Introduction- The Confederation Period

Throughout the Revolutionary Era, Americans engaged in a continuous debate about the need for and character of a central government. After 1763 there was mounting opposition, expressed in word and deed, to outside interference within each American colony, and by 1774 some Americans were denying the right and power of a central government–that of Great Britain–to control them in any way. Samuel Adams summed up that attitude the next year when he declared that each legislature "is and ought to be the sovereign and uncontrollable power within its own limits or territory."

At the opposite pole were other Americans who insisted that a central government was indispensable to regulate trade, to control finance, to direct military affairs, to suppress internal rebellions, and to prevent civil war among the colonies over lands and boundaries. This was the essence of Joseph Galloway's arguments in the First Continental Congress in 1774 when he proposed the creation of an American central government within the British Empire. Galloway's basic assumption was that "in every government, patriarchical, monarchical, aristocratical, or democratical, there must be a supreme legislature," and he argued that Americans should either create such a government or concede the necessary power to Parliament.

The opposing positions taken by Americans in the First Continental Congress in 1774 were maintained with remarkable continuity for years thereafter, and by some of the same men. Richard Henry Lee, Patrick Henry, and Samuel Adams opposed Galloway's plan in 1774, and thirteen years later they were leading opponents of the ratification of an unamended Constitution. John Rutledge, Edward Rutledge, James Duane, and John Jay supported Galloway's plan. Thirteen years later they were among the leading supporters of the ratification of the Constitution, and Jay was one of the authors of *The Federalist Papers*, which elaborated upon the issues raised by Galloway in 1774.

All told, ten of the forty-one surviving members of the First Continental Congress were elected to the Constitutional Convention, although Richard Henry Lee, Patrick Henry, and Richard Caswell refused to serve. The seven members of the First Congress who served in the Convention of 1787—John Dickinson, William Livingston, Thomas Mifflin, George Read, John Rutledge, Roger Sherman, and George Washington—signed the Constitution and supported its ratification. Twenty of the surviving members of the First Congress were elected to the state conventions in 1787–1788, and the majority of them voted to ratify the Constitution.

Between 1774 and early 1776 the issue of a central government was subordinated to that of independence. The supporters of independence urged the creation of a confederation as one means of achieving it, while the opponents of independence opposed a confederation. When independence became inescapable, the latter reversed themselves and argued that a central government should be created before declaring independence.

On 7 June 1776 Richard Henry Lee, who supported independence, combined both issues when he moved that the colonies declare their independence and that Congress appoint a committee

to prepare a “plan of confederation.” On 12 June Congress elected a committee consisting of one delegate from each colony to prepare a constitution. The draft of articles of confederation, written by John Dickinson, was presented to Congress on 12 July.

Eight of the men who played key roles in the writing of the Articles of Confederation in 1776–1777 were members of the Constitutional Convention ten years later. They were George Clymer, John Dickinson, Benjamin Franklin, Elbridge Gerry, Robert Morris, George Read, Roger Sherman, and James Wilson. An even larger number of men who debated the Articles in 1776–1777 were not members of the Convention, but they were involved in the debate over the ratification of the Constitution. Among them were Samuel Adams, Samuel Chase, Abraham Clark, James Duane, John Hancock, Richard Henry Lee, and Benjamin Rush.

The Dickinson draft raised most of the issues which Americans debated between 1776 and 1787, and afterwards as well. In effect, it proposed the creation of a sovereign central government, for it gave broad powers to Congress and guaranteed very little power to the states. Thus while it provided that each state should retain “as much of its present Laws, Rights and Customs” as it saw fit, and reserve to itself the regulation of its “internal police,” the guarantee was followed by a provision that negated its effect. The states were to retain such powers and rights only in “matters that shall not interfere with the Articles of this Confederation.” Similar guarantees followed by similar limitations were scattered throughout the Dickinson draft.

The fundamental nature of the draft was at first ignored by Congress because it raised other issues of more immediate concern. One such issue was the balance of power between the large and the small states, an issue debated as heatedly in 1776 as it was in the Convention of 1787. Should each state have an equal vote in Congress or should voting be by population, wealth, amount of contributions to common expenses, or some combination of these?

