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The Articles of Confederation: A Re-interpretation*

Merrill Jensen

Traditionally in the history of the United States, the Articles of Confederation have played the rôle of villain. Historians old and new have pictured them as the product of inexperience, the parent of chaos, and the basic cause of the need for the creation of the Constitution of 1787. In so interpreting the first constitution of the United States and the history of the country during its existence, historians have tended to follow the lead of the Federalists. The Federalist party was organized to destroy a constitution embodying ideals of government and economic practice abhorrent to those elements in American society of which the Federalist party was the political expression. What was the Federalist party? No one knew better than John Adams. It was, he said, the party of "the education, the talents, the virtues, and the property of the country." [1]

As a party it did not believe in the democracy made possible under the Articles of Confederation. In the Convention of 1787 Edmund Randolph explained that the framers of the Confederation were wise and great men but that "human rights were the chief knowledge of the time. . ." Since then, he said, "Our chief danger arises from the democratic parts of our constitutions. It is a maxim which I hold incontrovertible, that the powers of government exercised by the people swallows

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[1] John Adams to Benjamin Stoddert, March 31, 1801, in C. F. Adams, ed., *The Works of John Adams* (Boston, 1856), IX, 582. See also Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1925), *passim*. Corroboration is likewise to be found in so conservative a work as Albert Beveridge, *The Life of John Marshall* (Boston, 1916), I, 312-313.

up the other branches. None of the constitutions have provided sufficient checks against the democracy. The feeble Senate of Virginia is a phantom. Maryland has a more powerful senate, but the late distractions in that State, have discovered that it is not powerful enough. The check established in the constitution of New York and Massachusetts is yet a stronger barrier against democracy, but they all seem insufficient." [2]

Alexander Hamilton was in profound agreement and his statements in the Convention are equally illuminating of the character and purpose of the Federalist party. Freely and openly he declared himself in favor of government by "the rich and well born" and in the use of force to suppress the mass of the people whom he said "will not conform to the dictates of reason and justice. . ." [3] John Jay did not elaborate his beliefs to the same extent as his fellow Federalists but contented himself with his favorite maxim that "the people who own the country ought to govern it." [4]

Men who believed thus undertook to blacken the reputation of the Articles of Confederation, and this they did with vast success. They pictured the Confederation period as one of chaos – the "Critical Period" of American history. Sole responsibility for the "chaos" was laid upon the existing form of government. *The Federalist* papers were but one portion of the propaganda [5] in favor of the Constitution of 1787 which

[2] Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, 1911), I, 26-27. Madison's essay number ten of *The Federalist* is further proof that the founding fathers were consciously at work to destroy what they recognized as democracy and its evils. In that essay Madison demonstrates the advantages of a republic over a democracy.

[3] Farrand, *op. cit.*, I, 299; *The Federalist,* no. XV.

[4] Frank Monaghan, *John Jay. . .* (New York, 1935), 323.

[5] The development of Federalist propaganda may be traced in the contemporary press. Items with a tinge of special pleading began to appear before the Convention met, continued during its deliberations, and burst forth in full strength once the Constitution was presented to the electorate. A few examples will suffice. May 16, 1787, the *Pennsylvania Gazette* pictured Congress as the object of derision in Europe. May 23, the same paper stated that it was unanimously agreed that a strong executive power should be lodged somewhere, and predicted chaos unless something were done.

While the Convention was in session, a serious effort was made to prepare the public to accept its work without question. Two lines of argument much used were: (1) that

subsequent historians have accepted, not as propaganda, but as true exposition of history of the so-called "Critical Period." [6]

To approach the Articles of Confederation from the point of view of the admitted difficulties and distresses of the years after the Revolution is to miss largely their real significance. Logically, they can be approached only from the point of view of the social-political turmoil out of which came the American Revolution. From this point of view, the nature of the Articles of Confederation, the problems involved in their construction, and the ends desired as a result of their adoption, appear in a quite different light from that cast on them by hindsight and a too facile and willing acceptance of Federalist propaganda as historical fact.

In recent years the work of historians who have made an effort to study the internal history of the American colonies, has shown that so far as any given colony is concerned the causes of the Revolution were exceedingly complex. Such work has shown that the American Revolution was far more than a war between the colonies on one hand and Great Britain on the other. There has been revealed in most of the colonies a struggle between those clothed with political power and those without voice in the government. The development of the colonies since their foundation had seen the creation of broad

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the members of the Convention were the wisest and best men in the country; therefore their deliberations should be accepted without question; (2) if their deliberations were not accepted, chaos would ensue. Opponents of the Convention were said to be inspired only by ulterior motives (*Pennsylvania Gazette,* July 25, August 8, 15).

August 29, the *Pennsylvania Gazette* held forth in a manner since made familiar by use in political campaigns: "the pulse of industry, ingenuity and enterprise, in every art and occupation of man" stand still awaiting the results of the Convention.

September 5, the *Gazette* stated that every state had its Shays who was trying to do what Shays had done. On September 12, there were predictions of future horrors to be suffered if the as yet unseen constitution were not adopted.

Such propaganda did not fool all the people. A brilliant answer to it was that of *"Brutus Junior"* in *The New York Journal and Weekly Register,* November 8, 1787.

