

Introduction to the Ratification of the Constitution in New York

A New State Constitution

During the decade preceding the War for Independence, New York was divided into two large provincial factions—the Delanceys and the Livingstons. When independence neared, the Delanceys were in power and they remained loyal to the king. The opposition to British imperial policy consisted of three groups—the radical elements led by New York City mechanics who advocated independence from Great Britain, a very conservative group that wanted reconciliation, and another conservative group that wanted to delay independence but would not give up key colonial rights. Because conservatives controlled the third Provincial Congress, that body gave no instructions on the question of independence to New York's delegates to the Second Continental Congress meeting in Philadelphia. Not being instructed, the New York delegation, standing alone, did not vote on independence on 2 July 1776. Earlier, in response to the Continental Congress' resolution of 15 May 1776, the third Provincial Congress had called on the electors in the different counties to elect a fourth provincial congress which might draft a constitution creating a state government. The election took place and the new Provincial Congress on 9 July resolved unanimously to join the other colonies in declaring independence. The next day it renamed itself the Provincial Convention. On 1 August the Convention appointed a committee of thirteen to draft a state constitution and to report by 26 August. The committee did not report until 12 March 1777. After almost six weeks of debate, the Convention on 20 April voted "in the name and by the authority of the good people of this State" to adopt the constitution.

The new constitution provided the framework for one of the most conservative state governments in the Union. Among the leading architects were John Jay, James Duane, Robert R. Livingston, Gouverneur Morris, and Abraham Yates, Jr. (chair). The first article provided "that no authority shall on any pretence whatever be exercised over the people or members of this State, but such as shall be derived from and granted by them."

"The supreme legislative power" was vested in a legislature consisting of an Assembly "of at least seventy members" and a Senate of at least twenty-four. The legislature was required to meet at least once each year. Each house could judge of its own members and each needed a majority for a quorum. The Assembly could elect its own speaker; the lieutenant governor would serve as the president of the Senate with a casting vote in case of ties. The doors of both houses were to be open, "except when the welfare of the State" required secrecy. Bills could originate in either house. A conference committee would resolve differences between the two houses.

The Assembly was elected annually by adult male inhabitants who had resided in a county for six months and who were freeholders owning land worth at least £20 (half the colonial requirement) or tenants paying annual rents of at least £2 and who had "been rated and actually paid taxes to this State." All freemen as of 14 October 1775 in New York City and Albany could also vote. As the population increased (determined by a septennial census), a county's representation could be increased or the legislature could create new counties until the Assembly grew to a maximum of 300 members. Because of a demand for switching from *viva voce* to balloting, it was decided that "as soon as may be" after the war, an experiment with balloting for both houses of the legislature should be tried. If, however, "after a full and fair experiment" balloting should "be found less conducive to the safety or interest of the State, than the method of voting *viva voce*, it shall be lawful and constitutional for the legislature" by a two-thirds vote of those present in each house to restore voice voting.

The Senate was to be chosen by freeholders possessed of net property worth £100. Immediately after the first election, the twenty-four senators would be divided by lot into four classes of six senators each. Those in the first class would have a one-year term, in the second class two years, etc. In this way after the first four years all senators would have a four-year term with one-quarter of the senators being elected in any given year. The state's senators were to be grouped into four districts—southern, eastern, western, and middle districts. The constitution initially allotted nine senators to the southern district, three to the eastern district (which included Vermont), and six each to the middle and western districts. When a septennial census indicated a sufficient population growth, the legislature could increase the number of senators to a maximum of 100 and increase the number of counties and districts.

The “supreme executive power, and authority” was lodged in a governor elected by ballot by those freeholders qualified to vote for the Senate. The governor had a three-year term, the longest of any state executive in the Union. No reeligibility restrictions were placed upon him. The governor was general and commander-in-chief of the state militia and admiral of the state navy. He could call the legislature into special session “on extraordinary occasions” and could prorogue it but for no more than sixty days within a year. A lieutenant governor was elected in the same manner as the governor. The lieutenant governor would serve as president of the Senate.

The constitution provided for two unique councils—the Council of Revision and the Council of Appointment—to handle certain executive functions. The Council of Revision consisted of the governor, the chancellor, and the three justices of the Supreme Court. A quorum of the Council consisted of the governor and any two of the four other members. Every bill passed by the legislature had to be submitted to the Council of Revision for its “revisal and consideration.” The Council had to act within ten days, otherwise the bill automatically became law. If the majority of the Council agreed on a report objecting to the bill, the bill and the objections would be returned to the originating house, which could override the Council's objection by a two-thirds vote. The bill and objections would then be sent to the other house, and, if it overrode the objections by a two-thirds vote of the members present, the bill became law. (See Appendix I.)

The Council of Appointment made all appointments not otherwise provided for by the constitution. All Council appointees, whose tenures were not otherwise fixed by the constitution, served at the pleasure of the Council. The Assembly annually appointed one senator from each senatorial district to the Council. The Assembly usually selected the new Council well into the first legislative session after the previous Council had served one full year. Senators could not serve two consecutive terms on the Council. The Governor was president of the Council but could only vote in case of a tie. (See Appendix I.)

The constitution referred to a Supreme Court but never specified its composition. The justices of the Supreme Court were first appointed by the Provincial Convention early in May 1777; they were John Jay (chief justice), Robert Yates, and John Sloss Hobart. These men refused to exercise their duties until the Council of Appointment reappointed them. Equity cases were under the jurisdiction of the chancellor in a court of chancery. The chancellor, Supreme Court justices, and the first judge of each of the county courts (all appointed by the Council of Appointment) served during good behavior or until they reached the age of sixty. The other county judges and justices of the peace served at the pleasure of the Council of Appointment, but their commissions had to be issued at least once every three years. Judges appointed the officers of their courts. Sheriffs and coroners served one-year terms, but not for more than four consecutive years. Sheriffs could hold no other offices concurrently. The Assembly alone, by a two-thirds vote of those present, had the power to impeach government officials.

The constitution provided for a unique court for the trial of impeachments and the correction of errors. It consisted of the president of the Senate, the senators, the chancellor, and the justices of the Supreme Court. The chancellor or the justices of the Supreme Court were ineligible to sit on cases appealed from their courts. The court, based to a certain extent on the British House of Lords, was created by law in November 1784.

The legislature elected members of Congress annually. Each house would nominate the number of delegates to be elected. At a joint session those nominated by both houses were declared elected. Half of the remaining nominees were to be chosen by joint ballot. (The Articles of Confederation provided that each state could have between two and seven delegates; New York usually elected five or six delegates.)

The constitution provided that the English common law and the statute law of England and the colony of New York as of 19 April 1775 (the date of the Battles of Lexington and Concord) should continue as law unless altered by the legislature. Unlike some other states, New York had no separate bill of rights prefacing its constitution. Within the body of the constitution, a number of rights were protected. No New Yorker could be disfranchised or deprived of his rights or privileges unless by the law of the land or judgment of his peers. The Anglican Church and the Dutch Reformed Church were disestablished, and the constitution provided that “the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this State to all mankind. Provided that the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.” Ministers could not hold civil or military office, and Quakers could be granted conscientious objector status. The trial by jury as formerly practiced in New York was to “remain inviolate forever,” bills of attainder were forbidden for crimes committed after the war, [] and no new courts could be established but that “shall proceed according to the course of the common law.” The legislature was given authority over naturalization. (See Appendix I.)

The Revolution and a Strengthened Congress

Conservative Whigs were pleased with New York’s constitution. John Jay wrote that “Our Constitution is universally approved, even in New England, where few New York productions have credit. But, unless the government be committed to proper hands, it will be weak and unstable at home, and contemptible abroad.”¹ Men like Jay hoped and expected to fill the offices with wealthy conservatives. To their chagrin militia and Continental Army General George Clinton, an Ulster County farmer-lawyer, defeated the aristocratic Philip Schuyler in the gubernatorial election in June 1777. Schuyler lamented his loss to Clinton, a man who was by “family and connections” not entitled to “so distinguished a predominance.”² Clinton was also elected lieutenant governor, but resigned the post allowing runner-up Pierre Van Cortlandt, a wealthy Westchester manor lord, to assume the office. Both Clinton and Van Cortlandt were reelected continuously five additional times before Clinton retired in 1795. Much of the politics of New York during and after the Revolution centered around the disagreements between the Clintonians and Anti-Clintonians over both state and continental matters.

¹ Jay to Leonard Gansevoort, 5 June 1777, Johnston, *Jay*, I, 141.

² Philip Schuyler to John Jay, 14 July 1777, *ibid.*, 146–47.

New York suffered greatly during the Revolution. Throughout most of the war years New York City and parts of the lower six counties were occupied by British troops. The state was thus unable to derive revenue from the trade normally flowing through the port of New York. New York was often the theater of military action as the British attempted to cut off New England from the other states at the Hudson River. Even after Burgoyne's surrender at Saratoga in October 1777, Loyalists, assisted by British regulars and their Indian allies, attacked throughout the Mohawk and Hudson River valleys. New York constantly sought assistance from General George Washington and Congress; but the commander-in-chief never had sufficient forces to meet all the requests and Congress, without coercive power over the states, could provide little aid.

