only of those who possessed property—for the protection of which, government had been originally founded. Melancthon Smith was not opposing this ideology, he was arguing that this ideology

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was not pervasive enough in the Constitution. Sixty-five representatives produced an elite. That only the most powerful of the propertied classes would have an active voice in policy, was Smith's accusation.

The basic fear of the Antifederalists was an inbred concern that government under the Constitution would be controlled by the "great", and would not truly reflect the interests of all groups in the community and would almost certainly become oppressive. In fact, "Majoritarians did not always act in democratic ways," as Richard B. Morris points out; "... nor did they seem always willing to abide by the will of the majority. Witness the shocking abuse of power by radicals of Pennsylvania who established the state constitution by fiat and did not dare submit it to the people. In fact, they went so far as to require the people to take an oath to support the constitution as a prerequisite for franchise."¹⁶ This railroading tactic was also apparent in Pennsylvania's ratification of the Constitution.

The cause of the Antifederalist defeat lay in their inability to compromise among themselves and to provide an alternative plan to the one proposed by the Federalists. The term "Antifederalist" seems, after close examination, to be a convenient tag placed on the men who opposed the Constitution. Their ranks did not embody a clear-cut political philosophy that all Antifederalists affirmed and propagated. They were instead a heterogeneous group of men thrown together by one factor: opposition to the Constitution. Many felt the Constitution was strong; others believed the Constitution was too weak. Power should be

equally distributed, and then again the House of Representatives should be the strongest. Many Antifederalists believed that man could govern without a strong central government, while others held that human nature everywhere was grasping, evil and rapacious.\textsuperscript{17} Against the united, well-organized opposition, the Antifederalists crumbled to defeat. Mr. Randal of Massachusetts acidly wondered out loud about the heavy artillery the Federalists used in the state debates:

> An old saying is that "a good thing don't need praising"; but it takes the best men in the state to gloss this Constitution, which they say is the best that human wisdom can invent. In praise of it we hear the reverent clergy, judges of the Supreme Court, and the ablest lawyers, exerting their utmost abilities. Now, sir, suppose all this artillery was turned the other way, and these great men would speak half as much against it, we might complete our business and go home in forty-eight hours.\textsuperscript{18}

Whatever the inner division, the Antifederalists were united in their criticism of the Constitution. Many of the objections were cogent arguments bordering on prophecy. Despite some extreme objections, the criticisms against the Constitution were an imposing analysis of its defects. Because they show the Antifederalist ability to cut incisively to the heart of the matter, George Mason's objections are the best.

"The president of the United States has no Constitutional Council, a thing unknown in any safe and regular government. He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or he will become a tool of the

\textsuperscript{17}Morton Borden (ed.), \textit{The Antifederalist Papers} (East Lansing: Michigan State University Press, 1965), pp. 7-14.

\textsuperscript{16}Elliott, \textit{Debates in the Several States}, II, 40.
When the cabinet system did evolve, it evolved extra-constitutionally and without cabinet responsibility. Mason also foresaw the rift that developed between the northern and southern states economically:

By requiring only a majority to make all commercial and navigation laws, the five Southern States, whose produce and circumstances are totally different from that of the eight Northern and Eastern states, may be ruined, for such rigid and premature regulations may be made as will enable the merchants of the Northern and Eastern states not only to demand exorbitant freight, but to monopolize the purchase of the commodities at their own price. Whereas requiring two-thirds of the members present in the Houses would have produced mutual moderation, promised the general interest and removed insuperable objection to the adoption of this government.

It is apropos to note that in the Federal Convention differences of opinion did not revolve around basic principles, but around the vested interests of each state. Self-interest created controversy, not basic differences in ideology. In the compromise over the navigation laws and slave trade, South Carolina and the North "horse-traded". South Carolina wished to raise the restrictions of the slave trade for twenty years, and the North wanted to build up their shipping industry. The South therefore agreed to vote for the proposition that only a majority in both Houses would be needed to pass navigation laws, and the North agreed to extend the slave traffic for twenty more years. Tariffs could be pushed through favorable to the North, which could prove harmful to the South. But twenty more years of slave trade enabled the South to solidify her "peculiar institution."

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20 Ibid., p. 337.
A further objection of Mason's was that,

Under their own construction of the general clause, at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusually and severe punishments, and extend their powers as far as they shall think proper; so that the State legislatures have no security for the powers now presumed to remain to them, or the people for their rights. 21

This suspicion has not been negated with proof to the contrary.