[6] The acceptance of Federalist propaganda as fact has not always been the consequence of ignorance. R. G. Adams states frankly: "Too often has the 'propaganda' of one generation become the classic of the next. . . So the work of ratifying our Federal Constitution produced a work of propaganda which is a classic. *The Federalist* is itself the frankest, the baldest and boldest propaganda ever penned – but what of it?" *Selected Political Essays of James Wilson* (New York, 1930), 24.

social groupings based on specific economic and political conditions. Wealth and political power centered more and more in the coastal region, in the hands of planters in the South and of merchants in the North.[7]

During the colonial period this ruling aristocracy which arose kept itself in power by a number of political weapons. As wealth accumulated and concentrated along the coast, as the frontier moved westward from the coast and became debtor and alien in character, and as the propertyless element in colonial towns grew larger, the possessors of property demanded "a political interpretation of their favored position."[8] They demanded political supremacy in order to protect their property from the economic programs of debtor agrarians and the town poor. Colonial wealth, encouraged by the British government, gradually secured the political safeguards it demanded. The possession of a certain amount of property became the prerequisite of the right to vote.[9] Newly settled areas to the west of the coast were given inadequate representation or denied representation entirely. Thus the ever-growing West found it impossible to overcome the minority control of the East by legal means.[10]

[7] C. H. Lincoln, *The Revolutionary Movement in Pennsylvania, 1760-1776* (Philadelphia, 1901); Carl Becker, *The History of Political Parties in the Province of New York, 1760-1776* (Madison, 1909); A. M. Schlesinger, *The Colonial Merchants and the American Revolution, 1763-1776* (New York, 1918). Other studies in which the course of the internal revolution has been treated are: J. T. Adams, *Revolutionary New England, 1691-1776* (Boston, 1923); Edith A. Bailey, "Influences Toward Radicalism in Connecticut, 1754-1775," in *Smith College Studies in History* (Northampton, 1920), v, no. 4; H. J. Eckenrode, *The Revolution in Virginia* (New York, 1916); Isaac S. Harrell, *Loyalism in Virginia* (Durham, 1926); Henry M. Wagstaff, "States Rights and Political Parties in North Carolina, 1776-1861," in J.H.U. *Studies in Historical and Political Science,* XXIV (Baltimore, 1906), 9-31; Richard F. Upton, *Revolutionary New Hampshire* (Hanover, 1936).

[8] A. E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* (Philadelphia, 1905), 485.

[9] *Ibid., passim.*

[10] See J. T. Adams, *op. cit.,* 161-163; H. A. Cushing, *History of Transition from Provincial to Commonwealth Government in Massachusetts* (New York, 1896), 20-24; Lincoln, *op. cit.,* chap. iii, "The Pennsylvania assembly under the Colonial Government;" Upton, *op. cit.,* 26-29; W. A. Schaper, "Sectionalism and Representation in South Carolina," in American Historical Association *Annual Report, 1901* (Washington, 1901), I, 324-353; Max Farrand, "The West and the Principles of the Revolution," in *Yale Review,* XVII (May, 1908), 44-58.

It is difficult, therefore, to escape the conclusion that democracy was decreasingly a characteristic of constitutional development within the American colonies. The oligarchical political control made possible by restrictions on suffrage and representation enabled the ruling class to deny most of the popular demands. Discontent simmered and occasionally flared up in a violent outburst only to be forcibly suppressed,[11] but opposition to increasing economic and political stratification within the colonies did not become effective until after the French and Indian war. Then, fostered by economic depression,[12] and aided by the bungling policy of Britain and the desire of the local governing classes for independence within the empire, colonial radicalism became united in an effort to throw off its local and international bonds.

Historians who have viewed the American Revolution from the vantage point of the internal history of the American colonies have seen the significance of the social struggle going on and its relation to the outbreak of the Revolution.[13] But the conclusions to be drawn from the history of social conflict within the colonies and applied to such matters of mutual concern to the new states as the writing of a common constitution are

[11] McKinley, *op. cit., passim,* and especially 478-481. The most notable outbursts were Bacon's Rebellion in Virginia, the Regulator Movement in North and South Carolina, and the Land Bank controversy in Massachusetts. The latter did not bring on violence, but the same elements were there that were present when violent conflict actually took place. See John C. Miller, *Sam Adams* (Boston, 1936), 9-15.

[12] J. T. Adams, *op. cit.,* 252-255, 262-263, 298-299, 351; C. M. Andrews, "The Boston Merchants and the Non-Importation Movement," in the Colonial Society of Massachusetts *Transactions, 1916-1917* (Boston, 1918), XIX, 181-192; Schlesinger, *op. cit.,* 56-64.

[13] Carl Becker in *Political Parties in New York,* 5, describes the American Revolution as the result of two general movements: (1) a movement for home rule and independence; (2) a movement for the democratization of American politics and society. He pictures the latter movement as fundamental and states that it began before the movement for home rule and lasted until after its achievement.

J. T. Adams, *op. cit.,* 13, 108-109, describes a movement directed against speculator, merchant, and aristocrat as well as against royal officials. This social revolt, he says, widened into a war for independence as a result of the pressure on the colonial conservatives from the "men of the two frontiers."

Lincoln, *op. cit.,* 96, maintains that there would have been a revolution in Pennsylvania had there been no break with England, and declares that it was the latter movement which suggested the means and furnished the opportunity for the revolution which did occur.

seldom drawn and applied. Ordinarily, the Revolution is treated as the end of one age and the beginning of another. A new country was born. Political parties sprang into being. Political leaders, full of wisdom learned during the Revolution, sought to save the new nation from the results of ignorance and inexperience. So runs the story.[14] But the story is true only in an external sense. The basic social forces in American colonial life were not eliminated by the Declaration of Independence. There was no break in the continuity of the underlying conflict between party and party representing fundamental divisions in American society.

Another common assumption in treating the political history of the American Revolution is that all revolutionists were radicals; that, as time passed and bitter experience taught them, the fathers of the Revolution repented of their radical beliefs and became conservative.[15] The fact that a man became a revolutionist is no proof of his political radicalism. Men like George Washington, James Wilson, Robert R. Livingston, John Dickinson, Edward Rutledge, and Charles Carroll were always conservative in political philosophy and practise. None of them adopted the democratic ideas trumpeted by the radicals, though some of them accepted independence as the only solution of the troubles between the colonies and Great Britain.[16]

The evidence shows that the conservatives were as strongly opposed as the radicals to British measures threatening colo-

[14] The classic statement of this point of view is John Fiske, *The Critical Period of American History* (Boston, 1888). A more recent statement of the same general thesis with essentially the same point of view is to be found in A. C. McLaughlin, *A Constitutional History of the United States* (New York, 1935), chap. xiii, "The Tribulations of the Confederate Period. The Chief Problem of the Time."