The Dickinson draft also precipitated a confrontation between the Northern and the Southern states. The draft provided that the expenses of the central government should be apportioned among the states according to total population, except for Indians not paying taxes. Southern delegates argued that expenses should be shared according to white population alone because slaves were wealth and a species of personal property. Throughout the debates on the Articles of Confederation, New Englanders insisted that total population was the best index of wealth, but the Articles, as finally agreed upon, provided that expenses would be shared according to the value of land granted to or surveyed for individuals. New Englanders remained convinced that they would be exploited and that the South would escape payment of taxes on its slaves and its large areas of ungranted and unsurveyed lands.

A second issue raised between the North and the South during the dispute over the apportionment of expenses concerned the treaty-making power. Southern delegates argued that if slaves were to be taxed, so too should the commercial wealth of New England. As Edward Rutledge of South Carolina saw it, the New England States would become “the carriers for the Southern,” and Southerners feared that future congresses might try to make

commercial treaties granting Northern merchants a monopoly of the carrying trade. Therefore, shortly before the Articles were completed in November 1777, Southern delegates, led by Richard Henry Lee, secured the insertion of a restrictive provision. It forbade Congress to make commercial treaties which would prevent the states from levying the same duties on foreigners that their own citizens paid, or would prevent the states from prohibiting the exportation or importation of any goods whatsoever.

Another divisive issue, one which delayed ratification of the Articles of Confederation until March 1781, concerned the control of western lands. The Dickinson draft gave Congress the power to limit the boundaries of states whose colonial charters granted them land extending to the "South Seas," to fix boundaries of states where they seemed indefinite, and to create new states in the land separated from old states. Five states had definite western boundaries—Pennsylvania, Maryland, New Jersey, Delaware, and Rhode Island—and they supported such power. The states with charter claims extending to the "South Seas," led by Virginia, fought against and eliminated the provision. Furthermore, they added a provision to the Articles guaranteeing that "no State shall be deprived of territory for the benefit of the United States."

The question of the fundamental character of the proposed constitution came before Congress early in 1777 as the result of efforts to establish precedents for the exercise of congressional power over the states and their citizens. James Wilson, John Adams, and others proposed: (1) that Congress approve a convention of the New England States in order to establish the right to disapprove of state actions in the future; (2) that Congress ignore state governments and authorize constables and other state officials to seize deserters from the army; and (3) that Congress approve General Washington's proclamation requiring people who had taken an oath of allegiance to Great Britain to take an oath of allegiance to the United States, thus implying national citizenship.

The attempt to establish precedents was defeated by defenders of state sovereignty such as Samuel Adams, Richard Henry Lee, and Thomas Burke. Furthermore, these men acted positively to insure that the central government would be one of strictly delegated and limited powers. Burke proposed that an article be added declaring 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." Congress agreed, eleven states to one (Virginia) to what became Article II of the Articles of Confederation. It reversed the intent of the Dickinson draft and guaranteed the creation of a strictly federal government.

James Wilson summed up the significance of the Article when he told the Constitutional Convention in 1787 that "the original draft of Confederation" was based on the idea of Congress as a single state, and "the draft concluded on, how different!" Other American leaders were as aware as Wilson of the significance of Article II of the Confederation. In 1787 and 1788 every state that recommended amendments to the Constitution proposed that the language or the intent of the Article be added to the Constitution in order to limit and define the power of the central government.

After the Articles were submitted to the states in November 1777, various legislatures proposed amendments and suggested changes that reflected the debates during the writing of the Articles. Thus Maryland insisted that all ungranted western lands must be given to Congress and, with Delaware, proposed that Congress have the power to limit the boundaries of states claiming to extend to the "Mississippi or South Sea." Rhode Island, New Jersey, and Delaware proposed that the proceeds arising from the sale of western lands be for the benefit of all the states, although Rhode Island and New Jersey agreed that the states could retain jurisdiction over such lands within their boundaries.