Since Congress was weak, New York (and a few other states) tried to strengthen it. On 6 February 1778 the New York legislature (without amendments) nearly unanimously ratified the Articles of Confederation, proposed by Congress and sent to the states for their approval in November 1777. Governor Clinton signed the act adopting the Articles on 16 February. If Congress were strengthened, he wrote Alexander Hamilton, beyond the provisions of the Articles, "Even their Want of Wisdom but too Evident in most of their Measures woud in that Case be less Injurious."³ Hamilton agreed that Congress' lack of powers "will, in all probability, ruin us."⁴

George Washington appreciated Clinton's efforts to strengthen Congress and assist the army. "In the confidence of friendship," the commander-in-chief thanked the governor for his support. The weakness of Congress and the lack of support from the states, declared Washington, "have uniformly appeared to me to threaten the subversion of our independence. . . . I should acknowledge, to the honor of your State, that the pernicious system I have complained of has not influenced your councils; but that New York is among the few that has felt the necessity of energy, and considering its situation, has done everything that could be expected from it."⁵

In August 1780 delegates from New Hampshire, Massachusetts, and Connecticut met in Boston to discuss efforts to coordinate activities and to strengthen Congress. The delegates called another convention to meet in Hartford in November 1780 and New York was invited to participate. In transmitting this invitation to the legislature on 7 September, Governor Clinton declared that the powers of Congress had to be increased: "When we reflect upon the present situation of our public affairs, it is evident our embarrassments in the prosecution of the war are chiefly to be attributed to a defect in power in those who ought to exercise a supreme direction, for while congress only recommend and the different States deliberate upon the propriety of the recommendation, we cannot expect a union of force or counsel." He believed that Congress should be vested "with such authority as that in all matters which relate to the war, their requisitions may be peremptory."⁶

The legislature on 23 September agreed to appoint delegates to attend the Hartford Convention "to propose and agree to . . . all such Measures as shall appear calculated to give a

³ George Clinton to Alexander Hamilton, 5 March 1778, Syrett, I, 436.

⁴ Hamilton to George Clinton, 12 March 1778, *ibid.*, 439.

⁵ George Washington to George Clinton, 27 June 1780, *Revolutionary Relics, or Clinton Correspondence* . . . (New York, 1842), 7.

⁶ *Messages from the Governors*, II, 107.

Vigour to the governing Powers, equal to the present Crisis.”⁷ Schuyler wrote to his soon to be son-in-law Alexander Hamilton that “A Spirit favorable to the common cause has pervaded almost both houses, they begin to talk of a dictator and vice dictators, as if it was a thing that was already determined on. To the Convention to be held at Hartford I believe I shall be sent with Instructions to propose that a Dictator should be appointed.”⁸ On 10 October, the legislature instructed its delegates to Congress to declare New York’s earnest wish that throughout the war or until a confederation government was adopted, Congress should “exercise every Power which they may deem necessary for an effectual Prosecution of the War,” and that whenever a state failed to provide its quota of men, money, or provisions, “that Congress direct the Commander in Chief without Delay to march the Army, or such Part of it as may be requisite, into such State, and by a Military Force, compel it to furnish its Deficiency.”⁹ New York Congressman James Duane told the governor that the resolution “does Honour” to the legislature’s “Zeal and publick Spirit.”¹⁰

The Hartford Convention, meeting in November 1780, proposed that George Washington be given dictatorial powers and that Congress be given the power to levy tariffs to pay the interest on the public debt and a coercive power to force the states to comply with its requisitions. Furthermore, the delegates advocated that Congress be vested with broad implied powers in addition to the powers specified in the Articles of Confederation. By the end of March 1781, the New York legislature and the governor had endorsed the convention’s proposals.

On 5 February 1781, Governor Clinton writing to President of Congress Samuel Huntington challenged what he and the legislature thought was an unfair congressional requisition on the state. In this lengthy letter, he detailed the pain and anguish New Yorkers had endured for the previous five years. Clinton warned Congress that New York could not be expected to withstand the combined attacks of British regulars, Hessians, Loyalists, hostile Indians, and rebellious Vermonters (see below for Vermont) if Congress sapped the state’s strength to compensate for the lack of support from other states. Clinton also suggested that Congress either did not have the power to enforce its laws and compel each state to do its duty, or that Congress neglected to exert the coercive power that it did have. New York would not presume to say “whether Congress has *adequate* Powers or not? But we will without hesitation declare that if it has them not, it ought to have them, and that we stand ready on our Part to confer them.” But the governor argued that Congress had already exercised “extensive Powers.” It had waged war, absolved its citizens of allegiance to the British Crown, emitted money, entered into treaties, sent and received ambassadors, and given dictatorial powers to the commander-in-chief. No state had objected. “Hence we venture to conclude,” declared Clinton, “that other States are in Sentiment with us, that these were Powers that necessarily existed in Congress, and we cannot suppose that they

⁷ *Notes and Proceedings of the Assembly of the State of New-York* . . . [7 September–10 October 1780] [Poughkeepsie. 1780], 22 (Evans 16907). On 25–26 September the legislature appointed Philip Schuyler: John Sloss Hobart, and Egbert Benson as Convention delegates.

⁸ To Hamilton, 16 September 1780, Syrett, II, 133.

⁹ *Notes and Proceedings*, 13.

¹⁰ 11 November 1780 Smith, *Letters*, XVI, 333.

should want the Power of compelling the several States to their Duty and thereby enabling the Confederacy to expel the common Enemy.”¹¹ Congress needed to assert itself.

On 1 March 1781, Maryland became the last state to ratify the Articles of Confederation. Congress immediately notified the states that the first federal constitution had been adopted. Governor Clinton relayed the message to the state legislature on 19 March, declaring that “This important event, as it establishes our union, and defeats the first hope of our enemy, cannot but afford the highest satisfaction.”¹²

The financial and military difficulties facing the country prompted Congress on 3 February to propose a federal tariff of five percent on all foreign imports—the Impost of 1781—earmarked to pay the interest and principal on the war debt. New York acted swiftly and ratified the impost on 19 March. Eleven other states adopted the impost, but Rhode Island refused. Because the Articles of Confederation required that amendments be adopted by all thirteen state legislatures, the impost died.

Although America’s overall military prospects had brightened after Yorktown in October 1781, its finances had worsened. New York still remained occupied, whereby its commerce was disrupted. Governor Clinton wrote John Hanson, President of Congress, in November 1781 expressing his concern “that there is more than a Hazard that we shall not be able, without a Change in our Circumstances, long to maintain our civil Government.” Alluding to his letter of 5 February (above) and to various resolutions passed by the legislature at its last session, he assured Hanson that New York was completely federal: “I trust there can be no higher Evidence of a sincere Disposition in the State to promote the common Interest than the alacrity with which they passed the Law for granting to Congress a Duty on Imports and their present proffer to accede to any Propositions which may be made for rendering the Union among the States more intimate and for enabling Congress to draw forth and employ the Resources of the whole Empire with the utmost Vigor.” The governor admitted that the state had few resources at present to pay its federal requisitions, but, he predicted, when the British evacuated New York City and peace was established, New York would prosper. Clinton assured Hanson that the state would “cheerfully consent to vest” Congress “with every Power requisite to an effectual Defence against foreign Invasion and for the Preservation of internal Peace and Harmony.”¹³

Concurring with Governor Clinton’s opinion, the New York legislature, meeting in special session in July 1782, resolved that Congress ought to be given additional taxing authority and that a general convention be called to revise the Articles of Confederation. These resolutions were forwarded to Congress, but New York Congressman Ezra L’Hommedieu informed Clinton that they would not have the desired consequences because “very few States seem disposed to grant further Powers to Congress.”¹⁴ By mid-January 1783, however, Congressman Alexander Hamilton, who in September 1780 had called for a national convention to strengthen Congress, felt more optimistic. “Every day proves more & more the insufficiency of the confederation. The

¹¹ PCC, Item 67, New York State Papers, 1775–88, Vol. II, 344–59, DNA.

¹² *Messages from the Governors*, II, 127.

¹³ 21 November 1781. PCC, Item 67, New York State Papers, 1775–88, Vol. II, 443–17, DNA; and Clinton, *Public Papers*, VII, 520–22.

¹⁴ 11 September 1782. Smith, *Letters*, XIX, 149.

proselytes to this opinion are increasing fast, . . . and I am not without hope it may ere long take place. But I am far from being sanguine.”¹⁵

Hamilton’s optimism was not borne out. The reduced British threat made states less willing to increase the powers of Congress. The New York resolutions were considered by various congressional committees, but in September 1783 a committee recommended that action be postponed. The following month, Clinton wrote to Washington that he was “fully persuaded unless the Powers of the national Council are enlarged and that Body better supported than it is at present, all their Measures will discover such feebleness and want of Energy as will stain us with Disgrace and expose us to the worst of Evils.”¹⁶

A New State Perspective

With the end of hostilities and the evacuation of British troops, the military justification for a strong Union with increased congressional powers ended. Consequently, New Yorkers reassessed their state’s position within the Union. Alexander Hamilton reported from Congress that “There are two classes of men [in Congress] . . . one attached to state, the other to Continental politics.”¹⁷ In postwar New York two political parties developed—the followers of Governor Clinton opted to address the state’s problems, while the followers of Philip Schuyler favored a more Continental program.

