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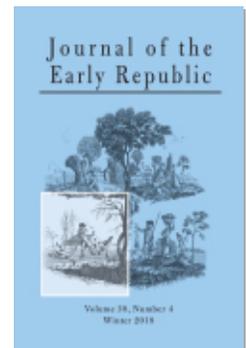
“Formed for Empire”: The Continental Congress Responds  
to the Carlisle Peace Commission

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# “Formed for Empire”

## The Continental Congress Responds to the Carlisle Peace Commission

ANTHONY GREGORY

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For six months in 1778, the Continental Congress consistently rejected the most generous terms for peace and reunion Britain offered during the Revolutionary War. To lure back the thirteen colonies, Lord North rescinded the Tea Act and Massachusetts policy and sent the Carlisle Peace Commission to America to concede nearly everything the colonists demanded short of independence. Parliament would relinquish internal taxing and legislative powers, more equitably share trade tax revenue, and stop deploying troops in the colonies without their consent. The Americans were defiant. Congress rebuked the Commission and confidently proclaimed its own authority in terms of both high principle and power politics. Its right to rule arose from popular consent and military might. The victory at Saratoga and ongoing negotiations with France emboldened American leaders to assert their continental power as righteous and destined.<sup>1</sup>

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1. “North was willing to concede the very issues for which Britain had first contended in America,” writes Andrew Jackson O’Shaughnessy, in *The Men Who Lost America: British Leadership, the American Revolution, and the Fate of the Empire* (New Haven, CT, 2013), 64.

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Congress's confident public face may help explain why so many historians have taken rejection of the Peace Commission for granted, and said little else. They have generally not found Congress's reaction mysterious or illuminating. There was no "finer hour" than Congress's unanimous rebuke on April 22, 1778, writes Lynn Montross. The alternative would have meant "an American surrender," notes Charles Royster. According to Gordon Wood, when Samuel Adams "told the Carlisle Commission" that there must be "one supreme executive power," he merely echoed the "overwhelming conviction" that Americans had shared since 1776. Mark Edward Lender and Garry Wheeler Stone recognize the Commission's military setbacks but describe its mission as "stillborn from the beginning." Robert Middlekauff briefly mentions the "ridiculous and pathetic" peace terms and only revisits the Commission as it returns to London, "its mission unfulfilled and its spirit in tatters." None of these historians scrutinize Congress's confident claims of unanimity.<sup>2</sup>

But some historians have invited a closer look, usually through the lens of legal theory or diplomacy. Bernard Bailyn gestures toward a greater significance in North's "grudging concession," a moment when "intellectual," "political," and "military" events broached fundamental questions about "unitary, concentrated, and absolute governmental sovereignty" that would "never fully" find resolution. Parliament's concessions, as Eliga H. Gould puts it, "introduced a creeping federalism" into Britain and America's relationship. Yet as Britain offered federation, Congress responded with a vision of national power surpassing the Declaration of Independence's contingent defense arrangement of "free and independent states."<sup>3</sup>

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2. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, NC, 1998), 353; Lynn Montross, *The Reluctant Rebels: The Story of the Continental Congress: 1774–1789* (New York, 1950), 234; Charles Royster, *A Revolutionary People at War: The Continental Army and American Character, 1775–1783* (Chapel Hill, NC, 1979), 268; Mark Edward Lender and Garry Wheeler Stone, *Fatal Sunday: George Washington, the Monmouth Campaign, and the Politics of Battle* (Norman, OK, 2016), 84; Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763–1789*, rev. and exp. ed. (Oxford, UK, 2005), 414, 438.

3. Bernard Bailyn, *The Ideological Origins of the American Revolution. Enlarged Edition* (Cambridge, MA, 1992), 228–29. Britain's proposed commonwealth first became reality with Canada's revolt, according to Charles R. Ritchie-

Such provocative but brief insights of constitutional and jurisdictional history stand alongside works of political and diplomatic history that focus more on Britain's bad timing. Weldon A. Brown's book, published in 1941, contains one of the few chapter-length discussions of the Peace Commission, centered on Britain's failures at negotiation. Edmund Cody Burnett's book *The Continental Congress*, published the same year, chronicles Congress's rejection without much analysis, reducing the explanation down to a "race between the British conciliation acts and the French treaty." Newer works have suggested that Britain's offer came two or more years late.<sup>4</sup>

The little historians have said points to the big predicament of American power in 1778. Arriving after Saratoga but before the finalization of the French treaty, the Carlisle Peace Commission came at just the perfect time to serve as an irritant, forcing Congress to struggle with the paradoxes of its sovereignty, grounded in both consent and coercion. Congress's public face of defiance concealed internal anxieties. Congress

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son, *British Politics and the American Revolution* (Norman, OK, 1954), 286. Eliga H. Gould notes that Burke saw the concessions as paradoxically recognizing de facto American sovereignty, treating so-called "Rebels . . . like the Subjects of an Independent State." Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill, NC, 2000), 193, quotation on 194.

4. Weldon A. Brown's chapter on the Commission appears in *Empire or Independence: A Study in the Failure of Reconciliation, 1774–1783* (1941; repr. Port Washington, NY, 1966). Edmund Cody Burnett discusses the "race" between France and Britain in *The Continental Congress* (New York, 1941), 355. Older diplomatic histories have stressed British, French, and American attempts to play the offers off each other and prevent an undesirable peace settlement. See James Breck Perkins, *France in the American Revolution* (Boston, 1911). As for Britain's timing, Alan Taylor believes the concessions would have worked in 1774, but the French Alliance emboldened Congress's stubbornness, which in turn provoked an escalated British war effort. Taylor, *American Revolutions: A Continental History, 1750–1804* (New York, 2016), 189. Benjamin Franklin, writing in April 1778, thought the terms "would probably have been accepted" two years earlier, but British sovereignty in North America was now "impracticable." Franklin to Monsieur Gerard, Apr. 1, 1778, in *B.F. Stevens' Facsimiles of Manuscripts in European Archives Relating to America, 1773–1783, With Descriptions, Editorial Notes, Collocations, Reverences, and Translations*, 25 vols., 22: 1907 (hereafter cited as *SFM*). Charles Carroll two months later said that the peace offers could have earlier restored "peace & tranquility to the British Empire" but were "*now* inadmissible." Charles Carroll of Carrollton to Charles Carroll, Sr., June 15, 1778, in *Letters of*