[15] Henry Cabot Lodge, *Alexander Hamilton* (Boston, 1882), 43-45, states this thesis briefly.

[16] Of the above named group, probably George Washington and Charles Carroll were the only ones to accept independence willingly. John Dickinson refused to sign the Declaration. Robert Morris did so but regretted it and still hoped for reconciliation. Henry Laurens declared that he wept at the news of independence. Robert R. Livingston opposed the Declaration until the last moment. James Wilson switched his vote at the last moment, a switch interpreted by a fellow conservative as simply an effort to retain his political life.

nial home-rule. But the bulk of them wanted no rupture of the connection with the Empire, for that connection seemed to offer far more than a dubious future as an independent group of states. Increasingly the conservatives opposed a complete break as they became aware that independence might result in a revolution within the colonies: as they became aware that conservative rule had more to fear from the people of the colonies than it had from British legislation.[17] But the conservatives were slow to awake to this fact as a group, caught as they were between the twin fires of British legislation and radical activity, both of which they abhorred.

One of the first to see the conservative dilemma and to state his preference was Gouverneur Morris. He explained that the ruling aristocracy had fooled the masses over-long and that the masses were beginning to realize it. If the attempt to deceive were continued, he wrote, "farewell aristocracy . . . if the disputes with Great Britain continue, we shall be under the worst of all possible dominions; we shall be under the domination of a riotous mob." What could the aristocracy do to save itself? Morris had a ready answer: "It is the interest of all men, therefore, to seek for reunion with the parent State." [18] Morris thus saw what others were not to see for one year, or even for two years: namely, that the connection with Britain was the guarantee of the aristocratic order within the colonies. The growing awareness of that fact does much to explain the attitude of the conservatives toward the idea of independence, and toward the idea of a common government once independence could not be avoided.[19]

[17] Herbert Friedenwald, *The Declaration of Independence* (New York, 1905), 78-80, makes a very clear statement of the difficult position of the conservatives and the effect it had on the question of independence.

[18] Gouverneur Morris to Mr. ———— Penn, New York, May 20, 1774, in Peter Force, ed., *American Archives* (Washington, 1837-1853), 4 ser., I, 343.

[19] See Thomas Wharton to Samuel Wharton, Philadelphia, January 31, 1775, in "Thomas Wharton Letter Book, 1773-1784," 140-141, in Pennsylvania Historical Society Manuscripts; "Diary of James Allen," July 26, 1775, March 6, 1776, in *The Pennsylvania Magazine of History and Biography,* IX (1885), 185, 186. In 1775 Allen was denouncing English despotism but by March, 1776, when the issue had become one of independence and internal revolution rather than of resistance, Allen declared: "Thinking people uneasy, irresolute & inactive. The Mobility triumphant. . . I love the Cause

When Alexander Graydon returned to Philadelphia in 1776, he found that many of those who had formerly been much in favor of "Whiggism and liberty" were no longer so ardent. The reason he said was "Power, to use a language which had already ceased to be orthodox, and could, therefore only be whispered, had fallen into low hands. . . It was, in fact, just beginning to be perceived, that the ardour of the inflamed multitude is not to be tempered; and that the instigators of revolution are rarely those who are destined to conclude them, or profit by them." [20] Independence was thus seen as an evil of which internal discord and revolution seemed to be an inevitable twin. "We do not want to be independent," wrote Joseph Hewes, merchant of North Carolina and delegate to Congress, "we want no revolution, unless a change of Ministry and measures would be deemed such." [21]

Feeling thus, and faced with what seemed political ruin, the conservatives in the second Continental Congress opposed every measure that smacked of independence. Led by John Dickinson, they sent a second petition to the king in the summer of 1775.[22] Twice they rejected consideration of Franklin's

of Liberty; but cannot heartily join in the prosecution of measures totally foreign to the original plan of Resistance. The madness of the multitude is but one degree better than submission to the Tea-Act."

20 Alexander Graydon, *Memoirs of His own Times* (Philadelphia, 1846), 283-284. John Adams viewed the matter in somewhat the same fashion. In his "Autobiography" he wrote that "The gentlemen in Pennsylvania, who had been attached to the proprietary interest, and owed their wealth and honors to it, and the great body of the Quakers, had hitherto acquiesced in the measures of the Colonies, or at least had made no professed opposition to them; many of both descriptions had declared themselves with us, and had been as explicit and as ardent as we were. But now these people began to see that independence was approaching, they started back." *Works,* II, 407.

What John Adams said of Pennsylvania was equally true of colonies like New York, Maryland, and South Carolina where the conservatives still retained control in 1775 and 1776.

21 "Letter from a Gentleman in North-Carolina, and one of the Delegates of the Congress [Joseph Hewes], to a Principal House in Edinburgh," Edenton, July 31, 1775, in Force, *op. cit.,* 4 ser. II, 1757.

22 *Journals of the Continental Congress 1774-1789* (Library of Congress edition, Washington, 1904——), II, 64-66, 79, 126, 127, 158-162; Thomas Jefferson, Autobiography, in P. L. Ford, ed., *The Writings of Thomas Jefferson* (New York, 1892-1899), I, 17; John Adams to Moses Gill, June 10, 1775, in *Works,* IX, 356; same to James Warren, July 24, 1775, in *Warren-Adams Letters* (1917-1925), I, 88-89.

plan of confederation, even though it provided for reconciliation.[23] They ignored John Adams' plea for the abolition of customs houses, the establishment of independent state governments, the formation of a confederation, and the opening of the ports of the colonies to the world.[24] Furthermore, they took positive as well as negative action. Again John Dickinson was their leader, this time in a movement to secure instructions from the colonial assemblies yet in control of the conservatives: instructions directing the delegates of those assemblies to vote against independence should the matter come up in Congress.[25]

The conservatives retained their control of Congress until February, 1776, when they met their first significant defeat. When George III charged that "The Rebellious War now levied is now become more general, and is manifestly carried on for the purpose of establishing an independent empire," [26] the conservatives in Congress attempted to send an address to the colonies denying that independence was the purpose of Congress. Congress rejected this address which was written by James Wilson, and from that moment on, began a steady drive in the direction of independence.[27]

Independence was now talked of openly in Congress.[28] The radicals demanded the appointment of a committee to prepare a confederation. Resolutions were offered to the effect that the

[23] *Journals,* II, 195-199; III, 454, 456; Samuel Adams to James Warren, January 7, 1776, in *Warren-Adams Letters,* I, 199-200; Richard Smith, "Diary," January 16, 1776, in *The American Historical Review,* I (January, 1896), 309.