Hamilton described his father-in-law as the second most influential man in the state—second only to the governor. Schuyler, however, according to Hamilton, had “more weight in the Legislature than the Governor; but not so much as not to be exposed to the mortification of seeing important measures patronised by him frequently miscarry.”¹⁸ In a candid characterization of Schuyler’s role in the state Senate, the governor wrote “in special Confidence” in January 1787 that “Genl Schuyler arrived last Night & now I suppose the Senate Room will ring with incoherent Rhapsody and feigned Patriotism, hitherto it has been blessed with singular Harmony—So much for Politics.”¹⁹ By the end of 1786, the mantle had shifted to Hamilton.

Party structure and hierarchy were not as clear on the other side. Everyone knew that George Clinton controlled a large number of legislative votes, and that he was the titular head of a party composed of several factions led by different men. The aristocratic Schuylerites—later to be Hamiltonians—did not want the popular governor as an avowed, personal enemy. Far better to oppose some of the more radical factions led by Abraham Yates, Jr., John Lansing, Jr., Ephraim Paine, and “the levellers” Mathew Adgate and Jacob Ford. Yates served especially well as the aristocrats’ whipping boy. According to Hamilton, he “is a man whose ignorance and

¹⁵ Hamilton to Clinton, 12 January 1783, Syrett, III, 240.

¹⁶ 11 October 1783, Washington Papers, DLC.

¹⁷ Hamilton to George Washington, 8 April 1783, Syrett, III, 318.

¹⁸ Hamilton to Robert Morris, 13 August 1782. *ibid.*, 138.

¹⁹ George Clinton to Christopher Tappen, 26 January 1787, Lloyd W. Smith Collection, Morristown National Historical Park, Morristown, N.J.

perverseness are only surpassed by his pertinacity and conceit. He hates all high-flyers, which is the appellation he gives to men of genius.”²⁰

George Clinton was satisfied to exert his influence behind the scenes and was not eager to be publicly acclaimed as the leader of a political party. He believed that he could be more effective above the fray of partisan politics. Furthermore the majority in the legislature was composed of various elements, some of which were too radical for the governor’s taste. By staying publicly aloof, the governor stayed out of the rough and tumble political battles, yet he could usually win support for or kill legislative proposals at will.²¹

Clintonians felt that New York had contributed more than its fair share of men and money toward the war effort. Since both the state and federal financial crises could probably not be solved simultaneously, and since it appeared that other states would not contribute significantly to alleviate the federal financial problem, Clintonians decided to concentrate on New York’s problems. Therefore, they developed an economic program calling for (1) a state impost, (2) sale of confiscated Loyalist estates and unsettled state lands, (3) a moderate real estate and personal property tax, (4) the issuance of paper money on loan to farmers, (5) the funding of the state debt, and (6) the state assumption of a portion of the federal debt owned by New Yorkers. Schuylerites strenuously opposed this program.

The Clintonian program began on 15 March 1783 with the repeal of New York’s earlier approval of the Impost of 1781, the British evacuation of New York City in late November 1783, and the passage in March 1784 of a state impost that was revised in November 1784. The state impost was to be the cornerstone of the new financial system, and as such Clintonians refused to support a continental impost. Annual income from the state impost during the Confederation years ranged between \$100,000 and \$225,000, and represented between one-third to over one-half the state’s annual income. This income was especially significant because much of it was paid by non-New Yorkers. Although the impost was initially paid by importing merchants resident in New York, much of it was passed along to consumers in other states in the form of higher prices for imported goods that were reexported and sold in other states. Half of the foreign goods consumed in Connecticut and New Jersey were originally imported into New York City. Thus, when consumers in other states paid higher prices for imported goods, the additional cost was paid into the treasury of New York. The impost also acted as an invisible tax on New Yorkers to be collected by merchants—a group not well represented among Clintonians. The income from this hidden tax was so substantial that other taxes were kept very low.

Confiscated Loyalist Property

Land sales were expected to contribute significantly to the state’s financial recovery. Almost \$4,000,000 was raised from the sale of confiscated Loyalist estates. Some Whig manor lords felt uncomfortable about the confiscation of these estates and the creation of moderate-sized parcels from them. Nationalists (those who still wanted to strengthen Congress) worried that the late

²⁰ Alexander Hamilton to Robert R. Livingston, 25 April 1783, and Hamilton to Robert Morris, 13 August 1782, Syrett, III, 608–9, 139.

²¹ Alexander Hamilton had previously criticized Clinton for secretly taking positions on public matters and then taking care “to propagate his sentiments in the manner in which it could be done with most effect. This,” Hamilton asserted, “appears to have been his practice.” (*Daily Advertiser*, 15 September 1787, I below).

seizures by New York and the refusal to compensate Loyalists violated the Treaty of Peace of 1783. In March 1783 William Floyd, delegate to Congress, assured Governor Clinton that the treaty's provisions concerning Loyalists were mere show inserted so that the king and his ministers could say to Loyalists "that they had attended to their Interest as far as Lay in their power on the Settlement of a peace." Congress would suggest that the states compensate their Loyalists, but the states would not comply.²² On 31 March 1784 the New York legislature resolved not to compensate Loyalists whose property had been confiscated because Great Britain had no plans to compensate Americans who had suffered from the wanton destruction of Loyalists and their Indian allies. The "Rules of Justice" did not require, nor would "the Public Tranquillity" allow, the restoration of citizenship or property to the enemies of America. The legislature said that it "entertain[ed] the highest Sense of National Honor, of the Sanction of Treaties, and of the Deference which is due to the Advice of . . . Congress," but that the legislators found "it inconsistant with their Duty to Comply with the Recommendation."²³ New York thus kept the confiscated property as partial remuneration for its wartime expenses.

Vermont Secedes from New York

New York was upset with Congress' handling of the separatist movement in Vermont. Various settlers had moved to Vermont with land grants from New York, Massachusetts, and New Hampshire. In 1764 the king in council ruled that the disputed territory belonged to New York. But in 1777 New England settlers, led by Ethan and Ira Allen and their Green Mountain Boys, declared their independence from both New York and Great Britain. Throughout the Revolution, New York sought congressional assistance at recovering these eastern counties; but, afraid of driving Vermonters into an alliance with Great Britain, Congress did little more than investigate the situation and make recommendations, while the Green Mountain Boys adopted a constitution, set up a government, defied Congress, imprisoned and confiscated the property of settlers who remained loyal to New York, and actually fought against New York militiamen. New York's congressional delegation reported to Governor Clinton on 9 April 1784 that Congress is determined "not to do anything about that matter, expecting that in Time we shall be Obligated to consent that [Vermont should] . . . become a separate State."²⁴ Such was the case as Vermont was admitted to the Union as the fourteenth state in 1791.

New York's Western Lands

New Yorkers also worried about losing some of their western lands. After the successful August–September 1779 attack on pro-British Indians in western New York by Continental troops commanded by Generals John Sullivan and James Clinton, arguments surfaced that, because Continental troops had taken the land from an independent Indian nation, the land belonged to the United States. In October and November 1779 congressmen John Jay and Robert R. Livingston each recommended that New York give up a part of its western lands to secure the remainder.²⁵ Governor George Clinton soon agreed that it was in New York's interest

²² William Floyd to George Clinton, 17 March 1783, Smith, *Letters*, XX, 35.

²³ PCC, Item 67, New York State Papers, 1775–88, Vol. II, 465–67, DNA.

²⁴ Charles DeWitt and Ephraim Paine to George Clinton, 9 April 1784, Smith, *Letters*, XXI, 593–4.

²⁵ Jay to George Clinton, 7 October 1779 and Livingston to Clinton, 30 November 1779, Smith, *Letters*, XXI, 503–1.

“to give up a Part of our Western Lands, if by this we shall be able to enjoy the Remainder free from every Claim.”²⁶ In February 1780 the legislature instructed its delegates in Congress to propose a new state boundary and cede lands to Congress.²⁷ Congress accepted the cession and asked other states with western holdings to follow New York’s example.

By the end of the war, new dangers to New York’s western lands had appeared. On 9 April 1784 New York’s congressional delegates Ephraim Paine and Charles DeWitt alerted Governor Clinton that “Upon the whole sir it is our opinion that the utmost Vigilance ought to be exercised to prevent any encroachments on our Territory as we are to expect no protection otherwise than from our own arms.”²⁸ Three weeks later, Paine wrote that “it appears to be the general Sense of the Delegates [in Congress] that the western Country ought to be Considered as belonging to the united States in Common.” Paine suggested that it was “high time for our State to tak the Same measures as though it was Sorounded with open and avowed Enemies.”²⁹ On 4 June DeWitt repeated the warning.³⁰

The preceding day (3 June) the Massachusetts delegates to Congress submitted a petition to Congress formally claiming western New York and requesting that a federal court decide the case, as provided for in Article IX of the Articles of Confederation. Congress read the petition and ordered that agents from the two states present their states’ cases before Congress on 6 December 1784. Governor Clinton called a special session of the legislature which convened in mid-October 1784.