refused to dignify the Commission with a meeting, even as its leaders closely examined Britain's offers in detail. American leaders claimed a unified front but were privately jealous about their effective control over the states. Boastful of inevitable victory while petrified of internal dissent, members of Congress sought to shape public opinion through persuasion and censorship. In questioning the legitimacy of the Commission's authority, they soon found themselves drawn into a protracted dialogue about their own legitimacy, which exposed their insecurities. Meanwhile, diplomatic contingencies obscured the balance between high principle and military capacity. While the French Alliance furnished a theoretical justification of sovereignty grounded in international recognition, it also highlighted the competing capacities of military strength. Driven from Philadelphia, the British appealed directly to the states and people, prompting Congress to belie its outward confidence and resort to its own direct appeals to the states and finally to shows of force.<sup>5</sup>

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*Delegates to Congress, 1774–1789*, ed. Paul H. Smith, et al., 25 vols. (Washington, DC, 1982), 10: 94 (hereafter cited as *Letters of Delegates*).

5. Historians working on questions of wartime constitutional sovereignty have hinted at but rarely stressed 1778 diplomacy. Benjamin H. Irvin looks to Congress's 1777 rejection of the Howe Commission and how the French treaty occasioned "novel diplomatic protocols" and offered new ways "to champion . . . sovereignty." Irvin, *Clothed in Robes of Sovereignty: The Continental Congress and the People Out of Doors* (Oxford, UK, 2011), 4, 10, quotation on 167. Gould finds tensions between Congress's enumerated powers and its expansive treaty authority persisting after Constitutional ratification, as American leaders sought power comparable to that of European nations, an independent sovereignty over "all of North America" in a struggle for both self-governance and "dominion over others." Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, MA, 2012), 10, quotation on 4. On national unity and Congress's fledgling foreign and domestic authority see Jerrilyn Greene Marston, *King and Congress: The Transfer of Political Legitimacy, 1774–1776* (Princeton, NJ, 1987), especially 206–50. Merrill Jensen's *Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774–1781* (Madison, WI, 1962), calls the "revolution . . . in large measure a revolt against" Britain's "centralized coercive power" (163), pitting decentralist radicals against centralist antirevolutionary conservatives, hardly addressing 1778 diplomatic factors beyond the western struggle (218). Daniel Hulsebosch affirms the dialectical process of sovereignty construction although "Each side claimed to be working these rules out independently." See Hulsebosch, "Review: Rights, States, and Empires: The Declaration of Independence: A Global History by

The process of rejecting the Carlisle Peace Commission clarified the claim of independence. Congress, while questioning the logic of British rule, articulated a bold alternative vision—a more cohesive, united, and centralized dominion. A closer look reveals the anxieties beneath the confidence. In the particular course of Congress's rejection, sovereignty became contested and thus emboldened, the tensions of power highlighted if not resolved. As a focal point in the demonstration of the paradox of rule, this is a story of neglected salience in the American nation-state's development.<sup>6</sup>




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David Armitage," *William and Mary Quarterly* 65 (Apr. 2008), 363–64, quotation on 364.

6. In identifying watersheds for sovereignty, most see the Articles of Confederation as impotent, as clarified by Shays's Rebellion, and no consensus exists on the Revolutionary War's impact. Don Higginbotham argues that even peaceful recognition of independence would have failed to produce the sovereignty forged in armed conflict, when Congress—"an extralegal body—managed the war and concluded the French alliance" even before the Articles' ratification. Higginbotham, "War and State Formation in Revolutionary America," in *Empire and Nation: The American Revolution in the Atlantic World*, ed. Eliga H. Gould and Peter S. Onuf (Baltimore, 2005), 54–71, quotation on 61. Jack N. Rakove argues that without comprehensive taxing power, Congress was exceedingly weak before 1781. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979). While historical sociologists often see "pressures of war" and international competition as fundamental to state-building, Max Edling identifies a wartime "demand for an American 'fiscal-military state'" somewhat reminiscent of Britain's, but contends "that external pressure did not determine" state development "in any absolute sense." Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the American State* (Oxford, UK, 2005), 220–21. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775–1787* (Philadelphia, 1983), stresses the Critical Period with little attention to 1778 diplomacy. More broadly speaking, Onuf's approach brings attention to a process spanning decades. On the historiographical impact of Onuf's "prescient call for a neo-imperial revival," producing a late twentieth-century emphasis on the "transformation" from "1776" to the "1790s . . . push for a stronger federal government," see "Revolution in the *Quarterly*? A Historiographical Analysis," *William and Mary Quarterly* 74 (Oct. 2017), 633–66, quotation on 662. Focusing on constitutionalism, Alison L. LaCroix brings ideology back into the institutional story of federalism in *The Ideological Origins of American Federalism* (Cambridge, MA, 2010).

Control over North America relied on a balance between consent and coercion, and only after the balance shifted did Britain offer its peace terms of 1778. Lord North's Commission emerged from a protracted period of imperial setbacks, diplomatic stumbles, and political deliberation. The Continental Congress first convened in 1774, unified in distress over the invasive occupation and internal taxes spawned by the Seven Years' War's conquests. The Stamp Act, Declaratory Act, tax revenue expenditures without colonial consultation, Massachusetts Government Act, and other Coercive Acts all provoked a common grievance. Americans wanted Parliament's general lawmaking power driven from colonial life. If the grievances before 1776 had any central political or legal principle, this was it.<sup>7</sup>

Negotiation did not appear to serve either side's demands from 1774 to 1777. Parliament generally ignored Congress's 1774 grievances. The British offered more colonial voice over taxes primarily to finance common defense, but insisted on control of trade, the despised Massachusetts policy, and the Quebec Act. In May 1776, the king named brothers Lord Richard and Sir William Howe as peace commissions. Their duty was to secure submission, and they had very little negotiating flexibility. Many Americans wanted to consider the terms before announcing independence; others were more dismissive. George Washington refused to read the Howes's letter. The Commission arrived days after Americans declared independence. On September 19 the Howes appealed to colonists, insisting that Congress neglected their interests. In serving the dual roles of negotiator and conqueror, the Howes embodied political power's reliance on consent and coercion.<sup>8</sup>

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7. Richard B. Morris argues that the First Continental Congress marked the origins of national sovereignty, pre-dating the creation of the states, in ch. 3 of *The Forging of the Union, 1781-1789* (New York, 1987), 55-79. John Phillip Reid crystallizes the classic legal interpretation of revolutionary grievances in *Constitutional History of the American Revolution: The Authority of Law* (Madison, WI, 1993).