[24] John Adams to James Warren, July 6, 1775, in *Warren-Adams Letters,* I, 74-75; same to same October 7 and October 20, in *ibid.,* I, 126-129 and 155-156; John Adams, Autobiography, in *Works,* II, 406-407.

[25] Force, *op. cit.,* 4 ser. III, 1408; Lincoln, *op. cit.,* 225-227; John Adams to James Warren, May 20, 1776, in *Warren-Adams Letters,* I, 249-250.

[26] *Annual Register, 1775,* 268-271. Speech from the throne, October, 1775.

[27] Richard Smith, "Diary," January 9, 24, February 13, *loc. cit.,* I, 307, 495, 501-502; Samuel Adams to John Adams, January 15, 1776, in H. A. Cushing, ed., *The Writings of Samuel Adams* (New York, 1904-1908), III, 259; *Journals,* IV, 134-146.

[28] Richard Smith, "Diary," February 29, 1776, *loc. cit.,* I, 507. John Adams wrote to James Warren, February 14, that "Scarcely a paper comes out without a speculation or two in open vindication of opinions, which, five months ago, were said to be unpopular." Force, *op. cit.,* 4 ser. IV, 1140. Conservative strategy was effective at this time because of the instructions of the colonies against consideration of independence by their delegates in Congress.

colonies had a right to make alliances with foreign powers.[29] Soon the ports of the colonies were declared open to the world.[30] Finally on May 15, 1776, Congress passed what John Adams declared to be the most important resolution ever passed in America.[31] What Congress did was to invite a revolution in those colonies yet within the hands of the conservatives.[32] The radicals responded gladly. The government of Pennsylvania was toppled from its position and the last bulwark of conservative opposition to independence was gone.[33]

The conservatives now had to choose between England and the United States: between loyalism and patriotism. Many became loyalists as some had done before this time. Fearfully and reluctantly – the victims of circumstances partly of their own creation – others became revolutionists. Now those conservatives who became revolutionists, whether willingly or not, did not throw away their ideals of government. They were too cool, too long accustomed to government in their own interest to be led astray by the floods of radical propaganda. They were not to be swept along in an idealistic attempt to create independent democracies. Their dislike of independence was in part the result of their fear of democracy, and they had tried to avoid both. They failed and therefore they changed

[29] John Adams, Notes on Debates, February 16, 1776, in *Works,* II, 486-487; Richard Smith, "Diary," *loc. cit.,* I, 502; John Penn to Thomas Person, February 14, 1776, in E. C. Burnett, ed., *Letters of Members of the Continental Congress* (Washington, 1921-1936), I, 349.

[30] *Journals,* IV, 59, 62-63, 113, 148, 153, 154, 159, 256, 257-259; John Adams, Autobiography, in *Works,* III, 29 and Notes on Debates, *ibid.,* II, 485-486.

[31] John Adams to James Warren, May 15, in *Warren-Adams Letters,* I, 245-246.

[32] *Journals,* IV, 357-358. Men like John Adams looked upon this resolution as a declaration of independence. He wrote to Mrs. Adams, May 17, 1776, that "Confederation among ourselves, or alliances with foreign nations, are not necessary to a perfect separation from Britain," in C. F. Adams, ed., *Familiar Letters of John Adams and His Wife Abigail Adams During the Revolution* (Boston, 1875), 173-174.

[33] The conservatives realized this bitterly. James Allen wrote in his diary that the Pennsylvania Assembly would not consent to change the Constitution in accordance with the resolve of Congress. The result would be a convention of the people and "A Convention chosen by the people, will consist of the most fiery Independants; they will have the whole Executive & legislative authority in their hands." He determined to oppose such measures as long as he could in the Assembly, "for if they prevail there; all may bid adieu to our old happy constitution & peace." "Diary," May 15, 1776, in *Pennsylvania Magazine of History and Biography,* IX, 187.

their tactics. They now attempted to delay independence until a common government could be created. Such matters as confederation and foreign alliances which they had opposed for a year now quite suddenly became indispensable prerequisites of independence.[34]

In a general way the conservatives knew what kind of a government they wanted. They wanted a centralized government which would take the place of the British government: a government which would regulate trade, control the disposition of western lands, and provide force to quell internal dissention. They did not need the experience of the Revolution to demonstrate what were for them the benefits of such a government. They had been stating their ideas on the subject since the meeting of the first Continental Congress. In that body Joseph Galloway had argued in behalf of his plan of union that while the colonies denied the authority of parliament, they were in their relations to one another "in a perfect state of nature" and that conflict between colony and colony was "at this moment only suppressed by the authority of the Parent State; and should that authority be weakened or annulled, many subjects of unsettled disputes, and which in that case, can only be settled by an appeal to the sword, and must involve us all in the horrors of civil war." [35]

Arguments for a coercive superintending power were not confined to those conservatives who became loyalists. The conservatives who were to become revolutionists were equally clear. Galloway had argued that some power must have the right to regulate trade for the individual colonies, since they could not do so for themselves.[36] But so did James Duane and

[34] John Adams to James Warren, Philadelphia, May 20, 1776, in *Warren-Adams Letters,* I, 251.