On 12 November the legislature appointed five agents to represent New York before Congress. James Duane, John Jay, Robert R. Livingston, Egbert Benson, and Walter Livingston would try to save New York’s western lands. The agents presented their arguments before Congress on 6, 8, and 10 December. Congress resolved that the judges meet in Williamsburg, Va., in June 1785 to settle the case. When the court failed to attain a quorum. Governor Clinton authorized the state’s newly created land office to start selling land in the disputed territory. Sensing that Congress could not resolve the matter, both states appointed agents in 1786³¹ who met in Hartford, Conn., between 30 November and 16 December and negotiated a compromise. New York was to retain the jurisdictional control over the land but Massachusetts would retain property rights. Although New York retained control over the territory, it lost the vast revenue expected from the sale of the land.

²⁶ Clinton to Robert R Livingston, 7 January 1780, Clinton, *Public Papers*, V, 445–46.

²⁷ *Ibid.*, 199–502, VI, 203–5.

²⁸ Smith, *Letters*, XXI, 594.

²⁹ Paine to Clinton, 29 April 1784. *ibid.*, 556–57.

³⁰ DeWitt to Clinton, 1 June 1781. *ibid.*, 664.

³¹ On 28 April 1786 the New York legislature appointed James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, Robert Yates, and John Lansing, Jr., as its agents. It authorized and live of them to settle the “Controversy” with Massachusetts “otherwise than by the said Fœderal Court” (Laws of New York [31 January–5 May 1786] [New York, 1786]. Chapter XLIX, 95 [Evans 19854]).

The Northwest Forts

Another point of contention between New York and Congress concerned the northwest forts that the British continued to occupy after the war in violation of the 1783 Treaty of Peace. Of the seven forts in question, five were within the boundaries of New York. As the end of the war neared, New York was eager to occupy the forts to regain control of the lucrative fur trade, assert hegemony over the Indians, and assure its claim to the region. On 27 March 1783 the state legislature passed concurrent resolutions calling for the state to occupy the forts immediately upon the British evacuation. To leave the forts vacant would risk their destruction by Indians. To have the forts garrisoned with Continental troops would encourage those states and individuals who wanted to divest New York of its western lands.

Because the Articles of Confederation forbade states to maintain an army in peacetime “except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state,”³² New York requested that Congress allow it to occupy the forts with up to 500 soldiers to be taken from New York troops already under Continental command, who had enlisted for three years’ service beginning in April 1781. The legislature asked Congress to declare that these soldiers henceforth would be “in the immediate Service of this State, and not in the Pay or Service of the United States.” Since New York was bereft of funds, however, the legislature requested that Congress provide “immediate Subsistence” and munitions for the units and charge these expenses against New York’s account with the Confederation.³³ On 1 April 1783, Governor Clinton sent the resolutions to Alexander Hamilton and William Floyd, the state’s delegates to Congress. They did not submit the resolutions to Congress. Instead Hamilton committed them to his own committee to prepare a report on a military establishment and then did not pursue the New York resolutions. In effect, he buried the resolutions. A week later the New York delegates reported that the resolutions were sent to committee, but that they thought “it improbable Congress will accede to the idea.”³⁴ On 1 June Hamilton informed the governor that Congress had agreed to a temporary provision instructing General Washington to garrison the evacuated forts with three-year Continental soldiers, which Hamilton endorsed as “more for the interest of the state than to have them garrisoned at” New York’s expense.³⁵

Congress reconsidered the garrisoning problem in the spring of 1784. Congressman Ephraim Paine wrote the governor that Congress would not give New York an estimate of the number of soldiers needed to garrison the forts until it had decided upon the measures necessary to take possession of the forts. Paine asked the governor if New York was likely to raise soldiers to occupy the forts. If so, the state’s delegates would “Endeavour to protract the Determination of Congress upon the Subject of arangements in order to give an opportunity to our troops first to get Possession.” Paine felt it was important for New York troops to occupy at least Forts Niagara and

³² Article VI, CDR, 88.

³³ Clinton, *Public Papers*, VIII, 108–9.

³⁴ New York Delegates to George Clinton, 9 April 1783, Smith, *Letters*, XX, 157.

³⁵ Hamilton to George Clinton, 1 June 1783, *ibid.*, 296. Clinton greatly objected to Hamilton’s handling of this matter.

Oswego because “it appears to be the general Sense of the Delegates that the western Country ought to be Considered as belonging to the united States in Common.”³⁶

Frustrated with Congress, on 19 March 1784 Governor Clinton (in violation of the sixth article of the Articles of Confederation) had commissioned a secret envoy to meet with Sir Frederick Haldimand, governor general of Canada, to determine when the British would evacuate the forts. Haldimand informed New York’s envoy that when the forts were evacuated they would be turned over to Congress. Meanwhile, however, Great Britain would not evacuate the forts until Americans compensated Loyalists and removed state impediments hampering British creditors from collecting prewar debts from Americans.

Congressman Paine objected to Congress’ “utmost Chicanery.” He believed that Massachusetts had offered to turn over some of the western lands to Congress and retain the rest. Soon, Paine wrote, Congress would order Massachusetts Continental troops stationed at West Point to garrison the posts when evacuated by the British. The delegates’ “Chagrin was very visible when Congress were told plainly that New York would not Suffer the Massachusetts troops to march into that Country.”³⁷

A compromise was reached on 3 June 1784—the very day Massachusetts delegates petitioned Congress claiming western New York as Massachusetts property. New York would not be allowed to raise troops for garrison duty, nor would Congress send Continental soldiers to occupy the forts. When needed, Congress would call for a regiment of 700 men to be drawn from the militias of four states—New Jersey would supply 110 soldiers. New York and Connecticut 165 each, and Pennsylvania 260. Pennsylvania would supply the commanding officer.³⁸

The Impost of 1783

In April 1783 Congress proposed to the states an economic program to help pay the war debt. Among other things, Congress requested that the method of apportioning federal expenses among the states be changed from the value of land to population. New York adopted this amendment on 9 April 1785. Congress also asked the states to give it the power to levy a five percent tariff for twenty-five years with revenue earmarked exclusively to pay the war debt. New Yorkers divided over the wisdom of granting such a power to Congress. The state’s two delegates to Congress—Alexander Hamilton and William Floyd—split their vote on the proposed plan. Floyd supported the measure, but Hamilton opposed it because it was too weak. Despite his opposition, Hamilton urged Governor Clinton to support the impost, but by this time, the governor and his followers had become disenchanted with Congress. They now looked to strengthen the state of New York so that it could stand up to incursions from its neighbors.

Some New Yorkers had ideological reasons for opposing the federal impost. Abraham Yates, Jr., led the opposition in a series of newspaper essays expounding upon the danger of giving Congress the power to levy taxes and to collect revenue independent of the states. These ideologues called for Congress to have the means to pay the public debt, but they demanded that the states should retain the power of the purse and grant Congress the funds it needed.

³⁶ Paine to Clinton, 29 April 1784, Smith, *Letters*, XXI, 556.

³⁷ Ephraim Paine to Robert R. Livingston, 24 May 1784, *ibid.*, 640.

³⁸ JCC, XXVII, 530–40; Hugh Williamson to James Duane, 8 June 1784, Smith, *Letters*, XXI, 674–75.

Yates and others feared that Congress would misuse its taxing power to create a powerful and oppressive bureaucracy reminiscent of prewar imperial harassment. It would appoint “collectors, deputy-collectors, comptrollers, clerks, tide-waiters, and searchers.” Ships and soldiers would be maintained in port towns to enforce the tariff. Special courts would be created to try offenders. Opponents of the impost also argued that when the federal government augmented its power, Congress’ voracious appetite for authority would be satiated only when it had “swallowed entirely *the sovereignty of the particular states*.”³⁹ Similar fears surfaced in other states. Consequently, when some states ratified the Impost of 1783, they provided in their acts of ratification that the state constitutional protections accorded their citizens would not be violated by despotic federal prosecutions. Instead of taking such a halfway measure, the New York Senate defeated the impost eleven to seven on 14 April 1785.