8. Weldon A. Brown, *Empire or Independence: A Study in the Failure of Reconciliation, 1774-1783* (Port Washington, NY, 1966), 39-78; Brown, "The Howe Peace Commission of 1776," *North Carolina Historical Review* 13 (Apr. 1936), 122-42; as Ira D. Gruber puts it, "While Lord Howe was trying to open negotiations with Congress, his brother was making preparations for taking New York City." Gruber, *The Howe Brothers and the American Revolution* (New York, 1972), 120.

In 1777, prompted by humiliation at Saratoga and the threat posed by French alliance, a nevertheless hopeful Lord North considered more hospitable concessions. The king suspected the terms were generous enough to alienate British opinion and yet might still fail to win over the colonists, but he allowed Parliament to undertake three bold initiatives. Parliament drafted legislation that retracted its internal taxing power over the colonies, repealed the Massachusetts Act, and established a new peace commission empowered to grant further concessions to sweeten its negotiations. Remarkably, the legislation authorized the commissioners to suspend policy in America, even to halt Britain's military activities "as they may judge it convenient." As a whole, the implications of Parliament's proposals were significant. Accommodating mixed sovereignty cut to the core of imperial policy. Curtailing the tax power would gut Grenville's strategic approach to rule. Americans could even preserve some dignity under a proposed amnesty, restoring their allegiance without renouncing the Declaration of Independence.<sup>9</sup>

Increasingly desperate to neutralize colonial rebellion before it became a globalized war with France, British officials cautiously pondered the concessions' ramifications. William Eden considered relinquishing internal taxing power too extreme. Charles Pratt, Earl Camden, thought the tax and Massachusetts bills were too modest and might elicit distrust rather than revive loyalty; at the same time, he also opposed as unprecedented the Commissioners' unilateral prerogative. Lord Lyttleton decried the whole gesture as radically compromising British power. Parliament rationalized its concessions—including the limitation of taxation to the purpose of traditional commercial regulation and allocation of revenue where taxes were levied—as countering the "Uneasiness and Disorders" caused by "sundry Misrepresentations" exploited to lead "His Majesty's faithful Subjects" astray. North provided a similar face-saving justification for reversing the Coercive Acts.<sup>10</sup>

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9. Draft of Bill on Commissioners, in *SFM*, 4: 358; Ritcheson, *British Politics*, 258, 269; Gruber, *The Howe Brothers*, 278–79; Leonard J. Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the Founding of America* (Charlottesville, VA, 2009), 106; Brown, *Empire or Independence*, 244; O'Shaughnessy, *Men Who Lost America*, 51.

10. William Eden to Lord North, Feb. 7, 1778, *SFM*, 4: 369; "Legislative Acts/ Legal Proceedings," *Royal Pennsylvania Gazette* (Philadelphia), May 22, 1778, 24: 2; "Bill for Declaring the Intentions of Great Britain Concerning the Exercise of the Right of Taxation over the American Colonies With the Amendments,

British expectations about the American reaction reflected the precarious timing of the offer. Treasury Secretary Samuel Martin predicted Americans would reject the terms, as did some in the British press. The *Gazetteer* said the concessions came too late. A voice in the *Morning Post* worried that war escalation would follow when colonists refused. Another commentary condemned North's "humiliating reconciliation" offered to a "race of unnatural and ungrateful bastards," who would now think "that they are invincible." Others in the British press hoped the reconciliation would succeed.<sup>11</sup>

Parliament was at last ready to concede everything Americans demanded not long before, but it was still willing to divide and conquer if necessary and possible. Britain's ambivalence, its rule predicated on both diplomacy and coercive enforcement, expressed itself in the Commission's personalities, from pro-American George Johnstone to secretary Adam Ferguson, who favored a more brutal war. The Howe brothers were initially included but returned to England early. Frederick Howard, 5th Earl of Carlisle, was the titular head, but William Eden assumed effective leadership. Eden had authored a criminal law treatise and served on the board of trade. He maintained spies in France, the German states, and the Low Countries, and the loyalist secret agent Paul Wentworth advised him on reconciliation. Wentworth was nostalgic for Americans' recent loyalty, and for a time when his family dominated New Hampshire; he privately attempted to convince Franklin to scuttle the French alliance.<sup>12</sup>

Despite the king's personal doubts about the Commission—on which he neither consulted his full cabinet nor got its complete support—the

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Printed at King's College Cambridge," in *SFM*, 4: 363; O'Shaughnessy, *Men Who Lost America*, 62. Harry T. Dickinson briefly considers the domestic implications in "The Impact of the War on British Politics," ch. 19 in *The Oxford Handbook of the American Revolution*, ed. Edward G. Gray and Jane Kamensky (Oxford, UK, 2013), 355–69, quotation on 359.

11. Ritcheson, *British Politics*, 267; Solomon Lutnick, *The American Revolution and the British Press, 1775–1783* (Columbia, MO, 1967), 123–28; *Morning Post* quotation in O'Shaughnessy, *Men Who Lost America*, 64.