Massachusetts expressed doubts about apportioning expenses according to the value of lands and improvements, and Connecticut proposed that common expenses be apportioned according to total population. Rhode Island urged that the value of land and improvements be established every five years, while South Carolina proposed that it be done every ten years. New Jersey asked for a census every five years as the basis for furnishing troops in wartime. Massachusetts, Pennsylvania, and New Jersey proposed that the quota of troops supplied by each state be based on the total population rather than on white population alone. Connecticut and New Jersey disapproved of standing armies. South Carolina proposed several amendments to guarantee greater state control of any troops raised at the request of Congress. New Jersey was the only state to propose that Congress have the exclusive power to regulate trade and that the money arising therefrom be used to build a navy and fortify the seacoast. South Carolina and Georgia wanted the guarantee of the privileges and immunities of the citizens of one state in any other state to be limited to "free white" inhabitants, not guaranteed to all free inhabitants.

The proposed amendments were rejected by Congress, and by 22 February 1779 all the states except Maryland had ratified the Articles of Confederation. From the beginning, Maryland refused to ratify unless Congress acquired the power to fix the western limits of states with charter claims extending to the "South Seas," and unless Congress recognized Maryland's demand for an equal share to the land "lying westward of the frontiers of the United States…." However, Maryland exempted from her demand those areas which she defined as "the property of individuals" before the war. Maryland thus sought to protect the claims of the pre-war land speculators of the colonies with fixed western boundaries who had established claims within Virginia's charter limits by means of purchases from the Indians. The Virginia legislature responded in the fall of 1778 by declaring all such claims null and void.

Virginia continued to denounce the land speculators, but by the end of 1780 the state was ready to cede some of the territory within her charter limits. On 2 January 1781 the legislature ceded Virginia's claim to the territory northwest of the Ohio River–the "Old Northwest"—to Congress. But certain conditions were attached. At the same time that Virginia was moving toward a cession, Maryland was moving toward ratification of the Articles. Both states were impelled by British military victories in the South during 1780, by financial and economic difficulties, and by the widespread hope that the final establishment of the Articles of Confederation might be helpful. The Maryland legislature adopted an act of ratification on 2

February 1781, and the Maryland delegates in Congress signed the Articles of Confederation on 1 March 1781.

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The establishment of constitutional government for the United States in 1781 did not end the debate over the extent of power needed by Congress to manage the affairs of the nation. Between 1781 and 1787 many individuals and some states suggested additional powers for Congress, but most of the significant proposals for strengthening the central government came from Congress itself. Furthermore, Congress assumed powers and adopted measures that had a fundamental and lasting impact on the future settlement and growth of the United States.

Those measures concerned the national domain, the creation of which was made possible by the Virginia cession of the Old Northwest in January 1781. In creating the national domain, and in adopting ordinances for its government and the sale of land within it, Congress exercised power for which there was no constitutional warrant in the Articles of Confederation, but it was an exercise of power accepted by political leaders of all shades of opinion. As James Madison put it in the fall of 1787: "Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new western governments, exercised assumed powers of a very high and delicate nature...."

Americans in 1776 recognized that the territory west of the Appalachians would eventually be divided into states, but they were at odds from the beginning about how to create and to govern them. The point of view of the states with claims extending beyond the mountains was expressed in June 1776 by Thomas Jefferson in his final draft of a constitution for Virginia. He provided that Virginia would create new western colonies "free and independent of this colony and of all the world." The point of view of the states with definite western boundaries was expressed the next month in John Dickinson's draft of articles of confederation. The draft gave Congress power to limit the boundaries of states claiming lands to the "South Seas," and the power to establish the boundaries of new states in the area "within which Forms of Government are to be established on the Principles of Liberty." The Articles of Confederation, as adopted, denied Congress such power, but the issue was revived by Maryland's refusal to ratify unless the Articles of Confederation were amended to give Congress control of western lands.

While Virginians were willing to cede some of Virginia's claims, they insisted that Congress must declare void all pre-war purchases from Indians as Virginia had done, while Maryland continued to insist that the land did not belong to Virginia, and that in any case, the pre-war claims must be validated.