On 15 February 1786, Congress asked New York to reconsider its rejection. State Senator Philip Schuyler, in a letter to his political lieutenants in Albany County, held out little hope, but vowed to do his best to obtain the adoption of the impost “for the honor, for the interest and *for the security of the peace* of the state.” He was not at liberty to tell them what he meant by the “security of the peace of the state.” All he could say at that time was “that we have it in our power by *our prudence*, not by our *strength* to avert disagreeable consequences—we may be driven to do by compulsion that which ought to flow spontaneously from our Justice and from neighbourly considerations.”⁴⁰ A month later, Schuyler elaborated on his fears. If the legislature refused to pass the impost, “the consequences are seriously to be apprehended.” Connecticut had already sent emissaries to Vermont and to western Massachusetts to seek their cooperation in compelling New York’s compliance. Such a combination, Schuyler asserted, “will be powerful, and if once hostile disturbances arise, heaven only knows where they will end.”⁴¹ Schuyler was not alone in predicting violence. Nathaniel Gorham, a Massachusetts delegate to Congress, believed that it was only “the restraining hand of Congress (weak as it is) that prevents NJ and Conne. from entering the lists very seriously with NY & blood shed would very quickly be the consequence.”⁴²

Animosity toward New York raged throughout New Jersey and Connecticut. Half of all foreign goods imported into these states came through the Port of New York. In effect, New Jersey and Connecticut consumers, and to a lesser extent those in Massachusetts and Vermont, paid New York’s state impost in the form of higher prices. They subsidized New York’s low real estate and personal property taxes. This hidden tax cost New Jersey and Connecticut approximately £30,000 and £50,000 per year, respectively. Gorham believed that the discontent fostered by this economic domination would “greatly weaken if not destroy the Union.” New Jersey’s legislature fought back by resolving not to pay its congressional requisitions until New York gave up its state impost or applied its revenue “for the general purposes of the Union.”⁴³ “Gustavus,” writing in the *New York Journal*, 2 March 1786, chided his fellow New Yorkers: “That by our own impost we actually lay two states under contributions, and thereby pay our debt with monies which properly belong to the treasuries of Jersey and Connecticut.” But most

³⁹ “N Rough Hewer,” *New York Journal*, 17 March 1785.

⁴⁰ Schuyler to Abraham Ten Broeck et al., 19 February 1786, N.

⁴¹ Schuyler to Abraham Ten Broeck, 19 March 1786, N.

⁴² Gorham to James Warren, 6 March 1786, Smith, *Letters*, XXIII, 180.

⁴³ *Ibid.*

New Yorkers were not embarrassed; they understood the economics of their port and appreciated its benefits. “Let our imposts and advantages be taken from us, shall we not be obliged to lay as heavy taxes as Connecticut, Boston, &c.” The bountiful revenue from the Port of New York was “a privilege Providence hath endowed us with,” and New Yorkers were not about to surrender it to Congress.⁴⁴

Attention focused on the New York legislature in April 1786 as it reconsidered the impost. To some the stakes were high—perhaps the very existence of the Union. Some delegates in Congress felt that New York would accept the impost rather than risk the consequences. Clintonians, however, aware of the attention their state was receiving, chose to adopt the impost with important restrictions. On 4 May New York acceded to the principle that revenue from imports should accrue to Congress for the next twenty-five years to pay the interest and principal on the public debt. But New York would use the mechanism and bureaucracy of the state impost to collect the revenue. Furthermore, the state reserved the right to pay Congress the impost revenue with its paper money.

Congress, now meeting in New York City, received New York’s act on 12 May 1786 and appointed a committee to consider it. On 16 June, the committee’s report was read. The committee proposed a resolution asserting that New York’s act “so essentially varies” from Congress’ system, that it could not “be considered as a compliance.”⁴⁵

Not all congressmen wanted to reject New York’s adoption. When Congress debated the report on 27 July Melancton Smith, one of Clinton’s closest advisers, argued that most of the states had “restrictions & limitations” in their ratification acts so that Congress could not “exercise, appoint or controul any judicial power at all. The Courts of the diff. States are only competent, and not accountable or controulable by the U.S.” The states, Smith persisted, “generally have not given the powers asked, yet Cong. have determined these Laws are a compliance—a strict compliance they cannot be—it must be meant then that they are a substantial compliance—and so a sub[stantial] comp[liance] is suffi[cient].” Congress would receive the revenue it needed.⁴⁶

James Monroe wrote Clinton that the Virginia congressional delegation wanted to avoid irritating New York. In their judgment, “the best plan” was for Congress to draft an ordinance implementing the impost that would show the New York legislature that the new revenue plan would not be “a system of oppression, but in conformity with the laws & constitution of the state itself.” With this assurance, the legislature would be induced “to grant powers in such conformity with the acts of other states as to enable them [i.e., Congress] to carry it into effect.” Congress, according to the Virginians, should “proceed with temper in this business . . . to conciliate & gain

⁴⁴ From John Williams, 29 January 1788 (I below). An “Extract of a letter from a gentleman in New-York, to his friend in Connecticut,” in the *Norwich Packet*, 8 November 1787, took the opposite position: “Tho’ we are sensible, that the harbour of New-York is so commodiously situated for trade, that we might reap great profits from duties on articles which are exported from hence into other states. But we may not think too much of our own particular interest to the injury of the whole.—At the same time I must confess myself at last convinced by these patriots in this state who maintain; that the port of New York, having been saved by the united arms of all the states, ought to be free for all” (Mfm:N.Y.).

⁴⁵ JCC, XXX, 263, 345n, 439–41. Quoted text on p. 441.

⁴⁶ 27 July 1786, Smith, *Letters*, XXIII, 416–20.

the confidence of the state & all its citizens.”⁴⁷ Other congressmen, such as Stephen Mix Mitchell of Connecticut, hoped that Clinton would see “the Precipice on which the united States as a collective body stand, by reason of withholding the necessary Means for the preservation of our Union.”⁴⁸

The majority of Congress, however, disagreed, and, on 11 August, Congress asked Governor Clinton to call a special session of the legislature to reconsider the impost. Five days later the governor rejected the request, referring to the state’s constitutional provision that allowed the governor to call special sessions only on “extraordinary Occasions.” “I cannot yield a Compliance.” Clinton explained, “without breaking through one of those Checks which the Wisdom of our Constitution has provided against the Abuse of Office.”⁴⁹ On 23 August, Congress again debated and rejected New York’s ratification of the impost. For a second time, it requested the governor to call an early session, but Clinton again rejected the request.

Several members of Congress opposed this second request. New York Congressman Melancton Smith unsuccessfully offered a motion opposing a second request to the governor because “it would be inexpedient.”⁵⁰ North Carolina Congressman Timothy Bloodworth thought this second request to Governor Clinton “improper as there is not the least probabil[it]y of his complying, deeming the measure unwarrantable by the constitution.”⁵¹

Massachusetts Congressman Rufus King had a different perspective. Suggesting that Congress was “as the lawyers say, at issue with New York,” King observed that Clinton “is the only one of the thirteen [state governors] who would under similar circumstances refuse” to call the legislature into special session. But King welcomed Clinton’s adamant stance and New York’s refusal to alter its act adopting the impost. Without a revenue from the impost, King believed that Congress would be justified in doing “every thing in their power for the public Good.”⁵² Clinton’s actions and New York’s obstinacy, consequently, would help those nationalists who wanted more power for Congress.

When the legislature convened for its regular session in January 1787, the nationalist forces in the Assembly were mobilized by a new leader. Alexander Hamilton had been elected to the Assembly. On 13 January 1787, Clinton delivered his opening address to the legislature, in which he transmitted Congress’ request for a reconsideration of the impost. The governor justified his refusal to call a special session of the legislature and said that he would “forbear making any remarks on a subject which hath been so repeatedly submitted to the consideration of the legislature, and must be well understood.”⁵³ Hamiltonians tried to censure Clinton for not calling the early session. The Assembly, however, approved the governor’s inaction, 36 to 9. Connecticut

⁴⁷ Monroe to Clinton, 16 August 1786, *ibid.*, 479–80.

⁴⁸ Mitchell to William Samuel Johnson, 9 August 1786, *ibid.*, 525n.

⁴⁹ Clinton to the President of Congress, 16 August 1786, PCC, Item 67, New York State Papers, 1775–88, Vol. II, 540, 541, DNA.

⁵⁰ JCC, XXXI, 556n.

⁵¹ Bloodworth to Governor Richard Caswell, 24 August 1786, Smith, *Letters*, XXIII, 521.

⁵² King to Elbridge Gerry, 26 August 1786, *ibid.*, 529–30.

⁵³ *Messages from the Governors*, II, 264.

Congressman Stephen Mix Mitchell wrote that the Assembly, in approving Clinton's inaction, "stepd. as twere out of their way to give Congress a Slap in the face."⁵⁴

The Assembly submitted the impost to a three-man committee composed of two Hamiltonians and one Clintonian. On 9 February, the committee recommended a bill that would meet Congress' standards, but Clintonian assemblymen—described by one partisan as "mere machines" under the control of the governor—amended the bill so that it would still remain unacceptable to Congress. On 15 February Hamilton delivered a lengthy, impassioned speech in favor of the federal impost that, according to "Rough Carver" was followed by "a contemptuous silence. . . . The members appeared pre-determined, having . . . *made up their minds on the subject.*"⁵⁵ The Assembly then voted 38 to 19 for the amended impost bill—the Clintonian-dominated Assembly had succeeded in retaining the impost and its revenue for state use. The Assembly's actions, according to Virginia Congressman James Madison, "put a definitive veto on the Impost."⁵⁶

Opposition to the impost came from Abraham Yates, Jr., in the Senate and John Lansing, Jr., in the Assembly, whom Hamiltonians attacked as demagogues, pandering to the "little folks." They were also accused, for the love of "power and office," of daily paying "homage to the G——r." As for Clinton, it was "whispered that he also is in secret an anti-impost man." It seemed clear that Clinton had sufficient influence in the Assembly to exert his will, and "a distant hint only from" him could have adopted the impost for Congress.⁵⁷ A month after the vote, Philip Schuyler charged that the delegates against the impost were led "by promises, and the influence of a certain great man."⁵⁸

⁵⁴ Mitchell to Jeremiah Wadsworth, 24 January 1787, Smith, *Letters*, XXIV, 74.