[35] Joseph Galloway, *Historical & Political Reflections on the Rise and Progress of the American Rebellion* (London, 1780), 77. The Galloway plan of union was far more than a mere effort to bring about a constitutional union with Britain. It was also an effort to guarantee the continued rule of the colonial aristocracy, the position of which had become increasingly insecure. Clear evidence of this is to be found in the letters of Thomas Wharton written before the first Continental Congress. See "Thomas Wharton Letter Book, 1773-1784."

[36] John Adams, Notes on Debates, in *Works,* II, 390-391.

John Dickinson.[37] The conservatives also conceived of union as desirable for the purpose of making "Laws relative to the General Police of America, this . . . would have a tendency of checking a Turbulent Spirit in any one of the Colonies. . ." [38]

By 1776, the conservatives were also genuinely alarmed at the possibility of civil war among the colonies if independence were to be declared. Carter Braxton of Virginia wrote that if this happened "the Continent would be torn in pieces by Intestine Wars and Convulsions." Inter-colonial disputes should be settled before independence, and above all "A Grand Continental league must be formed and a superintending Power also." [39] This idea was expressed eloquently by Edward Biddle who declared: "The subjugation of my country. . . I deprecate as a most grievous calamity, and yet sicken at the idea of thirteen, unconnected, petty democracies: if we are to be independent, let us in the name of GOD, at once have an empire, and place WASHINGTON at the head of it." [40]

On June 7, 1776, Richard Henry Lee of Virginia moved that the colonies were and of a right ought to be free and independent states, that they should form a confederation, and that committees should be appointed to draw up the documents. The conservatives opposed the motion. In their own estimation they were "the sensible part of the House." They did not object

[37] *Ibid.*, II, 389, 397, and "Diary" in *ibid.*, II, 379. See also James Duane to Samuel Chase, New York, December 29, 1774, in Burnett, *op. cit.*, I, 87-88; Gouverneur Morris to ———— Penn, May 24, 1774, in Force, *op. cit.*, 4 ser. I, 343.

[38] Thomas Wharton to Thomas Walpole, May 2, 1774, in "Thomas Wharton Letterbook," 35. The idea of a central government as a check on the democracy of colonial legislatures had been urged all through the Eighteenth Century according to Richard Frothingham, *The Rise of the Republic of the United States* (Boston, 1910), 114-115.

[39] Carter Braxton to Landon Carter, Philadelphia, April 14, 1776, in Burnett, *op. cit.*, I, 421. Braxton feared civil war particularly because of conflicting land claims. His fear was justified because minor hostilities had actually been engaged in. See also Lincoln, *op. cit.*, 225, note 1.

[40] Graydon, *op. cit.*, 285. Other statements of the problem are to be found in the letters of Joseph Hewes to Samuel Johnston, March 20, 1776, in Burnett, *op. cit.*, I, 401; same to same, July 28, 1776, *ibid.*, II, 28; Thomas Stone to Daniel of St. Thomas Jenifer, April 24, 1776, *ibid.*, I, 431-432; William Whipple to John Langdon, May 18, 1776, *ibid.*, I, 456.

to the formation of a confederation, nor the formulation of plans for a treaty with France, but from their point of view, the only reason offered for declaring independence, was the reason of a madman: "a shew of our spirit." Independence would only render the colonies ridiculous in the eyes of foreign powers who would not unite with the colonies before they had united among themselves. Likewise, daily experience showed "that the Inhabitants of every Colony consider themselves at liberty to do as they please upon almost every occasion." [41]

John Dickinson, Robert R. Livingston, James Wilson, Edward Rutledge, and James Duane – all to become unwilling revolutionists within a month – led in opposition to declaring independence.[42] Consideration of the question was thus delayed until July 1 when John Dickinson made a formal speech in which he set forth the conservative views for the last time before the adoption of the Declaration of Independence. He pleaded once more the necessity of union before independence, and pointed to the difficulties of the committee engaged in the preparation of articles of confederation. In particular he urged the necessity of a central power to control western lands.[43]

Once independence was declared, the conservatives continued to hope for the establishment of a supreme national legislature. There is no clearer statement of this desire than that by Joseph Reed, at the time private secretary to George Washington. He was still in hopes of reconciliation with the mother country, but he was for a national union among the thirteen states in any case: ". . . mere local authority should be subservient to the supreme decision of Congress." [44]

[41] Edward Rutledge to John Jay, Philadelphia [June 8, 1776], in Burnett, *op. cit.*, I, 476-477.

[42] Thomas Jefferson, Notes on Debates, in *Writings*, I, 19-24.

[43] John Dickinson, "Arguments agt. the Independence of these Colonies – in Congress," in Pennsylvania Historical Society Manuscripts.

[44] Joseph Reed to Robert Morris, New York, July 18, 1776, in W. B. Reed, *Life and Correspondence of Joseph Reed* (Philadelphia, 1847), I, 199. Reed frankly admitted that his motives were personal: "From the purity and extent of its intelligence, and the abilities of its members, I derived my hopes of political safety, and therefore beheld with concern every attempt to control the judgment and bind down the opinions of any of its members by instructions and other devices. . ."

The Conservatives had an opportunity of sorts to create the government they desired for they dominated the committee which prepared the first draft of the Articles of Confederation. It was presented to Congress in the handwriting of John Dickinson.[45] To a degree this first draft of the Articles of Confederation was an expression of the conservative desire for a central government superior to the states. In the committee they made a strenuous effort to destroy "Provincial Distinctions" and to make "every thing of the most minute kind bend to what they call the good of the whole. . ." [46] But the draft presented to Congress did not contain many practical measures for the achievement of this purpose. Various reasons may be assigned for the failure. The two radicals on the committee doubtless exercised some influence. More important was the fact that the southern conservatives were obsessed with a fear of New England democracy. They were convinced that a national government would subject the whole country to the rule of New England.[47] Probably the greatest restraint upon the work of the committee was the realization that most of the state governments would never knowingly accept a superior government over them.[48]

[45] The three leading opponents of independence, and of union before independence, if independence there must be, were John Dickinson, Edward Rutledge, and Robert R. Livingston. All three were on the committee to prepare the confederation. Thomas Nelson, a conservative leader from Virginia, Joseph Hewes, a conservative North Carolina merchant, Button Gwinnet, a Georgia merchant, Thomas McKean of Pennsylvania, a political chameleon tending to be on the conservative side, were men of definite conservative leanings on the committee. Samuel Adams and Stephen Hopkins were the only members who might be considered radical in internal politics.