In September 1780, in an effort to break the deadlock, Congress voted to ask the states to cede a portion of their western claims for the sake of the Union and asked Maryland to ratify the Articles of Confederation. Congress refused to consider the merits of the rival claims since

Congress had declined to discuss them when "the Articles of Confederation were debated...." Virginians then proposed specific policies for the future of the lands to be ceded and Congress agreed. Congress promised the states on 10 October 1780 that any land ceded (1) would be "disposed of for the common benefit of the United States"; (2) would be "settled and formed into distinct republican states, which shall become members of the federal Union, and have the same rights of sovereignty, freedom and independence, as the other states"; and (3) each state would not be "less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit." However, Congress refused to guarantee the remaining claims of the ceding states or to declare invalid purchases from Indians within the areas to be ceded.

On 2 January 1781 the Virginia legislature ceded the territory northwest of the Ohio River to Congress. The legislature's resolutions incorporated the promises of Congress and, in addition, required Congress to void all pre-war purchases from Indians and to guarantee Virginia's territory south of the Ohio River to her.

Three years elapsed between the first Virginia cession in 1781 and the actual establishment of the national domain by the acceptance of the second Virginia cession on 1 March 1784. The delay was the consequence of the conditions attached to Virginia's first cession. That act required Congress, in effect, to nullify the claims of the Indiana Company south of the Ohio River and the Illinois-Wabash Company north of the river.

Powerful Maryland leaders such as Thomas Johnson, Samuel Chase, and Charles Carroll of Carrollton, and equally powerful Pennsylvania leaders such as Robert Morris and James Wilson were members of those companies, and they fought in Congress and out to prevent the acceptance of the Virginia cession with the conditions attached. Land speculators argued that sovereignty over the West had "devolved" from the British government upon Congress and that Virginia had no valid claim. James Wilson, as president of the Illinois-Wabash Company, was only one of the members of Congress who supported the speculators. The Virginians countered by demanding that each member of Congress declare his connection with the land companies whenever the Virginia cession came before Congress.

The end of the war in 1783 produced a change. Congress needed the money to be acquired from the sale of western lands; Virginia was selling land in the West; and people were settling on the land without paying anyone for it. The deadlock was broken on 13 September 1783. Congress adopted a report on the Virginia cession of 1781, which, James Madison said, "tacitly" excluded the claims of the land companies. Congress requested a new cession, and on 20 December 1783 the Virginia legislature ceded the Old Northwest to Congress a second time. The act embodied the general principles for the government of the West and its division into states, which Congress had promised on 10 October 1780 and reiterated on 13 September 1783.

Congress accepted the cession on 1 March 1784 and on 23 April adopted a plan for the government of the national domain. Thomas Jefferson was the chief architect of the ordinance,

the broad outlines for which were established in October 1780 and made mandatory by the Virginia cession. The Ordinance divided the national domain into ten districts and provided for self-government by the people within them. The people were to create temporary governments, and whenever the population of a district equalled that of the smallest of the original thirteen states, the district was to be admitted to the Union as a state and as an equal partner of the original states.

On 20 May 1785 Congress adopted an ordinance for the survey of the Western Territory and the sale of the land surveyed. The Ordinance divided the national domain into townships each containing thirty-six square miles, with each square mile or "section" containing 640 acres. Four sections in each township were reserved for the United States, and one section was set aside for public schools. Once the land was surveyed, it was to be sold at public auction at not less than a dollar an acre.

The method prescribed for the survey and sale of land was soon ignored because of the slow pace of the survey, the rise of new speculative interests, and the growing demand for money to enable Congress to make payments on the national debt. The Ordinance required that seven ranges of townships be surveyed before land sales could begin, but only four ranges had been surveyed by 1787. Meanwhile, a group of New Englanders, calling themselves the Ohio Company, appeared before Congress and offered to buy a million acres of land in the Northwest Territory beyond the seven ranges to be surveyed. Congress agreed to sell the land in July 1787. However, the division of the West into townships and sections set forth in the Land Ordinance of 1785 remained a permanent part of American land policy.

The abandonment of orderly land sales was accompanied by mounting opposition to the prospect of new western states and to the self-government provided for in the Ordinance of 1784. In December 1785 James Monroe reported to James Madison that the "most enlightened members" of Congress were doubtful about admitting even one new state into the Union, and that the Virginia cession should be revised to allow Congress to reduce the number of prospective western states.