⁵⁵ "Rough Carver," *Daily Advertiser*, 3 September 1787 (I below).

⁵⁶ Madison to George Washington, 21 February 1787, Rutland, *Madison*, IX, 285.

⁵⁷ "Leo," *Daily Advertiser*, 27 February 1787.

⁵⁸ Philip Schuyler to Henry Van Schaack, 13 March 1787 (Appendix II [below]). In the state ratifying convention on 28 June 1788, Governor Clinton professed that he had uniformly supported an impost for Congress. He confessed, however, "the manner in which that body proposed to exercise the power, I could not agree to. I firmly believed that if it were granted in the form recommended, it would prove unproductive, and would also lead to the establishment of dangerous principles." Clinton favored "granting the revenue" but opposed giving Congress the "power of collection or a controul over our state officers" (V below).

In March 1789, Alexander Hamilton resurrected the debate over the impost as a campaign issue in the hotly contested gubernatorial election and accused Clinton of duplicity. Hamilton discredited Clinton's statement in the ratifying convention "that he had always been a friend to the impost, but *could not agree to the manner in which Congress proposed to exercise the power.*" To oppose a specific plan and profess support for a general principle was sheer "hypocrisy." Hamilton claimed to have "unquestionable evidence" that the governor had used his "personal influence" with various legislators to "prejudice them against the granting of the impost." Clinton supposedly warned the legislators that Congress, as a single-house legislature with no effective checks on its power, ought not to be trusted with a revenue independent of state control. Hamilton questioned the propriety of this kind of executive interference with legislators. To him, it appeared "highly exceptionable" ("H. G." VII, *Daily Advertiser*, 20 March 1789, printed in Syrett, V, 277–78).

A Devastated Economy

The end of the Revolution in New York brought a short period of prosperity followed by a swift deflation that soon deepened into the “bad times” of 1785–86. These years of severe economic distress were marked by extensive public and private indebtedness, disorganization of trade, contraction of the circulating currency, and drastically reduced agricultural prices. Distressed New Yorkers demanded some sort of relief. Twice in 1784 the Assembly yielded to public demand and passed paper-money proposals, only to have the Senate reject them.

The New York City Chamber of Commerce opposed paper money because it “would not promote the general interest of the State; and that ’till such time as the Public confidence is restored, by a faithful performance of all Contracts Public and Private, it must inevitably depreciate to the Ultimate injury of the Merchants and Inhabitants of this City.” But if the legislature did issue paper money, the chamber hoped that it would not be legal tender.⁵⁹ Most members of the Chamber admitted that a scarcity of specie existed and that the poor were suffering, but they were afraid that paper money would be issued to excess, leading to an unbridled depreciation, such as had happened to the Continental currency during the war. To alleviate the distress, petitions submitted to the legislature recommended that the general form of taxation be altered and that the collection of tax arrears be postponed thus lightening the tax burden on those least able to pay.⁶⁰

Some influential men who denounced state paper money believed that a private commercial bank was required. In March 1784 the Bank of New York had been chartered, with some of the leading conservatives as stockholders, including such men as Alexander Hamilton and Philip Schuyler, who steadfastly opposed state currency. The policies of the bank aroused intense opposition from the yeomanry because it concentrated capital from the state’s monied men and refused loans to farmers, even to those who owned substantial quantities of land, while a merchant, “whose property is of the most precarious and delusive nature, may readily procure a fictitious capital to facilitate his importation of foreign merchandize.”⁶¹ The only people who benefited from a bank were those who had connections with the institution. Some, in fact, believed that the bank’s policies had contributed to the hard times of the mid-1780s.

Hamiltonians had their own economic agenda. In their opinion, America’s economic crisis could be solved only by granting Congress the impost, vesting it with the power to regulate commerce, and eradicating the spirit of luxury that existed throughout the country.⁶²

The legislative struggle over paper money began in February 1784, when the Assembly passed a bill authorizing £100,000 of paper, but the bill was defeated in the Senate. Late in October, the house approved £150,000. The Senate again defeated this measure. The following year the lower house, by a vote of 22 to 18, authorized £100,000 in paper. The Senate, in mid-April, tenaciously adhered to its hard-money principles and again rejected the Assembly’s handiwork. By 1786, the

⁵⁹ *New York Packet*, 13 February 1786.

⁶⁰ Petitions from the City and County of Albany, 2 February 1785, and from the Inhabitants of Hillsdale in Albany County, 24 February, and 2 March, all in the New York State Library.

⁶¹ “Honestus,” *New York Packet*, 27 March 1786. “Fictitious capital” referred to the insufficient collateral used by some merchants in obtaining loans.

⁶² *Daily Advertiser*, 1 August 1786.

Senate admitted that a scarcity of specie existed and that yeomen were being ruined by forced sales in which their farms sold for only a fraction of their real value. Despite this admission, the Senate still opposed state paper money. The Assembly, however, was more resolute than ever.

Early in January 1786, a joint committee was appointed to consider financial matters. Deliberations were “conducted with unusual Harmony.”⁶³ After several meetings, the “prevailing sentiment” favored a paper-money loan office modelled on colonial experience. Furthermore, paper-money adherents on the committee stressed the need for the state to pay public creditors the interest on their securities. Hard-money committeemen warned that New Yorkers would pay their taxes in this newly proposed paper currency, thereby reducing specie revenue enough so that the state would be unable to pay its congressional requisitions. New York would have to break faith with Congress. To prevent this, paper-money committeemen proposed that the state “assume” and “fund” the national debt held by New Yorkers. All national securities would be exchanged for new state securities that would receive interest paid in paper money. The paper currency would be backed by import duties and other taxes. By accepting paper money for taxes, the state would ensure that the bills would remain buoyant. After consideration, the committee recommended that £200,000 be emitted—one-quarter to pay the interest on the state and the assumed Continental debts and the other three-quarters to be loaned on real estate mortgages.

Acting on the joint committee’s recommendation, the Assembly appointed a committee on 21 January 1786, consisting of one member from each county, to consider the best method for emitting paper money and for redeeming public securities. On 23 February, the committee reported a bill providing for the emission of £200,000. “The grand question” of whether or not the money should be legal tender was put to an initial vote on 23 February, when the Assembly overwhelmingly defeated the tender provision by a vote of 47 to 12. Realizing that a tender provision jeopardized the entire bill, paper-money advocates proposed a compromise, making the currency legal tender only in law suits, thus protecting hard-pressed debtors. The compromise satisfied most assemblymen, and the bill passed on 6 March by a sizable margin of 43 to 9.

To gain the governor’s endorsement, and thus to assure passage of the bill, several funding proposals were added. The entire state debt was funded, while Continental loan-office certificates and “Barber’s Notes” (certificates issued for supplies furnished to the Continental Army) owned by New Yorkers were also assumed by the state. Some people wanted either a complete assumption or a complete separation from the Continental debt. Clinton and the paper-money advocates, however, realized the political potency of the partial assumption of the federal debt. The state assumed only twenty-eight percent, or \$1,400,000 out of a total federal debt of about \$5,000,000 held by New Yorkers. The assumed federal debt was held by approximately half of the state’s voters. The unassumed \$3,600,000 was owned by several hundred wealthy New Yorkers, most of whom had little sympathy for Clinton.⁶⁴ The bill, in essence, converted large numbers of federal creditors into state creditors; in the process their economic welfare was tied to the state—not to the Confederation—and earned for the governor their political gratitude.

After the Assembly approved the bill, it went to the Senate where paper money had always foundered. On 29 March 1786, the Senate proposed twelve amendments—including a

⁶³ John Lansing, Jr., to Abraham Ten Broeck, 28 January 1786, Ten Broeck Papers, Albany Institute of History and Art.

⁶⁴ “Gustavus,” *New York Packet*, 13 April 1786; Matthew Visscher to Abraham Yates, Jr., 6 March 1786, Abraham Yates Papers, NN.

prohibition of the assumption of the federal debt. The Assembly rejected the amendments, and the Senate backed down on all but two minor amendments rather than killing a fourth paper-money bill.⁶⁵

Before the bill became law it had one more hurdle—the Council of Revision. It was here that hard-money men placed their last hope. Within the council there was considerable dispute. John Sloss Hobart, Robert R. Livingston, and Lewis Morris struggled to defeat the bill, while Governor Clinton and Robert Yates favored it. From 6 to 15 April, the three opponents presented their reasons for vetoing the bill, but no one veto report received the endorsement of more than two councillors; consequently the bill automatically became law after ten days.