12. Sadosky, *Revolutionary Negotiations*, 106; Brown, *Empire or Independence*, 246; on Eden's consideration of Commission members see *SFM*, 4: 374; Sadosky, *Revolutionary Negotiations*, 106; Gould, *Persistence of Empire*, 103–105, 198; O'Shaughnessy, *Men Who Lost America*, 60; Gould, *Among the Powers of the Earth*, 79.

April 12 orders under his name revealed a compromising spirit. He directed the Commissioners to address American officials "by any style or title" appropriate and to use Parliament's legislation to prove their authority. He demanded immediate notice of reasonable American counterproposals. He stressed Britain's magnanimity: He replaced a guarantee against peacetime standing armies in colonial territory without consent in favor of a vow for none at all if only the colonies agreed to "provide Provincial troops." He would restrain the contentious Admiralty Courts and vowed not to modify colonial governments, charters, and constitutions without the assemblies' consent.<sup>13</sup>

The orders recognized the reality of America's power, its decentralism, and its ambiguous distribution of sovereignty. They authorized the Commission to treat separately with assemblies but warned against "giving umbrage" to the Congress. The Commissioners should avoid any "public appeal" to Americans "at large" except as a very last resort. Additions written into the margins instructed the Commissioners to watch for states willing to separately return to the British empire, a plausible scenario in 1778. This delicate diplomacy aimed at the United States both as unified polity and as separate states reflected the creative range of possibilities Britain now entertained. It acknowledged the Americans' novel theory of federation while hoping that in the worst case Congress could not secure loyalty from every colony. The Commissioners aspired to exploit the popular divisions that Congress so feared—widespread discontent with the war, uneasiness about a French alliance, loyalist sympathies in the mid-Atlantic. Instead, they soon encountered a stubborn Congress claiming a unitary power, eager to obstruct Parliament's direct appeals to its subjects.<sup>14</sup>



In the months before the Commissioners landed, news of their mission aroused both Congress's confidence in its governing principles and its anxieties over whether American unity could withstand the British offers. Even as the Commissioners embarked on the *Trident* in mid-April, American leaders began rejecting Britain's terms. Washington produced

13. O'Shaughnessy, *Men Who Lost America*, 30, 61, 63; Orders to Earl, Howes, Eden, Georgestone, Apr. 12, 1778, *SFM*, 4: 440.

14. Orders to Earl, Howes, Eden, Georgestone, Apr. 12, 1778, *SFM*, 4: 440.

an April 18 letter to Congress, reporting on the Commission's communications. In addition to the official business of war prisoner exchange, the delegates fixated on Parliament's concessions, picking apart the Commission's principal diplomatic leverage well before its arrival. They questioned the documents' authenticity, and some suspected a plan "to amuse Us" and "to relax our Preparations." Henry Laurens suspected forgery, authored in Philadelphia and "calculated to ensnare weak minds, & to disunite the Citizens of these States." The immediate suspicion of designs to divide and conquer underscored anxieties about disunity, provoking radicalized visions of national solidarity. Virginia's Delegates told Patrick Henry that regardless of the document's origins, this "Scheme of the Enemy" threatened to "mislead the ignorant, & alienate the Minds of the wavering." Thomas McKean feared that Congressional or military corruption now posed the main threat to peaceful independence. Laurens told Washington that only national unity could manage the commissioners.<sup>15</sup>

Worried that Britain might foment disunity, American leaders articulated a new vision of unified power, one in which no state was free to defy Congress's will and embrace Parliament's. Samuel Chase suspected that North intended to appeal "*collectively & separately*," to the colonies, so at least some would "renounce *their* independency." Chase stressed "[t]wo . . . essentially necessary" components: "a respectable Army [and] a full Congress," and he suggested pardoning loyalists to win their favor. Laurens suggested that a resolute stance would "oblige" the British "to dulcify their propositions," and pondered displaying the peace offering to the states as evidence of British nefariousness. The same day he

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15. Earl of Carlisle's Entry Book of Commission's Proceedings, *SFM*, 11: 1059; Library of Congress, *Journals of the Continental Congress, 1774-1789*, Edited From the Original Records in the Library of Congress by Washington Chauncey Ford, Chief, Division of Manuscripts, Washington, Government Printing Office, 1908, 10: 369-70 (hereafter cited as *JCC*); Samuel Chase to Thomas Johnson, York Town, Apr. 20, 1778, in *Letters of Delegates*, 9: 452; Henry Laurens to Henry Clinton, Apr. 20, 1778, in *Letters of Delegates*, 9: 455-457; Laurens to Jonathan Trumbull, Sr., Apr. 20, 1778, in *Letters of Delegates*, 9: 458-59; Virginia Delegates to Patrick Henry, York, Apr. 21, 1778, in *Letters of Delegates*, 9: 466; Thomas McKean to Caesar Rodney, York-Town, Apr. 28, 1778, in *Letters of Delegates*, 9: 521; Laurens to Washington, Apr. 27, 1778, in *Letters of Delegates*, 9: 507-508.

identified Congress's efforts at "suppressing" the "Insurrection" activities in Delaware and Maryland. The British indeed wished to divide the colonists, finding both hope and diplomatic liability in the loyalists. George Germain later expressed sympathy for North Carolinians "of considerable Property" targeted by rebel confiscation acts, hoping a truce would protect their estates.<sup>16</sup>

Congress's official response on April 22 conveyed the public defiance that defined the rest of the war. Outwardly unmoved by the taxation concessions, Congress scoffed at Parliament for claiming "what they are pleased to term their right of imposing taxes within these United States." Speaking for the states, Congress mocked the "fallacious idea" that a ceasefire would stall their war preparations. Speaking for the people, who would not "accede" however "wearied with war," Congress predicted Britain's "corrupt influence" would prove practically impotent in "subjugating" them.<sup>17</sup>