On 24 March 1786 a committee reported that if the Western Territory were divided into states according to the Ordinance of 1784, many of the states would not soon, if ever, have enough inhabitants to form a government, would remain "without laws, and without order among them," and the Union would have no advantage from them. Therefore, Virginia should be asked to revise its cession, and the provision of the Ordinance of 1784 relating to the size of future states should be repealed.

On 10 May a second committee reported a plan of government to replace the Ordinance of 1784. The committee declared that a government should be established in the West before any lands were sold. Furthermore, instead of self-government by the inhabitants until a state was admitted to the Union, the West would be governed by officials appointed by Congress, including a governor with virtually dictatorial powers. The next day, James Monroe reported to Thomas Jefferson: "It is in effect to be a colonial government similar to that which prevailed in

these states previous to the Revolution.…" The details of the plan contradicted Monroe's assurance to Jefferson that the most important principles of the Ordinance of 1784 were preserved.

Debate on the proposed ordinance was resumed in July, but by then Congress was involved in the power struggle between the Northern and Southern states over the proposed Jay-Gardoqui treaty, which provided for closing the Mississippi River to Americans for twenty-five years in exchange for commercial privileges for Northern merchants in Spanish ports. James Monroe was convinced that the purpose of the Northerners, and particularly of the New Englanders, was to break up the western settlements, prevent the admission of new states, keep population in the East, and increase the value of vacant lands in New York and Massachusetts. The ordinance was discussed again in September and then dropped until April 1787, when it became the basis for the Ordinance for the Western Territory adopted by Congress on 13 July 1787.

The spirit in which the Ordinance was written is indicated by the words of the men who wrote it. On 25 April 1787 a committee of Congress reported that the Ordinance of 1785 should be repealed. The sale of land would be too slow, and "discontented and adventurous" people were settling on the land, which would be lost "unless early measures are pursued for vesting a better kind of people with rights there." A second reason was that experience had proven that "private adventurers" would be willing to pay for surveys if allowed to choose the lands they wanted.

After the Ordinance was adopted, Nathan Dane of Massachusetts, its principal draftsman, reported that Congress was "rather pressed" because of the Ohio Company offer to buy a large tract of land, "and we wanted to abolish the old system.…" He thought that the requirement that a district have 60,000 free inhabitants before it could be admitted as a state was too small, but that it might not be important since the easternmost of the states "will no doubt be settled chiefly by Eastern people" who would likely adopt "Eastern politics." He was surprised that there was no opposition to forbidding slavery in the territory, but, as William Grayson of Virginia explained it, "the clause respecting slavery was agreed to by the Southern members for the purpose of preventing tobacco and indigo from being made on the North West side of the Ohio as well as for several other political reasons."

Richard Henry Lee, who had returned to Congress in time to be appointed to the committee which drafted the Ordinance, reported to George Washington after its passage that "it seemed necessary, for the security of property among uninformed, and perhaps licentious people as the greater part of those who go there are, that a strong toned government should exist, and the rights of property be clearly defined." A little later he wrote his brother William Lee: "The form of this government, as you will see by the enclosed paper, is much more tonic than our democratic forms on the Atlantic are."

The provisions of the Ordinance illustrate the spirit and intent of its creators. The Ordinance abolished the self-government provided for in the Ordinance of 1784. The first government in

the national domain would be by a governor, a secretary, and three judges appointed by Congress. The governor, appointed for five years, must own 1,000 acres of land in the district; the secretary, appointed for four years, and the judges, appointed during good behavior, must each own 500 acres. The governor would be commander in chief of the militia and would appoint all officers below general rank. The governor had the power to appoint magistrates and civil officials, to lay out counties and townships, and, with the judges, to adopt any of the criminal and civil laws of the original states, which would remain in effect unless disapproved by Congress.

The Ordinance provided that when a district had 5,000 free male inhabitants, a legislature would be established. Representatives must own 200 acres of land and be citizens of one of the United States or residents of the district for three years. Voters must own 50 acres of land and be citizens of one of the United States or residents in the district for two years.

The power of the elected branch would be carefully controlled. Congress would appoint an upper house of five men for five years from ten names nominated by the elected branch, and each councillor must own 500 acres of land. Furthermore, the governor would retain great power. He would continue to appoint civil and military officers, have an absolute veto over legislation, and, like royal governors before 1776, have the "power to convene prorogue and dissolve the general assembly, when in his opinon it shall be expedient."