Most Antifederalists believed they were preserving a national government in their defence of the Articles of Confederation. In the debate over ratification, when accused otherwise, they protested that they also thought in national terms. General Heath of Massachusetts proclaimed,

I consider myself not as an inhabitant of Massachusetts, but as a citizen of the United States. My ideas and views are commensurate with the continent; they extend in length from the St. Croix to St. Maria and in breadth from the Atlantic to the Lake of the Woods; for over all this extensive territory is the federal government to be extended. 22

The Antifederalists, in essence, were arguing for a national government of restricted powers. "We ought to be jealous of all rulers," 23 was their watchword.

Like the Founding Fathers, like the men of their age, they were great constitutionalists. They were also first-generation republicans, still self-consciously so, and aware that their precious form of government was as yet an experiment and had not proved its capacity for endurance. Its greatest enemy was man's lust for power and the only thing which could hold this in check, they were convinced, was a carefully written and properly constructed constitution. 24

21 Ibid., p. 338.
22 Elliot, Debates in the Several States, II, 13.
23 Ibid., p. 28.
In summary, many of the Antifederalist criticisms were valid. The Senate did become a "rich man's club," and more responsive to the rich than to the poor; the federal government did come to overshadow the state governments; the Constitution did not lessen sectional animosities; a spoils system did evolve; the control of government by rich families, the tremendous expense of court cases, the possibility of minor rebellions against excise taxes, and the prediction that there would be no limit to the national debt— all were predicted by the Antifederalists, and proven through time. The great conundrum eternally harrassing man, "Perfection is not the lot of humanity," was the subject of Robert R. Livingston's opening speech at Poughkeepsie. "... perhaps, were the gentlemen on this floor to compare their sentiments on this subject, no two of them would be found to agree. Nay, such is the weakness of our judgment, that it is more than probable that, if a perfect plan was offered to our choice, we should conceive it defective, and condemn it." Robert R. Livingston was speaking against the Articles of Confederation. The same speech could have been said by those opposed to the Constitution. Human imperfection was the cause of the Confederation's fall. Ratification of the new Constitution was achieved, in part, through the people's realization of their transgressions. The Federalists held a double victory: a new Constitution built out of the hard lessons learned from the old, and a people ready to obey, for the rewards of stability—and the fear of failure a second time.

25 Borden, Antifederalist Papers, pp. 7-14.
26 Elliot, Debate in the State Conventions, II, 210.
EPILOGUE

The problems the Federal Convention faced were, essentially, the same as those faced by the drafters of the Articles of Confederation. If nothing else, the Articles of Confederation made it possible to further improve a republican system of government it had initially begun. The problem of selfish interests versus national interests confronted the drafters of both the Articles of Confederation and the Constitution. In some cases the Confederation solved problems of self-interest without compromise. For instance, the Articles of Confederation solved the western land controversy, with all benefits directed to the federal government.

Only once did Congress demonstrate firmness in the face of state opposition, and its success demonstrates the congressional potential—if only that firmness had been constant. The colonial charters were written in London. The King's aides passed out charters to Virginia, New York and Connecticut granting them lands extending to the South Sea. As a consequence, a number of the colonies had elaborate claims to western lands. Efforts were then made by the Continental Congress to have the states cede their claims to the territories outside their boundaries. The small states insisted that these claims were invalid and should be turned over to the federal government. The large states insisted that the claims be recognized. The battle between them proved hot and heavy. In 1781 Virginia, New York and Connecticut agreed to cede their claims to the federal government upon certain conditions.
But, as Virginia delegates reported to Governor Thomas Nelson, Congress declared "the inadmissability of those cessions upon the conditions specified." Congress then fixed a day "for ascertaining the boundaries, beyond which Congress would not guarantee, and concluded with the recommendation to lay out separate states in the ceded lands." There then came a motion for recommitment of the question, the advocates acting upon two different motives, "some intending to open the door for a full and minute questioning of the territorial rights of those three states, others proposed that the subject should be handled merely upon the basis of several resolutions of congress, passed with the express view of stifling inquiries of right."¹

Matters stood at an impasse until Alexander Hamilton and Philip Schuyler of New York concluded that if Virginia, Connecticut and New York all claimed the western territory it was unlikely that New York nor Connecticut could claim their title. Therefore, New York publicly made the gesture of ceding her lands to the federal government with the proviso that the others do the same. Connecticut then ceded her territorial claims, which placed intense pressure on Virginia. By the end of 1782 Virginia had acquiesced. The importance of such a victory for the federal government cannot be doubted. All western lands came under the jurisdiction of the national government, which would have command of setting up territorial boundaries and, eventually, new states. Also, the federal government made use of these western lands by paying the Continental soldiers in land scrips. Congress may have had only worthless paper money, but it also had something of far more value, and of

¹Hutchinson and Rachel, Papers of Madison, III, 287.
more lasting duration.