Congress's interrogation of the Commission's logic from spring through autumn revealed concerns about the precariousness of American power. Americans had questioned Britain's governing logic for years, from scrutinizing *imperium in imperio* to criticizing conciliatory rhetoric alongside wartime coercion. Congress now pointed to Britain's prior insistence on "a right to bind" Americans, coinciding with "a most cruel war" that enlisted "savages to butcher innocent women and children," language reminiscent of the Declaration of Independence. Congress reasoned that Parliament's 1778 gestures either renounced Britain's "former claims," therefore admitting to "an unjust quarrel," or intended to "deceive America." Congress warned that a future Parliament could reclaim its relinquished tax power and even criticized the offer to pardon rebels for a pardon itself implied "criminality in our justifiable [resistance]." James Lovell noted to John Adams that the British offered peace while spreading propaganda in the Philadelphia and New York *Gazettes* about Washington hinting he might renege on enlistment agreements.<sup>18</sup>

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16. Samuel Chase to Johnson, Apr. 21, 1778, in *Letters of Delegates*, 9: 462; Laurens to John Penn, Apr. 24, 1778, in *Letters of Delegates*, 9: 480; Laurens to Richard Caswell, Apr. 24, 1778, in *Letters of Delegates*, 9: 478; George Germain to HM Commissioners, May 29, 1778, *SFM*, 11: 1088.

17. *JCC*, 10: 374, 375.

18. *Ibid.*, 10: 376-78; Lovell to John Adams, Apr. 29, 1778, in *Letters of Delegates*, 9: 543.

Against Britain's governing logic, Congress offered a less ambiguous model of sovereignty—its own. Only when Britain withdrew its military or conceded independence would the United States even indulge the Commissioners with a conference. This unanimous resolution projected unshaken national resolve not only against Britain but also against internal dissent. Independence was a “great cause” of interest to “all mankind” that depended on America's endurance. Congress found authority in humanity's universal interests. Accordingly it regarded “any men, or body of men” willing to negotiate with the commissioners “as open and avowed enemies of these United States.” Laurens applauded the resolution, which he predicted would show the Commissioners the futility of their effort once they arrived.<sup>19</sup>

But this claim of unity cloaked the true division. Not every delegate sincerely embraced the unwavering posture. Dutifully supporting the resolution, North Carolina's Thomas Burke nevertheless found the political atmosphere discomfiting. Burke lamented that Congress cared little for “Rights of private citizens” or “our sovereign communities” and that “any rumor” could lead the “majority to violate both, and it is hardly safe to oppose it.” Each state's sovereignty had become a “chimerical phantom” next to “the unlimited power of Congress” to unilaterally use military force and imprison in violation of habeas corpus. Burke told Laurens he wanted to leave Congress and penned a warning to his state assembly that some Congressional members had an “Extraordinary propensity” to exercise unnecessary and illegal powers, to violate free speech and civil liberties “on a groundless Supposition of an Insurrection.”<sup>20</sup>

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19. *JCC*, 10: 379; Laurens to Jacob Christopher Zahn, Apr. 28, 1778, in *Letters of Delegates*, 9: 519.

20. Thomas Burke to Caswell, Apr. 25, 1778, in *Letters of Delegates*, 9: 483–84; Burke to Laurens, Apr. 28, 1778, in *Letters of Delegates*, 9: 508–509; Burke to the North Carolina Assembly, Apr. 29, 1778, in *Letters of Delegates*, 9: 535, 539. Divisions within America did not always predictably track demographics. Woody Holton considers the complexities in *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill, NC, 1999). Also focused on Virginia, Michael A. McDonnell argues that Dunmore's offers as well as war mobilization exposed the tension between “elites' anxious rhetoric of unity” and “internal divisions” in “Class War? Class Struggles during the American Revolution in Virginia,” *Class and Early America, William and Mary Quarterly* 63 (Apr. 2006), 305–44, quotations on 315, 316, and 339.

Congress had limited means to combat the dissent it feared. Force alone could not secure unity. In early May Congress circulated to churches a bulletin describing the war as a struggle between "fraud and violence laboring in the service of despotism" and "virtue and fortitude supporting and establishing the rights of human nature." It invoked the specter of Indian mercenaries and recalled that Britain had "spurned, contemned [sic], and insulted" a helpless America's "vain" pleas for peace. Now that Americans could defend themselves, the "haughty prince" offered "terms of accommodation" to "seduce you into a dependence" that "the most humiliating slavery" would follow. Unlike its idealistic summary rejection, Congress's circular appeared to take seriously practical implications.<sup>21</sup>

Congressional members meanwhile contemplated the Commission's authenticity and took the opportunity to assert its sovereignty among nations. John Matthews believed that in light of France "North earnestly wishes peace" and might countenance independence. France exposed practical considerations Congress contemplated beyond its principled stand. Robert Morris said that Johnstone revealed Britain's hand by mentioning the French alliance in a letter to Congress. The delegates were suspicious that opportunism and fear undergirded Britain's peace feelers. Convinced of Britain's desperation, Gouverneur Morris boasted that three months of diplomacy with France's ministers present would secure independence and peace.<sup>22</sup>

International relations underscored the limits of logic in the face of power. The need to finalize the French treaty highlighted the constraints national powers confronted. Despite outward confidence, American leaders prioritized the French treaty, which was not yet finalized. Fortunately, the Commission served as diplomatic leverage. Before Congress's official rebuke, American diplomats assured Foreign Minister Vergennes that Congress would dissuade Britain from "tempting" America with

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21. *JCC*, 11: 474, 475, 477, 478.