A "bill of rights" guaranteed freedom of religion, the right to a writ of habeas corpus, trial by jury, proportional representation, right to bail, freedom from cruel and unusual punishments; and slavery and indentured servitude were forbidden. The "bill" also provided for the protection of property: no law should ever be made "that shall in any manner whatever interfere with, or affect private contracts or engagements bona fide and without fraud, previously formed." Nor was the legislature of a district, or of the future states, to interfere with the sale of land by Congress, impose any tax on the property of the United States, or tax non-resident proprietors higher than the inhabitants.

The territory would be divided into not less than three nor more than five states. Whenever any district had 60,000 free inhabitants, it would be at liberty to form a constitution and state government and "be admitted by its delegates" to Congress on "equal footing with the original states…."

The actions of Congress in adopting ordinances for the government and sale of the national domain were determined by political and economic realities, not by constitutional responsibilities or niceties. Even the final vote on the adoption of the Ordinance of 1787 ignored the requirement of the Articles of Confederation that no important question could be determined except by the approval of nine states. The states present in Congress voted unanimously for the Ordinance, but only eight states were represented.

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At the same time that Congress acted outside the bounds of the constitution by adopting ordinances for the national domain, Congress also sought to acquire strength within the constitutional framework by proposing amendments to the Articles of Confederation and temporary grants of power. None of the constitutional amendments or grants of power proposed between 1781 and 1786 had been approved by all the states before the Articles were replaced by the Constitution of 1787. Nevertheless, the debate over such proposals reflected the continuing concern of Americans with the nature and purpose of the central government.

The first serious effort to strengthen the central government was made in February 1781 shortly before the Articles of Confederation were ratified. Congress had the power to issue paper money and to borrow money, but it did not have the power to tax. It could issue requisitions on the states for money, but it did not have the power to force compliance. By the end of 1780 Congress had abandoned the paper money which had been issued to finance the first years of the War for Independence. By that time, too, men who believed in the creation of a powerful central government were becoming more influential in Congress. They argued that Congress must have the power to collect an independent revenue to finance the war and to pay the interest on the public debt.

The result was a proposal on 3 February 1781 that Congress be given power to collect import duties until the debts of the United States were paid. After the Articles of Confederation were ratified on 1 March, the proposal was regarded as an amendment to them, rather than a grant of power. By mid-1782 all the states had ratified except Rhode Island, which refused on the ground that the amendment would alter the fundamental character of the Articles of Confederation. Then, in December 1782, Virginia withdrew its ratification, thus blocking the effort to free Congress from financial dependence on the states.

Immediately after the ratification of the Articles of Confederation on 1 March 1781, Congress appointed a committee to make recommendations for carrying the Articles into effect. On 16 March a report written by James Madison stated that Congress had “a general and implied power” to force the states to comply with decisions which the Articles empowered Congress to make. However, since the Articles did not contain a “determinate and particular provision” to that effect, they should be amended to give Congress specific power to use military and naval force against the states, to seize the property of the states and their citizens, and to prohibit the states from trading with one another and with foreign countries unless they obeyed the decisions of Congress.

Congress refused to consider the amendment, which proposed a constitutional revolution, and turned the report over to another committee of which Edmund Randolph and Oliver Ellsworth were members. The new committee submitted a milder report on 22 August, but Congress ignored it. Six years later Randolph and Ellsworth were members of the Committee of Detail of the Constitutional Convention. On 6 August 1787 the committee presented a draft constitution which included many of the proposals contained in the committee report of August 1781.

By 1783 the men who wanted to create what they came to call a “national government” had been unable to secure approval of the states or of Congress for the measures they had proposed. They were faced with mounting opposition, and the end of the war destroyed their argument that independence could not be won without granting Congress more power. However, they made one more attempt to secure an independent income for Congress, but this time they placed a specific time limit on the request. On 18 April 1783 Congress asked the states for a twenty-five year grant of power to collect import duties and for a grant of supplementary funds from the states.