[46] Edward Rutledge to John Jay, June 29, 1776, in Burnett, *op. cit.*, I, 517. Rutledge was convinced that unless the Dickinson draft were greatly curtailed it would never pass, "as it is to be submitted to Men in the respective Provinces who will not be led or rather driven into measures which may lay the Foundation of their Ruin."

[47] *Ibid.*, I, 517-518. After the Revolution when the position of the conservatives of the South was threatened seriously for the first time by radical movements within their states, they became "nationalists" as the Pennsylvania conservatives did in 1776. See W. E. Dodd, *Statesmen of the Old South* (New York, 1911), 42; U. B. Phillips, "The South Carolina Federalists," in *The American Historical Review*, XIV (April, 1909), 541-542.

[48] See the instructions to the Virginia delegates in Congress in Force, *op. cit.*, 4 ser. VI, 1524; "Credentials of the Rhode Island Delegates," in *Journals*, IV, 353-354; Instructions to the North Carolina Delegates in *The North Carolina Colonial Records* (Win-

In spite of the obstacles in the way of "nationalism," the Dickinson draft gave to Congress power over what was probably the most important subject of controversy at the time: western lands and state boundaries. Congress was given power to limit the size of states, to define their boundaries, and to settle disputes over rival land claims.[49] This grant of power was the most bitterly contested issue during the writing and ratification of the Articles of Confederation. States with definite western boundaries like Maryland and Pennsylvania were in bitter opposition to states like Virginia whose land claims were vast in extent. The landless states wanted to share in the profits expected from future sales, their speculators wanted their pre-revolutionary land claims made good. They also feared the domination of Virginia should she expand into the West. Hence the landless states appealed to a centralized government after independence as they had appealed to Great Britain before. Only a superior power could force the landed states to disgorge. The appeal was all the more effective since the leading politicians of the landless states were also their leading speculators. But the landed states defeated this effort to give Congress large powers and for their further security they added to the Articles of Confederation in their final form, a provision to the effect that no state was to be deprived of its territory without its consent.[50]

The question of the basis of representation likewise involved the question of the nature of the government to be created. Was each state to have one vote in Congress or were the states to be represented in Congress in proportion to their population or their wealth? The first Congress had decided that each state

ston, 1895-1905), X, 512. An excellent modern statement is to be found in Robert L. Schuyler, *The Constitution of the United States: An Historical Survey of its Formation* (New York, 1923), 26-27.

[49] *Journals*, V, 549, 550-551. Articles xiv, xv, xviii.

[50] This question is discussed in Merrill Jensen, "The Cession of the Old Northwest," in *The Mississippi Valley Historical Review*, XXIII (June, 1936), 27-48. See also, St. George L. Sioussat, "The Chevalier De La Luzerne and the Ratification of the Articles of Confederation by Maryland, 1780-1781," in *The Pennsylvania Magazine of History and Biography*, LX (October, 1936), 391-418.

should have but one vote [51] and the Dickinson draft continued the precedent.[52] But the large states led by Pennsylvania, Massachusetts, and Virginia insisted that votes should be according to population. They engaged in dialectical arguments to gain their end. The most significant argument used was that the delegates in Congress represented the people of the United States and not the people of the States, and that therefore voting should be according to population: "the individuality of the colonies is a mere sound," said John Adams.[53]

The radicals opposed this proposed measure so dangerous in its implications for self-government within the states. The small states opposed it for they feared they would be either swallowed up or dominated by their large neighbors. In answer to the contentions of the large states they insisted that the members of Congress represented the states and not individuals, and that "Every Colony is a distinct person." [54] The final result was a victory for the radicals and the small states: each state had one vote in the deliberations of Congress.[55]

The controversy over representation was of far more consequence than as evidence of a struggle between large and small states. It also involved the question of sovereignty: the location of ultimate political authority. The location of sovereignty during the American Revolution was a question of practical politics, not a question of constitutional metaphysics. No one realized this better than contemporary politicians who believed that the colonists could choose between "a sovereign state, or a number of confederated sovereign states" when they organ-

[51] *Journals,* I, 25; John Adams, Notes on Debates, in *Works,* II, 366-368; Diary, September 5, 1774, in *Works,* II, 365-366; James Duane, Notes of Proceedings, in Burnett, *op. cit.,* I, 13.

[52] *Journals,* V, 550. Article xvii.

[53] Jefferson, Notes on Debates, in *Writings,* I, 45.

[54] John Adams, Notes on Debates, in *Works,* II, 496, 499; Jefferson, Notes on Debates, in *Writings,* I, 42-47.

[55] *Journals,* V, 681. Article xiii. While the controversy over representation was clearly an issue between the large and small states, it is significant that the only evidence we have (John Adams' and Thomas Jefferson's notes on the debates) shows that no conservative argued for equal representation of the states and that no radical argued for representation according to population.

ized their common government.[56] The conservatives demanded that Congress be given the preponderance of power. The radicals insisted that it be retained by the individual states.