22. John Mathews to Thomas Bee, Apr. 26, 1778, in *Letters of Delegates*, 9: 498–99; Laurens to R. Morris, Apr. 27, 1778, in *Letters of Delegates*, 9: 504–505; G. Morris to John Jay, Apr. 29, 1778, in *Letters of Delegates*, 9: 545. David C. Hendrickson has situated the appeals to the law of nations in its struggle with Britain as formative to American diplomacy and thus power. See Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, KS, 2003), 170–76.

anything short of independence, that they gave “no encouragement to such overtures,” while stressing the treaty’s urgency: Congress’s rebuke would “make certain” its resolve “especially after the treaties are known.” On April 30, Lovell, on behalf of the Committee for Foreign Affairs, sent proof of Britain’s peace offerings to Paris, noting “the Strength of our enemy” and the need for French credit, “after which we may bid defiance to Britain and all her German hirelings.” In a proposed resolution in early May, William Henry Drayton reiterated the importance of French credit. Richard Henry Lee wrote to Jefferson that Britain was now stuck between acknowledging U.S. independence or confronting French power, and relayed intelligence to Washington indicating that North’s reconciliation intended to prevent the French treaty.<sup>23</sup>

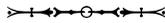
Receiving confirmation of the treaty on May 14, Lee and Lovell attempted a delicate balancing of their diplomatic assets. They carefully emphasized the treaty’s importance to independence while clarifying that Congress did not take Britain’s gestures seriously. They wrote to Paris celebrating that the agreement “unriddled the Affair” of North’s conciliatory acts. At the same time, North’s bills were “truly unworthy [of] the attention of any National Body,” and Lee and Lowell assured Paris that Congressional leaders had “instantly” and “unanimously” rejected the offers. Paradoxically, they pointed to Britain’s unworthy gestures as confirming the palpable reality of Congress’s leadership of the states. Now recognizing diplomacy’s importance in international signaling, the Committee of Foreign Affairs described Britain’s peace offerings as “calculated” to convince Europe that Americans were “not thoroughly fixed in our plan of independence.”<sup>24</sup>

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23. The American Commissioners to Vergennes, Apr. 10, 1778, ALS: Archives du Ministère des affaires étrangères, Franklin Papers, FranklinPapers.org; Committee for Foreign Affairs to the Commissioners at Paris, Apr. 30, 1778, in *Letters of Delegates*, 9: 547; William Henry Drayton’s Proposed Resolution, May 1, 1778, in *Letters of Delegates*, 9: 551–52; Lee to Jefferson, May 3, 1778, in *Letters of Delegates*, 9: 586; Lee to Washington, May 6, 1778, in *Letters of Delegates*, 9: 616. As Lynn Hunt has noted, the French would have declined to ally with the colonies had they “not . . . acted as if they were independent,” and “the British would never have conceded independence if asked politely.” See Hunt’s book review, “The Declaration of Independence: A Global History by David Armitage,” *William and Mary Quarterly* 65 (Apr. 2008), 347–49, quotation on 348.

24. Committee for Foreign Affairs to the Paris Commissioners at Paris, May 14, 1778, in *Letters of Delegates*, 9: 659; Committee for Foreign Affairs to Ralf Izard, May 14, 1778, in *Letters of Delegates*, 9: 662.

Both Congress's confidence and anxiety had mounted while the Commissioners were still in transit. Congress rejected North's gestures, prepared against national disunity, and leveraged the Commission to secure French assistance all before the diplomats arrived. But fear of dissent and international diplomacy exposed the limits of Congress's power. On May 27, about 70 leagues from the coast, the Commissioners learned that Henry Clinton and Lord Howe were in Philadelphia. Howe wrote to Washington, awaiting the "earliest opportunity" to forward North's conciliatory legislation. On June 3 Clinton sent Laurens copies. The Commissioners finally arrived on June 4, unaware how their mission had already provoked so much concern about American sovereignty.<sup>25</sup>



Underneath the constitutional rhetoric were the dynamics of war. Upon their arrival, the Commissioners dishearteningly learned that British forces had evacuated Philadelphia, significantly weakening their bargaining position. Carlisle told his wife the drawdown "will not give us much assistance" and later lamented the fate of Philadelphia's loyalists, many of whom Britain abandoned to Congress. Eden saw Britain's leverage undermined without a credible threat of re-conquest and doubted the wisdom of evacuating before his Commission could make "a full gesture." Controlling Philadelphia would have allowed Britain the credible claim of having tried desperately for peace, forced to unleash destruction against rebels eager to aid "the strength of France." Instead, offering peace "at the moment of an apparent retreat" increased Britain's diplomatic "disadvantage." Britain's own paradoxes of rule were now so pronounced that a peace delegate contemplated destroying a city while bringing unprecedented terms of conciliation.<sup>26</sup>

25. Clinton to Laurens in *SFM*, 11: 1089; *SFM*, 11:1059; Lord Viscount Howe to Washington, May 27, 1778, *SFM*, 11: 1087.

26. Lord Carlisle to Lady Carlisle, June 14, 1778, The Manuscripts of the Earl of Carlisle, preserved at Castle Howard, Great Britain, London, Printed for H. M. S. O., by Eyre and Spottiswoode, 1897, Historical Manuscripts Commission, Fifteenth Report, Appendix, Part 6, 341 (hereafter cited as Carlisle MSS); Lord Carlisle to Lady Carlisle, June 21, 1778, Carlisle MSS, 345; Wm Eden: On Receiving News of Proposed Evacuation of Philadelphia, June 5, 1778, with June 8 note, in *SFM* 5: 496. Robert Middlekauff finds North's failure to inform the Commission of the Philadelphia evacuation as evidence "of a lack of interest in the commission's work." Middlekauff, *Washington's Revolution: The Making of America's First Leader* (New York, 2015), 210. Conceivably, North's deprioritiz-

In contrast to the mixed messages in Britain's Commission and withdrawal, Congress projected an undivided public face in preemptively rejecting North's terms. Whatever Britain or Congress's touted governing ideals, the drawdown underscored the centrality of coercion to political rule. Americans were sensitive to the *realpolitik*, having monitored troop movements for indications of early withdrawal. Lee wondered whether the retreat was "designed to amuse us, and prevent the collection of a strong army." He later conceded that the evacuation "may be so" but maintained suspicions. The day after anchoring at Newcastle, the Commissioners circulated their authorizing legislation, including "sufficient powers to suspend . . . any Act or Acts of Parliament which have passed since the 10<sup>th</sup> day of February 1763." Washington's terse response foreshadowed what the Commissioners could expect.<sup>27</sup>

Britain, unable to rely solely on military victory, invoked the principle of peace. Addressing Laurens on June 9, the Commissioners proclaimed their pacifist desire "to Stop the further Effusion of Blood and the Calamities of War." Insisting that equally violent ruptures had ended in reunions, they held out hope for "Cordial Reconciliation." Parliament's gestures were unanimous, its "good intentions" unquestionable, its commitments to peace, free trade, and all the conditions the colonists before demanded unassailable. Acknowledging American federalism, Parliament would provide seats for the "different States," and respect each assembly's civil military powers. They pled the Americans to embrace the "ties of Consanguinity" and common language that tied them to the British against the French. Eden's notes emphasized this commonality of blood, language, religion, and laws. Unmoved by such ethnic appeals, Lee, writing to Francophile Jefferson, condemned the letter as "fraud" and "falsehood" ending with "denial of Independence," and an "abuse of France."<sup>28</sup>

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ing the Commission did not indicate he would not have taken any pleasantly surprising diplomatic breakthroughs seriously.