The request was accompanied by an amendment to the Articles of Confederation which proposed that the expenses of the central government be apportioned among the states according to population rather than according to the value of the land granted to or surveyed for individuals. As in 1776–1777, the issue of what population should be counted pitted the Northern against the Southern states. The dispute was compromised when Southern delegates, led by James Madison and John Rutledge, proposed that three-fifths of the slaves be counted in sharing expenses.

Four years later in the Constitutional Convention, the counting of three-fifths of the slaves became a central issue between the North and the South in the struggle over apportioning representation in Congress. Among the members of Congress in 1783 who debated the issue again as members of the Constitutional Convention in 1787 were Gunning Bedford, Jr., Daniel Carroll, Thomas FitzSimons, Nathaniel Gorham, Alexander Hamilton, James Madison, John Francis Mercer, Thomas Mifflin, John Rutledge, Hugh Williamson, and James Wilson.

The power to regulate trade was also a basic source of contention. The need for such regulation was urged in the First Continental Congress in 1774 and was discussed briefly in the debate over the Articles of Confederation in 1776–1777. The issue was in abeyance during the war but was revived in 1783 when Britain closed its ports in the West Indies to American ships. The states began discriminating against British ships and goods, but merchants and proponents of a stronger central government insisted that Congress needed the power to establish uniform regulations. The result was a proposal on 30 April 1784 that Congress be given the power to pass “navigation acts” for a period of fifteen years.

Meanwhile, merchants continued to urge a permanent grant of power, and in March 1785 a committee of Congress reported an amendment to the Articles of Confederation. It would give Congress the power to levy duties and imposts on exports and imports as a part of its power to make commercial treaties. The committee concluded that a “temporary power” would be inadequate to serve the interests of the United States and of the individual states. Thirteen members of the Convention in 1787 were members of Congress in 1785 during the debate over the proposed amendment. They were Abraham Baldwin, Gunning Bedford, Jr., Elbridge Gerry, William C. Houston, William Houstoun, William Samuel Johnson, Rufus King, John Lansing, Jr., James McHenry, Charles Pinckney, Richard Dobbs Spaight, Hugh Williamson, and James Wilson.

The proposed amendment was not adopted by Congress in 1785 because of rivalry between the Northern and the Southern states. That rivalry created even more bitter dissension the next year when John Jay, Secretary for Foreign Affairs, attempted to negotiate a treaty with the Spanish minister, Don Diego de Gardoqui. Jay proposed to close the Mississippi River to Americans for twenty-five years in exchange for commercial privileges for American merchants in Spanish ports. Jay was supported by the delegates from all the Northern States, but late in August 1786 the five Southern States were able to defeat the proposed treaty because the Articles of Confederation required that nine states must approve treaties as well as all other important actions of Congress.

The dispute over commercial power between 1784 and 1786 was a rehearsal for the debates in the Constitutional Convention, where Southerners insisted that the "two thirds" requirement of the Articles for the adoption of all important measures be required for the regulation of trade and the approval of treaties and be embodied in the Constitution. Some Southerners wanted to require an even larger margin, while Northern delegates insisted that simple majorities should be enough in both cases.

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By the end of 1785 most of the supporters of the Articles of Confederation agreed that Congress should have more power, and, in particular, the power to regulate trade. But, at the same time, they were alarmed at the growing demand for a constitutional convention and fearful that if one met, it would seek to overturn the Articles of Confederation.

The Massachusetts delegates in Congress summed up such fears in September 1785. The Massachusetts legislature had instructed them to move that Congress call a convention for the purpose of granting Congress power to regulate commerce. Rufus King, Elbridge Gerry, and Samuel Holten refused to obey and explained why in a letter to Governor James Bowdoin. They said that if a convention were called, it might overturn the government established at the beginning of the Revolution. "The great object of the Revolution," they declared, "was the establishment of good government," and the states and the federal government embodied republican principles. Nevertheless, plans had been laid, which if they had succeeded, "would inevitably have changed our republican governments into baleful aristocracies." Furthermore, if a convention were called, the "friends of an aristocracy" would send delegates who would promote a change in government. King, Gerry, and Holten agreed that Congress should have more power, but they warned "that every measure should be avoided which would strengthen the hands of the enemies to a free government…." The Massachusetts legislature then dropped the idea of asking Congress to call a convention.