The Articles of Confederation was also the first to deal with the problems of taxation and representation. When the committee of Congress, appointed to draw up the Articles of Confederation, reported its opinion that financial requisitions should be drawn on the states in proportion to the number of inhabitants, it also recommended that each state should be allowed one vote for deciding all questions in Congress. "The view that the assessments of the states for requisitions to the Congress should be based on population was supported by the feeling that, on the whole, under the conditions prevailing in America, population was a fairly reliable guide to property." However, this recommendation was not accepted by the delegates. It was decided instead to assess each state according to the value of its land. The rule that each state was to have one vote was maintained on the insistence of the smaller states, "who were in a position of being able to exercise a kind of veto." As a result, "The Articles incorporated the principle of state sovereignty, which necessarily meant state equality in the Congress."²

By the time the Federal Convention convened, state sovereignty had become all-powerful and able to block much national legislation. Madison, between the Confederation and the Federal Convention, was working on a theory that would cut down the importance of state sovereignty. He tried to evolve a system that would both "support" a due supremacy of the national authority, and leave in force the local authorities so far as "they can be subordinately useful." Madison's

plan entailed the idea of individuals, instead of states, who would be represented on a numerical basis "in a single, national legislature, whose composition would not be affected by state boundaries." The Virginia Plan, when originally presented, distinguished between persons and property—the two separate sources of representation. "This well established doctrine of American Whiggery embodied a pale reflection of the British distinction between Lords and Commons, and issued forth in the two houses of legislature, between which the Senate would represent the interests of property, the House of Representatives those of persons."3 This plan was supported by the large states, because their populations would outnumber the small and southern states, even if population was based nationally. Fearing for their independent existence, the small states insisted on a compromise. Instead of being a "house of property" the Senate must consist of the "specific, institutional representation of the states."4 The House of Representatives, under the auspices of the "Great Compromise", adopted the principle of proportional representation.

The great change that emerged out of the Federal Convention was the reduction of state sovereignty to a subordinate position. The Articles of Confederation had originally operated under the principle of dual sovereignty, but this had evolved into a greater emphasis on state rather than national sovereignty. The Constitution, it was insisted, also utilized the principle of dual sovereignty, but the national sovereignty came to overshadow the states'. Nevertheless, the corporate

3Tbid., p. 87.
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emphasis of the Confederation was now replaced by personal representation.

... the voters who were to be consulted under the Federal Constitution were to be consulted as persons, not as owners of specified amounts of property. Their state governments might and usually did impose property qualifications, but these were not the result of anything in the Federal Constitution. Once the Federal government was in operation, its electoral system gave a possibly unintentional but nevertheless an unmistakable impetus to the idea of political democracy.\(^5\)

The broad constructionalists got hold of the Constitution early, as can be evidenced by the change in representation. They met failure under the Confederation to institute proportional requisitions according to the number of inhabitants in the states. Had broad constructionalists early taken hold under the Articles of Confederation, would "political democracy" have had an earlier start?

The American Revolution was fought against general government. Never being chastised strongly by the Continental Congress, "freedom" ran rampant. Restraint is taught only by an old order, or respect for the new order. Neither the delegates nor the people were ready for a stronger government. The Continental Congress only requested, and did not utilize its implied power to enforce. But what use is force if a whole people do not consent? To use force then would be to substitute one arbitrary government for another. Under the Articles of Confederation government was inefficient and hopelessly in debt. To this accusation the Congress, itself, and not the Articles of Confederation, must stand guilty. That the delegates failed to put their own house in order was, perhaps, the cause for the general disorder. The

\(^5\) Ibid., p. 88.
predilection of the delegates for lengthy discourse did not convert hot air into steam-driven action. The role of Congress all too often took on the tone of henpecked husband rather than master of a household. All forms of government must have a beginning and a basis on which to judge succeeding governments. Under the Articles of Confederation, Congress made exploratory incisions into the problems of proportional representation, western lands and taxation. This, at least, is assured: without the Articles of Confederation the Federal Convention would have been like the sinking ship of Mark Twain's story, without any cargo to throw overboard.
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