27. Laurens to Clinton, May 8, 1778, in *Letters of Delegates*, 9: 620; Lee to Jefferson, May 11, 1778, in *Letters to Delegates*, 9: 649; Lee to John Page, May 31, 1778, in *Letters of Delegates*, 9: 791; *SFM*, 11: 1059; Washington said little more than, "My lord, On Thursday last I received the Favor of your Letter of the 27<sup>th</sup> [and] the Copies of the Acts to which it refers," to Lord Viscount Howe, June 6, 1778, *SFM*, 11: 1098.

28. Commissioners to Laurens and Members of Congress, June 6, 1778, *SFM*, 11: 1104; Notes for the First Letter of the Commissioners, Hand of William Eden,

The Americans exploited their home advantage. As its members anticipated, Congress refused to let the Commissioners make their case in person. Charles Carroll correctly predicted that Congress would deny the Commissioners a passport, barring acquiescence to America's terms. Laurens commended Washington for denying passage to Ferguson. Lee later considered issuing him one, but requiring an escort because the "Enemy is cruel." Congress's members meanwhile prepared an image of unanimity, sharing boilerplate language for their correspondence. Laurens asked the states to strengthen their resolve. On June 10 Laurens condemned Britain's "delusive appearances of peaceful Acts and Peace-making Commissioners" even as they waged war with "Acts of cruelty and devastation." Congress moreover needed to "press upon" the states to secure war finance.<sup>29</sup>

Congress's confident refusal to meet masked growing internal anxieties about the potency of Britain's offers. While formulating an official response, members took seriously the implications of governing logic. Francis Dana argued that the king should recognize independence unless he lacked the diplomatic power and so the negotiations were "insidious." Charles Thompson warned that Congress even explaining its refusal to negotiate independence would "enter into a chain of reasoning," showing weakness to its constituents. Instead, a terse rejection would "appall our enemies and inspirit the friends of the cause." Yet while suggesting

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June 9, 1778, *SFM*, 5: 497; Lee to Jefferson, June 16, 1778, in *Letters of Delegates*, 10: 106.

29. John Wentworth to John Langdon, June 10, 1778, in *Letters of Delegates*, 10: 69; Charles Carroll of Carrollton to Charles Carroll, Sr., June 11, 1778, in *Letters of Delegates*, 10: 71; Committee of Congress Proposed Report, June 11, 1778, in *Letters of Delegates*, 10: 71; Laurens to Washington, June 11, 1778, in *Letters of Delegates*, 10: 75; *JCC* 11: 616; Washington to Adam Ferguson, June 9, 1778, *SFM*, 11: 1104; Richard Henry Lee's Proposed Resolution, June 12?, 1778, in *Letters of Delegates*, 10: 81; James Lovell said that "Terms consistent with the Honour of Independent States" would help end "this unprovoked & cruel War," June 9, 1778, in *Letters of Delegates*, 10: 56; Thomas McKean used similar words in a letter to Sarah McKean, changing the ending to stress "*Independent Nations*," June 9, 1778, in *Letters of Delegates*, 10: 60; three days later Josiah Bartlett wrote similar words, hoping for "proper measures Consistent with the Rights of Independent Nations," to Nathaniel Folsom, June 12, 1778, in *Letters of Delegates*, 10: 77; Henry Laurens to the States, June 10, 1778, in *Letters of Delegates*, 10: 67.

Britain could not prevent independence, some maintained hope for recognition. Laurens hoped the Commissions possessed the “full powers to acknowledge . . . sovereignty.” Members took Parliament’s Acts seriously enough to study them carefully. Congress on June 17 unanimously derided the premise that Americans were “subjects of the crown,” insisted it was “inclined” toward peace, and demanded the king to accept peace by recognizing independence or withdrawing his troops. Laurens declared that Congress would entertain a treaty consistent with “Treaties already subsisting,” meaning the French alliance.<sup>30</sup>

Outwardly boastful of its rightful sovereignty, Congress quietly acted on its fears that Britain might undermine American resolve. Worried about English letters “insidiously calculated to divide and delude the good people of these states,” Congress formed a committee comprising Gouverneur Morris, Richard Henry Lee, and William Henry Drayton to suppress independent correspondence from the Commission and Britain. With very limited national police power, Congress enlisted the states to practice “vigilance” so as to suppress the “dangerous and criminal . . . correspondence.”<sup>31</sup>

Such “vigilance” required a localized effort, nationally coordinated by the Committees of Safety. Laurens, having instructed Washington to “take the most effectual measures for preventing the evil in Camp,” informed the general of Congress’s pressure on members to relinquish private letters from British officials, an intrusion he would normally find “exceedingly abhorrent” but thought circumstances justified. He especially worried about letters from Johnstone, whose “deep schemes” he distrusted. Johnstone had tried bribing American leaders, which potentially exposed a fracture in American resolve. Four days later Laurens told John Houstoun about Congress’s efforts to suppress correspondence.<sup>32</sup>

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30. Francis Dana’s Notes, June 16?, 1778, in *Letters of Delegates*, 10: 104; Charles Thomson’s Notes, June 16, 1778, in *Letters of Delegates*, 10: 112; Henry Laurens to John Laurens, June 17, 1778, in *Letters of Delegates*, 10: 126; McKean to Caesar Rodney, June 17, 1778, in *Letters of Delegates*, 10: 129; James Lovell to Horatio Gates, June 18, 1778, in *Letters of Delegates*, 10: 133; *JCC*, 11: 615; Laurens to HM Commissioners, June 17, 1778, in *SFM*, 11: 1110.