Members of Congress realized, however, that action was needed to strengthen the government, and during the early months of 1786 Congress appointed committees to report on the status of earlier requests for power to collect import duties and to regulate trade. Congress then encouraged the non-assenting states to comply. As a result, the states had taken the following actions by the middle of 1786:

(1) All states except New York had complied in one form or another with the proposal of 18 April 1783 giving Congress power to collect import duties for twenty-five years. New York ratified the request in August 1786 but refused to give Congress the power to remove state-appointed collectors. Congress therefore refused to accept New York's ratification.

(2) All the states except New Hampshire and Rhode Island had agreed to the amendment to the Articles which changed the basis for sharing expenses from the value of lands to population.

(3) All the states had granted Congress the power to pass navigation acts for a period of fifteen years, which Congress had requested on 30 April 1784. However, the states had approved the request in various forms that needed to be reconciled before the grant of power could become effective.

During the spring of 1786, the intense and growing concern over the state of public affairs led to debates in Congress on ways to strengthen the government under the Articles of Confederation. Some delegates argued that a convention was the best method, but a majority insisted that Congress should proceed constitutionally by proposing amendments to the Articles and sending them to the states for the required unanimous ratification.

Eight of the men who debated these issues in 1786 were members of the Constitutional Convention in 1787 and supported ratification of the Constitution. They were William Blount, William Few, Nathaniel Gorham, William Houstoun, William Samuel Johnson, Rufus King, Charles Pinckney, and James Wilson. Also involved in the debates in 1786 were such opponents of the Constitution in 1787–1788 as Timothy Bloodworth, Nathan Dane, William Grayson, John Haring, Richard Henry Lee, Stephen Mix Mitchell, James Monroe, Charles Pettit, and Melancton Smith.

Early in May Congress agreed to sit as a committee of the whole to consider "the state of public affairs." After sitting from time to time as a committee, Congress appointed a "grand committee" on 3 July to "report such amendments to the Confederation and a draft of such resolutions as it may be necessary to recommend to the several states for the purpose of obtaining from them such powers as will render the federal government adequate to the ends for which it was instituted."

On 7 August the "grand committee" reported seven amendments to the Articles of Confederation, but by then Congress was so involved in the dispute between the North and the South over the proposed Jay-Gardoqui treaty that Congress never considered the amendments or submitted them to the states. Nevertheless, the amendments represented the views of men who in 1786 believed that a federal government was best for the United States. Such views were diametrically opposed to the views of most of the twelve men, representing five states, who met at Annapolis between 11 and 14 September 1786, only five weeks after the amendments were submitted to Congress.

The report of the Annapolis Convention and the call of a convention by the Confederation Congress on 21 February 1787 marked a crucial turning point in the debate over a central government that had been under way since 1774, but they did not mark an abandonment of the past.

The various plans presented to and debated by the Constitutional Convention in 1787 embodied, in substance or in principle, each of the constitutional documents that Americans had considered during the preceding decade. Furthermore, many men who had drafted those constitutional documents were members of the Convention in 1787. The documents had also been debated by still other leaders who were not members of the Convention but who played important roles, often as opponents of the ratification of the Constitution.

The principles explicit and implicit in the constitutional documents debated between 1776 and 1787 were debated in the Confederation Congress which transmitted the Constitution to the states on 28 September 1787 without approval or disapproval. Above all, those principles were debated in newspapers and pamphlets and in the state conventions called to reject or ratify the Constitution. Thus the constitutional documents written by Americans between 1776 and 1787 are an integral part of the record required for an understanding of the writing and the ratification of the Constitution of 1787.

To provide the constitutional context within which the men who debated the ratification of the Constitution were familiar, this volume presents the basic constitutional documents written by Americans between 1776 and 1787, the resolutions and draft constitutions showing the evolution of the Constitution in the Constitutional Convention, and the debates over the Constitution in the Confederation Congress before Congress transmitted the Constitution to the states. The reader will thus be able to refer to these documents as did the men who debated the ratification of the Constitution. This volume therefore serves as an introduction to each volume of *The Documentary History of the Ratification of the Constitution*.

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