The act authorized £200,000 of paper money—three-quarters earmarked for mortgages on real estate and the remainder to be paid to New York's public creditors as interest on both state and Continental securities. The paper money could be used to pay taxes and other governmental fees. Mortgages had a fourteen-year term at five percent annual interest.

The paper money came from the presses in July 1786. The fear of depreciation proved unwarranted. The state's money passed "universally equal with gold and silver, and is caught at with avidity even by strangers."⁶⁶ Even fiscally conservative Alexander Hamilton assured the Assembly that "there need be no apprehension of" the paper currency's future fate. Largely because the scarcity of specie still existed, the demand for paper money "had not lessened," and the whole populace seemed satisfied with the currency.⁶⁷

Paper-money men predicted that the state's domestic and foreign trade would immediately increase when paper was issued. Beginning in late 1786 and early 1787, American commerce grew rapidly; and, by 1788, New York had regained much of its prewar commercial vitality. By the end of 1788, New York City, a broken port in 1783, was importing and exporting more than before the war: and about two-thirds of this trade was carried in New York ships. The revenue obtained from the state impost did much to stabilize the state's finances.⁶⁸ Paper money had played an important role in restoring New York's prosperity.

The debt-funding aspect of the paper-money program succeeded beyond anyone's expectations. Paper money coupled with the state's other revenue was used to purchase large quantities of Continental securities, replacing them with state securities until, by 1790, the state of New York owned federal securities worth over \$2,880,000 in specie. The interest due New York on these securities more than equalled the annual requisitions on the state by Congress. Had this process continued a few more years, New York, along with some of the other states, would

⁶⁵ Philip Schuyler to Abraham Ten Broeck, 19 March 1786, and Schuyler to Stephen Van Rensselaer, 22, 30 March 1786, Schuyler Papers, N; Schuyler to Leonard Gansevoort, 22 March 1786, de Coppet Collection. Princeton University.

⁶⁶ *New York Journal*, 24 August 1786.

⁶⁷ Hamilton Speech in Assembly, 15 February 1787, Syrett, IV, 90; Nicholas Hoffman to John Williams, 2 November 1787, John Williams Papers, N.

⁶⁸ Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781–1789* (New York, 1950). 215; *New York Packet*, 18 November 1788, 10 March 1789.

have assumed the entire domestic federal debt.⁶⁹ To a considerable degree, the paper money made these purchases possible, but New York's funding and assumption programs also contributed to maintaining the paper money's value.

Commerce and the Annapolis Convention

Many New Yorkers favored empowering Congress to deal with the postwar British trade restrictions.⁷⁰ On 4 April 1785, New York's legislature granted Congress authority for fifteen years to curtail trade with foreign countries that had no commercial treaty with the United States. New Yorkers agreed with Congress that "The fortune of every citizen is interested" in commerce; "for it is the constant source of wealth and incentive to industry; and the value of our produce and our land must ever rise or fall in proportion to the prosperous or adverse state of trade."⁷¹ After the enactment of New York's comprehensive impost act in November 1784, Clintonians' support of efforts to defend American commerce intensified. Although merchants generally opposed the governor, Clintonians supported efforts to increase commerce because more foreign trade meant more revenue for the state treasury.

This desire to stimulate commerce explains why New York endorsed Virginia's call on 21 January 1786 for a commercial convention of the states. On 14 March, Clinton submitted Virginia's proposal to the Assembly, which the following day resolved that five commissioners be appointed to attend the convention at Annapolis. Three days later, the Senate by a 14 to 4 margin concurred. On 20 April, the Assembly appointed Alexander Hamilton, Robert C. Livingston, and Leonard Gansevoort as commissioners. On the last day of the session (5 May), the Senate added three more commissioners—Robert R. Livingston, James Duane, and Egbert Benson—and the Assembly agreed. All six non-Clintonians supported strengthening the powers of Congress.

The legislature authorized the commissioners "to take into consideration the trade and commerce of the United States, to consider how far an uniform system in their commercial intercourse and regulations, may be necessary to their common interest and permanent harmony."⁷² Before any power could be conferred on Congress, however, any proposal of the convention had to receive the unanimous approval of the state legislatures. Such unanimous approval would give the legislature the right to reject any plan that might be detrimental to New York.

In September 1786 only Hamilton and Benson attended the Annapolis Convention, where they met with commissioners from Delaware, New Jersey, Pennsylvania, and Virginia. The commissioners quickly adopted a report, drafted by Hamilton, that acknowledged the poor attendance at the convention and the diversity of the commissioners' instructions. Rather than

⁶⁹ E. James Ferguson, "State Assumption of the Federal Debt During the Confederation," *Mississippi Valley Historical Review*, 38 (1951), 418; *Daily Advertiser*, 28 January, 2 February 1788.

⁷⁰ For the postwar British trade policy, enunciated most strenuously by Lord Sheffield in his *Observations on the Commerce of the American States* (London, 1783), see Robert B. Bittner, "The Definition of Economic Independence and the New Nation" (Ph.D. diss., University of Wisconsin, 1970).

⁷¹ CDR, 153.

⁷² *Senate Journal* [16 January–5 May 1786] (New York, 1786), 103 (Evans 19853).

deliberate under these conditions, the commissioners called for a general convention of all the states to meet in Philadelphia the following May to revise the Articles of Confederation.

The Constitutional Convention

On 13 January 1787, Governor Clinton addressed the opening session of the legislature meeting in New York City and delivered a copy of the Annapolis Convention report to the Assembly. Two days later the Assembly submitted to a committee the Annapolis report and Virginia's act of 23 November 1786 authorizing the appointment of delegates to a general convention.

On 15 February 1787, the Assembly rejected an unconditional ratification of the congressional impost, thus effectively killing the impost. (See above.) Then, on 17 February, without any reference to the Annapolis Convention report, the Hamiltonian forces in the Assembly proposed and the Assembly adopted a resolution instructing the state's delegates in Congress to move for the calling of a convention "for the purpose of revising the Articles of Confederation." On 20 February, Philip Schuyler led the Senate in a 10 to 9 vote concurring. The call for a convention could not have succeeded without support from Clintonians. They supported it to demonstrate that they were not entirely antifederal; they saw the necessity of strengthening Congress in areas other than granting it an independent source of income, and they were confident that they could prevent the ratification of any unacceptable convention proposal.

Philip Schuyler believed that New York called for a constitutional convention because several members of Congress had indicated a preference for the call of a convention to emanate from a state rather than from the ad hoc Annapolis delegates. An opportunity for such a state call had arisen in the New York legislature after the defeat of the impost despite Hamilton's speech of 15 February. Many delegates voted against the impost, because of pressure exerted by the governor. According to Schuyler, some of these delegates felt "ashamed of their conduct, and wished an opportunity to make some atonement." Seizing this opportunity, Hamilton and Schuyler's forces introduced the call of a convention in the Assembly, which was "violently opposed" by the governor's friends, "but as many of those, who are at his beck, had committed themselves too far in private conversation, they voted (tho perhaps) reluctantly, for It."⁷³

Despite the legislature's call for a convention, Schuyler was pessimistic, about New York's and the Union's political future. The Clintonians—whose principles, stated Schuyler, included "a state impost, no direct taxation, keep all power in the hands of the legislature, give none to Congress which may destroy our influence, and cast a shade over that plenitude of power which we now enjoy"—were willing that a constitutional convention meet and propose alterations "confering additional powers on Congress." Clintonians, however, according to Schuyler, would oppose these amendments as "destructive of Liberty, may [induce?] a King, an Aristocracy, or a despot."⁷⁴

When Congress considered the Annapolis Convention report on 21 February, New York congressmen Melancton Smith and Egbert Benson submitted their legislature's call for a convention. Unaware that nationalists in both the New York Assembly and Senate had pushed this resolution through to adoption, congressmen looked upon the proposal with considerable

⁷³ Philip Schuyler to Henry Van Schaack, 13 March 1787, Appendix II (below).

⁷⁴ *Ibid.*

skepticism. A state that less than a week earlier had killed the federal impost now seemed to advocate strengthening Congress. To some congressmen, it appeared as if New York was attempting to scuttle the convention called by the Annapolis commissioners by proposing an alternative to it. (By ignoring any reference to the convention called by the Annapolis commissioners, New York's resolutions seemed to invalidate the appointment of convention delegates that had already taken place in six states.)⁷⁵ Therefore, Congress refused to consider New York's resolution. Instead, it considered a proposal for a general convention submitted by the Massachusetts delegates even though this proposal did not refer either to the Annapolis Convention report or to the state appointments of delegates that had already occurred. Congress amended the Massachusetts proposal and acknowledged the validity of these appointments as well as any future appointments to the convention called to meet in Philadelphia.