The Dickinson draft expressed the wishes of the conservatives. It placed but one unqualified restraint upon the power of Congress: Congress was not to levy any taxes or duties except for the maintenance of the postoffice.[57] On the other hand, the states were given but one guarantee of internal independence and self-government, and that a conditional guarantee: the states were guaranteed control of their internal police where such control *did not interfere* with the Articles of Confederation. The implication of this was that the vast field of undefined powers was lodged in Congress, since but one specific restriction was placed upon its activity, while but one specific guarantee was made to the states, and that one subject to interpretation in the light of the Articles, and hence by Congress.[58]

The Dickinson draft, therefore, provided the legal basis for a government of potentially national powers. No one realized this more clearly than James Wilson, who declared in the Convention of 1787, that in the beginning Congress had constituted a single state and that "The Original draft of the confederation was drawn on the first idea [of Congress as a single state] and the draft concluded how different." [59] To achieve

[56] John Adams to Patrick Henry, June 3, 1776, in Burnett, *op. cit.*, I, 471. This was also the opinion of James Wilson. See his "Of Man as a Member of a Confederation" in James D. Andrews, ed., *The Works of James Wilson* (Chicago, 1896), I, 307-308.

[57] *Journals*, V, 552. Article xviii. Congress was not to interfere "in the internal Police of any Colony, any further than such Police may be affected by the Articles of this Confederation."

[58] *Journals*, V, 547. Article iii reads: "Each Colony shall retain and enjoy as much of its present Laws, Rights and Customs, as it may think fit, and reserves to itself the sole and exclusive Regulation and Government of its internal police, in all matters that shall not interfere with the Articles of this Confederation."

The above interpretation is essentially that of contemporaries, and especially of Thomas Burke who convinced Congress of the rightness of his idea. (See notes 69-71 and related text). One needs only to recall James Wilson's *Chisholm v. Georgia* decision, and John Marshall's *Marbury v. Madison* decision to realize that the men of the time understood the possibilities of "interpretative" constitution making.

[59] Robert Yates, Notes in the Convention of 1787, in Charles Tansill, ed., *Documents Illustrative of the Formation of the Union of the American States* (Washington, 1927), 759; James Madison's Notes, in *ibid.*, 177.

their end, the conservatives argued that Congress represented the people and not the states, and that the Americans were one nation. The implication was that the government to be created was a national government. James Wilson of Pennsylvania set forth this view at length. He defined government as a collection of the wills of all. Congress, he said, did not represent the states, it represented the people of the United States: "It has been said that Congress is a representation of states, not of individuals. I say that the objects of its care are all the individuals of the states. As to those matters which are referred to Congress, we are not so many states, we are one large state. We lay aside our individuality, whenever we come here." [60] John Adams declared that the confederation was to make the colonies into a single individual: "it is to form us, like separate parcels of metal, into one common mass. We shall no longer retain our separate individuality. . ." [61] Benjamin Rush added a refining touch, later elaborated in the Convention of 1787. This was to the effect that a portion of the people's rights were deposited in the hands of legislatures and a portion in the hands of Congress: "we represent the people. We are now a new nation." [62]

The radicals were not befuddled by such arguments. They reiterated the obvious fact that the delegates in Congress represented the governments of the states. They made a clear distinction betwen a national and a federal form of government, and hammered home the point that Congress was at work creating a federal government of independent states, not a national state.[63]

In spite of the awareness of the distinctions between a federal and a national government, none of the radicals seems to have sensed the significance of the Dickinson draft. No one in the early stages of the controversy was alive to the necessity of a specific statement of the apportionment of powers. This failure

[60] Jefferson, Notes on Debates, in *Writings*, I, 46-47.

[61] *Ibid.*, I, 45.

[62] *Ibid.*, I, 46; John Adams, Notes on Debates, in *Works*, II, 499.

[63] John Adams, Notes on Debates, in *Works*, II, 499; Jefferson, Notes on Debates, in *Writings*, I, 44-45.

was in part due to the subtleties and complexities of the Dickinson draft of which a contemporary said that it had "the Vice of all his productions . . . the Vice of Refining too much. . . ." [64] The first debates naturally concerned themselves with easily discernible issues such as the West and representation. Furthermore there was no time for the deliberation necessary to discover underlying implications, for the Confederation was dropped from consideration in August, 1776, after less than a month's debate, and was not again discussed until April, 1777.[65]

The question of the general nature of the union did not become an issue until 1777, shortly after the arrival in Congress of Thomas Burke of North Carolina. During the first part of the year, much time was taken up with debates "whose object on one side is to increase the Power of Congress, and on the other to restrain it." [66] Burke soon discovered that the landless states were determined to make Congress powerful enough to take the western lands away from the landed states. This desire aroused Burke's suspicion, and a series of debates over the relative power of Congress and the states stirred him to positive action.

James Wilson was one of the few conservative leaders still left in Congress, and he was conducting a movement to establish precedents for the supremacy of Congress over the states. When the New England states held an informal meeting and sent a report to Congress, Wilson made a determined effort to twist the meeting into an affair requiring the approval of Congress, "to the end that this approbation might imply a right to disapprove." The result of the attempt was what one member described as "a long metaphysical debate." During its

[64] Edward Rutledge to John Jay, June 29, 1776, in Burnett, *op. cit.*, I, 516.

[65] *Journals*, V, 674, 689; VII, 240. The radicals generally showed very little concern about the completion of the Confederation. Some of them felt it neither necessary nor important. See Samuel Chase to Richard Henry Lee, July 30, 1776, in Burnett, *op. cit.*, II, 32; same to Philip Schuyler, August 9, 1776, *ibid.*, II, 44; Thomas Burke to the Governor of North Carolina, November 4, 1777, *ibid.*, II, 542.