On 23 February 1787, Governor Clinton sent the legislature the congressional resolution calling the Constitutional Convention. Three days later, the Assembly resolved that five delegates be appointed to the Convention by a joint ballot of both houses. On 27 February, the Senate disagreed, objecting to its inferior status in a joint ballot. The following day, the Senate voted on a straight party vote of 11 to 7 to reduce the number of delegates to three. The Clintonians supported the reduction. Then the Senate rejected 12 to 6 a motion to elect the delegates by joint ballot. After which, Senator Abraham Yates, Jr., proposed that the Convention limit its proposals to alterations and amendments "not repugnant to or inconsistent with the constitution of this State." The Senate narrowly defeated Yates's proposal when two Clintonians, Thomas Treadwell and John Williams, abandoned it and Lieutenant Governor Pierre Van Cortlandt, the president of the Senate, cast his vote against it, breaking the 9 to 9 tie. The Senate finally approved the resolution that provided for the election of three delegates by each house voting separately, the same manner specified in the state constitution for the election of delegates to Congress. The Assembly concurred later on 28 February.

On 6 March, the Assembly voted in open balloting for convention delegates. All fifty-two assemblymen voted for state Supreme Court Judge Robert Yates, while Alexander Hamilton received all but three votes (one being his own). The real contest centered on the third delegate—and with it, who would control the delegation. John Lansing, Jr., narrowly defeated New York City Mayor James Duane for the Assembly's nomination by a vote of 26 to 23. After the Senate also nominated Yates, Hamilton, and Lansing, the two houses compared their nominees, adjourned to their separate chambers, and passed resolutions officially appointing the three men.

On 16 April, the Assembly agreed to Hamilton's motion authorizing the appointment of two additional convention delegates, totalling five—the number of delegates usually elected to Congress. Two days later, however, the Senate rejected the increase. (See Appendix II, below.) By appointing a three-man delegation and weighting it in their favor, Clintonians felt that the Clintonian delegates could control their state's actions in the convention. In letters to fellow Convention delegates George Washington and Edmund Randolph, Virginia Congressman James Madison, writing from New York City, described Yates and Lansing as "pretty much linked to the antifederal party here, and are likely of course to be a clog on their Colleague." Madison believed that the two Clintonians "lean too much towards State considerations to be good members of an Assembly which will only be

⁷⁵ See James Madison's Notes on Debates in Congress, 21 February 1787, Rutland, *Madison*, IX, 290–91; CDR, 188–90.

useful in proportion to its superiority to partial views & interests.”⁷⁶ George Washington lamented that “It is somewhat singular that a State (New York) which used to be foremost in all foederal measures, should now turn her face against them in almost every instance.”⁷⁷

Yates and Hamilton first attended the Convention in Philadelphia on 25 May, the first day of a quorum. Lansing came a week later on 2 June. From the beginning the Clintonian delegates had “forebodings” about the Convention. On 30 May, Yates voted in the minority against Hamilton on a motion that called for the Convention to create a “national Governt.” Two days later, Robert Yates wrote a confidential letter to his uncle, Abraham Yates, Jr., then serving in Congress in New York City, in which he indicated that his “forebodings . . . are too much realized.” Because of the Convention’s secrecy rule, Yates could not relate any of “its business until the final close of it. While I remain a sitting member these rules must be obligatory.” He was uncertain how long he would remain in Philadelphia, but “in the mean while,” he was keeping “an Exact journal of all its proceedings.” With this letter Yates communicated important and sensitive information back to New York. Because of the dominance of nationalist sentiment in the Convention, Yates and Lansing might abandon the Convention. This would leave New York unrepresented in the Convention because a minimum of two delegates had to be present for a state’s vote to count. Realizing the explosiveness of his letter, Yates warned his uncle that “This Communication is in the most perfect confidence, in which only one person [i.e., George Clinton] beside yourself can participate.”⁷⁸

Throughout their stay in the Convention, Yates and Lansing voted with a minority of delegates who favored amending the Articles of Confederation in order to invest Congress with limited additional powers that would not unduly shift sovereignty away from the states. They usually voted together against Hamilton. During the climactic debate over the choice of the Virginia Plan (29 May) which called for the abandonment of the Articles of Confederation in favor of a national government, or the New Jersey Plan (15 June) which proposed amendments to the Articles of Confederation, Lansing argued on 16 June that the mere consideration of a national government violated the resolution of Congress calling the Convention as well as the delegates’ commissions from their state legislatures. New York, he told the Convention, “would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.” Furthermore, he asked “was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? and which so far exceeded what they regarded as sufficient?” The states, according to Lansing, would “never sacrifice their essential rights to a national government.” Both the states and the people wanted Congress strengthened, not a new government.⁷⁹

Hamilton was silent for most of the first three weeks of the Convention, partly because he disagreed with both the Virginia and the New Jersey plans and “partly from his delicate situation with respect to his own State, to whose sentiments as expressed by his Colleagues, he could by no means accede.” On 18 June, however, Hamilton expressed his opinion that “no amendment of the

⁷⁶ Madison to Randolph and to Washington, 11 and 18 March 1787, Rutland, *Madison*, IX, 307, 315.

⁷⁷ Washington to Madison, 31 March 1787, *ibid.*, 343.

⁷⁸ Robert Yates to Abraham Yates, Jr., 1 June 1787, Abraham Yates Papers, NN. Robert Yates ended his letter by asking his uncle to communicate “My Respectful compliments to the Governor.”

⁷⁹ Farrand, I, 249–50, 257–58.

confederation . . . could possibly answer the purpose.” The delegates, Hamilton suggested, “owed it to our Country, to do on this emergency whatever we should deem essential to its happiness.”⁸⁰ Concluding his five-hour oration, Hamilton sketched an outline for a plan of government that called for a bicameral Congress composed of representatives with three-year terms elected by the people and senators with life-time terms selected by electors chosen by the people. Hamilton’s single chief executive would also be selected by electors chosen by the people and he too would have life tenure and the veto power. A supreme court of twelve justices with life tenure would have final judicial authority, and Congress could create inferior courts. All state laws contrary to the constitution or federal laws would be void. State governors, according to Hamilton, would be appointed by the general government, and they would have veto power over their legislatures.

Hamilton knew that the Convention would never approve his plan. But he believed that there were “evils operating in the States which must soon cure the people of their fondness for democracies.”⁸¹ Once the people tired of democracy, he argued, they would be more receptive to his ideas. Many of the delegates admired Hamilton’s forthrightness and some even agreed with his ideas, but few supported him. Connecticut delegate William Samuel Johnson said that Hamilton was “praised by every gentleman, but supported by no gentleman.”⁸² Frustrated with his minority position within the New York delegation, Hamilton left the Convention at the end of June. While in New York, Hamilton publicly criticized Governor Clinton for his alleged opposition to the Convention. Thinly disguising his authorship, Hamilton’s attack was published in the *Daily Advertiser* on 21 July and provoked heated controversy for several weeks. (See “Alexander Hamilton Attacks Governor George Clinton,” 21 July–30 October 1787 [I below].) Hamilton returned to the Convention briefly in mid-August and was in New York from 20 August until 2 September. On 8 September, he was appointed to the Committee of Style and signed the Constitution nine days later as the only delegate from New York.

Yates and Lansing also became increasingly convinced of the futility of their position as the Convention proceeded toward the creation of a national government. Finally, on 10 July, they too abandoned the Convention, never to return, leaving New York unrepresented.

For more than five months, Yates and Lansing remained publicly silent about their early departure from the Convention. As the New York legislative session approached in January 1788, they decided to write an “official” report, perhaps with some urging from the Governor Clinton.⁸³ On 21 December 1787, shortly before the legislature’s scheduled meeting, Yates and Lansing wrote the governor, giving their reasons for opposing the Constitution and for their abandonment of the Convention. When the legislature attained a quorum, Clinton delivered the letter, the new Constitution, Congress’ resolution of 28 September 1787, and the other public documents that he had received since the legislature’s last session (II below).

Yates and Lansing justified their departure as a matter of principle. The Convention was creating “a system of consolidated Government” which was not “in the remotest degree . . . in contemplation of the Legislature of this State.” The delegates—New York’s in particular—had

⁸⁰ *Ibid.*, 282–83.

⁸¹ *Ibid.*, 291.

⁸² *Ibid.*, 363, 366.

⁸³ Walter Rutherford believed that Clinton “had a hand” in convincing Yates and Lansing to write their letter (to John Rutherford, 8, 15 January 1788 [I below]).

been commissioned to revise and amend the Articles of Confederation, not “to abrogate” them. Furthermore, the consolidated government proposed by the Convention “must unavoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it.” They were certain that the new Constitution would not “afford that security to equal and permanent liberty, which we wished to make an invariable object of our pursuit.” The absentees justified their refusal to return to Philadelphia because the principles of the new Constitution “were so well established as to convince us that no alteration was to be expected, to conform it to our ideas of expediency and safety. A persuasion that our further attendance would be fruitless and unavailing, rendered us less solicitous to return.”⁸⁴ Virginia Congressman Edward Carrington believed that the letter “is perfectly in conformity with the views of their Mission,” which was to represent the interests of New York, a state marked by “her uniform opposition to every federal interest for several years.”⁸⁵

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⁸⁴ For Yates and Lansing’s letter, see I below.

⁸⁵ Carrington to James Madison, 10 February 1788 (RCS:Va., 360).