[66] Thomas Burke to Governor [Richard Caswell], March 11, 1777, in Burnett, *op. cit.*, II, 294.

course, Benjamin Rush went so far as to assert flatly that the meeting had actually usurped the powers of Congress. The radicals were quick to resent so daring an assumption of power. Samuel Adams asserted that the right to assemble and to discuss measures for promoting liberty and happiness was the privilege of freemen – that it was dreaded only by tyrants like Governor Hutchinson. Richard Henry Lee pointed out that the unconfederated Congress had no powers whatsoever.[67]

James Wilson also led in an attempt to have Congress pass laws authorizing local officials to pick up men suspected of desertion. Thus the intervention of local governments was to be evaded. Thomas Burke opposed this attempt with great force. His arguments were an epitome of the radical attitude toward the central government. He said that if the acts of Congress were to be enforced by the authority of Congress, it would give Congress power to prostrate state laws and constitutions because it might thereby create a power within a state which could act independently of the state.[68]

The effect of such controversies on men like Burke was to increase in them the conviction "that *unlimited Power can not be safely Trusted* to any man or set of men on Earth." [69] Thus when the Articles of Confederation were once more taken up for consideration, Burke was quick to sense that the third article of the Dickinson draft was full of potential danger for the independence of the individual states. This article, in Burke's words, "expressed only a reservation of the power of regulating the internal police, and consequently resigned every other

[67] Thomas Burke, Abstract of Debates, February 12, 1777, in Burnett, *op. cit.*, II, 249; Benjamin Rush, "Diary," *ibid.*, II, 234-235; William Ellery to the Governor of Rhode Island, February 15, *ibid.*, II, 255.

[68] Thomas Burke, Abstract of Debates, February 25, 1777, in Burnett, *op. cit.*, II, 275-281. In this debate as in many others, James Wilson argued for the extensive powers of Congress.

[69] Thomas Burke to Governor Richard Caswell, March 11, 1777, in Burnett, *op. cit.*, II, 294. Why should members of Congress seek to increase their power? Burke's answer was that "Power of all kinds has an Irresistible propensity to increase a desire for itself. It gives the Passion of ambition a Velocity which Increases in its progress, and this is a passion which grows in proportion as it is gratified." See also Richard Henry Lee to [Edmund Pendleton?], May 12, 1776, in J. C. Ballagh, ed., *The Letters of Richard Henry Lee* (New York, 1911-1914), I, 191.

power." He was convinced that to leave it thus was to leave it "in the Power of the future Congress or General Council to explain away every right belonging to the States and to make their own power as unlimited as they please." Burke therefore proposed an amendment to the confederation stating that "all sovereign power was in the States separately, and that particular acts of it, which should be expressly enumerated, would be exercised in conjunction, and not otherwise; but that in all things else each State would exercise all the rights and power of sovereignty, uncontrolled."

Members of Congress were so slow to become aware of the significance of the proposed amendment that even a second was wanting for a time. James Wilson and Richard Henry Lee furnished most of the opposition, but eventually eleven states voted for it.[70] As it stands in the Articles, the amendment reads: "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." [71]

The constitution thus written was presented to the states for unanimous ratification before it could be declared in operation. Unanimous ratification was delayed for years by the continuance of the controversy over Congressional control of the west. Maryland finally refused to ratify at all, unless the landed states would agree to make some cession of their western lands to Congress. This was done in 1780, and on March 1, 1781, the Articles of Confederation became the first constitution of the United States.[72]

This Constitution was, as James Wilson said later, "how different." The constitutional relationship between the states and their common government was quite unlike what it had been in the Dickinson draft. The vast field of undefined and

[70] Thomas Burke to Governor [Richard Caswell], April 29, 1777, in Burnett, *op. cit.*, II, 345-346.

[71] *Journals*, IX, 908; Burke to Governor Caswell, in Burnett, *op. cit.*, II, 346.

[72] See Jensen, *loc. cit.*, XXIII, 27-48.

unenumerated powers now lay with the states rather than with Congress. Congress was rigidly restricted within the bounds of precisely delegated authority. Congress was the creature of the states and ultimately of the people of the states. Centralized government with a legal veto on laws, with the power of general legislation, and with the force of arms had disappeared with the Declaration of Independence. The conservative revolutionists had been unable to recreate such a government over the American states in spite of their efforts to do so. The constitution finally adopted was the constitution of those elements of American society which helped to bring about the American Revolution. In so far as those elements were democratic, the constitution they created was democratic. It was democratic because within a state, the majority of the electorate could do as it pleased unhindered by external coercive and restrictive authority. Thus Edmund Randolph's statement in the Convention of 1787 takes on meaning and color. He objected then that the chief knowledge of the framers of the Confederation was "human rights." Since then, the "chief danger arises from the democratic parts of our constitutions . . . the powers of government exercised by the people swallows up the other branches. None of the constitutions have provided sufficient check against the democracy." [73]

The problem of the more general nature of the Articles of Confederation was lost sight of in the confusion surrounding the controversy over the control of the West. As soon as the Articles were ratified, however, an attempt was made to add "nationalistic" features to them.[74] This failed as did the efforts made to "interpret" the Articles in "nationalistic" terms. The language of the document was too explicit to admit of such

[73] Farrand, *Records of the Federal Convention,* I, 26-27. See also *The Federalist,* number ten, wherein the advantage of the Constitution of 1787 as being far removed from the danger of democratic action is set forth.

[74] *Journals,* XIX, 236; XX, 469, 470. See also George D. Harmon, "The Proposed Amendments to the Articles of Confederation," in *The South Atlantic Quarterly,* XXIV, (October, 1925), 411-436.

interpretation, even by the most adept legal gymnasts.[75] Ultimately, as a result of circumstances and of careful planning, the conservative elements in American society were able to overthrow the constitution they disliked and to substitute for it a constitution more in keeping with their conceptions of sound political theory and practise.

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[75] See James Wilson, "Considerations on the Bank of North America" (1785) in Adams, *Political Essays of James Wilson,* 133. Wilson argued, as a stockholder of and attorney for the Bank of North America, that the Pennsylvania legislature could not revoke the bank's state charter. His reasoning was that the bank charter granted by Congress was superior to the state charter, because the central government was superior to the state government. This was so, he said, because the Declaration of Independence preceded the Articles of Confederation. It declared that "*these United* Colonies, '(not enumerating them separately)' are free and independent states; and that, as free and independent states, *they* have full power to do *all* acts and things which independent states may, of right, do." Congress had powers before Confederation, and the Confederation was not intended to weaken or abridge the powers Congress previously held.

Thus by 1785, the doctrine of the sovereignty of Congress and the only argument to prove it was evolved. Story, Webster, and Von Holst did little more than embroider the pattern set by James Wilson.