31. *JCC*, 11: 616.

32. Laurens to Washington, June 17, 1778, in *Letters of Delegates*, 10: 127; Laurens to Washington, June 18, 1778, in *Letters of Delegates*, 10: 131; Adams to James Warren, July 20, 1778, in *Letters of Delegates*, 10: 315; Lee to Jefferson,

In sharp contrast to Congress's pithy official response, Drayton and Morris thoroughly cross-examined the Commission's logic, stressing American power as both predestined and irreversible. Drayton's June 17 open letter targeted British rule's incoherence. He criticized Johnstone for offering predictably unacceptable terms, remarked that mere Parliamentary representation had scarcely helped Scotland, and accused the British of scheming to monopolize trade. As for American power, it was "formed for empire . . . naturally" and "having tasted of it she will be ever anxious to possess it again." America was "*de facto et de jure*" independent, its status recognized by France, officiated by "the great powers of Europe," "our own virtue and the favour of Heaven."<sup>33</sup>

Charged with quashing seditious contact, Gouverneur Morris affirmed America's unity and coercive capacity. He presumptuously spoke for "the sentiments of America" in his first open letter signed, "an American." Unlike "rude Americans" who mistook the Commission's intentions, he understood them: Britain wanted "to monopolize our commerce," while America's "interest [was] to trade with all the world." But power would settle the matter. Britain's promise to consult the assemblies before deploying troops was "exemplary condescension," because it was not for Britain to decide. Morris quipped that indeed "no military force shall be kept [here] without the consent of" American leaders. U.S. jurisdiction over military matters was a *fait accompli*, determined by enforceability and might. Britain's willingness to negotiate given American power and French assistance was "(excuse the word) disingenuous."<sup>34</sup>

Morris's stridency obscured his own insecurities. He opposed a full reading of the Commission's letter before Congress. He publicly and anonymously dissected British governing logic, but strategized that refusing negotiation would demonstrate strength and win over the Tories, whose loyalism contradicted the very unity Morris and Congress touted. Moreover, the very peace offer Congress deemed unworthy of

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July 20, 1778, in *Letters of Delegates*, 10: 323; Laurens to John Houstoun, June 22, 1778, in *Letters of Delegates*, 10: 172.

33. William Henry Drayton to the Carlisle Commissioners, June 17, 1778, in *Letters of Delegates*, 10: 116, 118–21.

34. Morris, *Pennsylvania Gazette* (Philadelphia), June 20, 1778, in *To Secure the Blessings of Liberty: Selected Writings of Gouverneur Morris*, ed. J. Jackson Barlow (Indianapolis, IN, 2012), 26, 28–29, 32.

consideration continued to serve its diplomacy. On June 21 Henry Lee, Thomas Heyward, Jr., and James Lovell sent an update to Paris on the Commission, reminding their new ally of Britain's eagerness to negotiate.<sup>35</sup>

In July the contest over high principle was degenerating into semantic games. Having fled Philadelphia, and now awkwardly corresponding from New York with the Americans in York, Pennsylvania, the Commissioners wrote to Laurens and Congress. They acknowledged that Congress wanted "Independence of these States," and, declining "to dispute . . . the meaning of Words," recapitulated the confederation offer, suggesting that Congress could call it independence. Britain would willingly "[en]large that Independency," but needed a mutual defense posture against France. The Commissioners protested any American treaties undertaken without British knowledge. They aimed a fundamental question at Congress's treaty power, noting that the "proposed Articles of Confederation" specified "certain Restrictions" and that no "Act or Resolution" from the state assemblies had authorized Congress to treat with France. They hinted that they might take their case "to the Public."<sup>36</sup>

Having grown accustomed to interrogating Britain's governing logic, the Americans were now on the defensive. Lee dismissed the Commissioners as "very silly, and equally insolent," unworthy of official response. But Drayton and Morris published mindful responses under their pseudonyms. Drayton accused the Commissions of twisting "the meaning of words": "[A] state of *independence*" cannot be "a state of *dependence*." He pointed to practical considerations. The British were "deaf" to legitimate grievances when America "was destitute of arms," demanding "unconditional submission" in 1776 and 1777, and only now negotiated from desperation, yet still sought "dominion" over the colonies, an "*independent dependence*—a jargon of words—a very chaos

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35. Morris to Jay, June 23, 1778, in *Letters of Delegates*, 10: 186; Committee for Foreign Affairs to the Commissioners at Paris, June 21, 1778, in *Letters of Delegates*, 10: 169.

36. Brown, *Empire or Independence*, 269; the expected evacuation to Philadelphia halted once the Commissioners arrived, Joseph Reed wrote to Esther Reed, June 9, 1778, in *Letters of Delegates*, 10: 62; by month's end, Samuel Adams observed the evacuation essentially complete, writing to James Warren, June 19, 1778, in *Letters of Delegates*, 10: 135; Commissioners to Laurens and Congress, July 11, 1778, *SFM*, 11: 1119.

of ideas." Drayton invoked decentralism to defend Congress's treaty power: "Congress do not *conceive* themselves answerable to you." They knew "their own powers" and were "answerable to their constituents." The assemblies had not censured Congress, so the Commissioners "*ought to infer*" that they approved Congress's authority. Most strikingly, Drayton insisted that the war would extend American sovereignty. Although the Commissioners seemingly neglected Florida, Nova Scotia, and Canada in defining "'the people of North America,'" Congress intended to "raise them to the rank of independent freemen."<sup>37</sup>

Morris's legalistic response resorted to appeals to force. He affirmed treaty power as Congress's "indispensible Duty" while questioning the Commissioners' authority to speak on Britain's behalf. He revisited Britain's inconsistent gestures and asked rhetorically "how a body of men in this country" could protect Britain from French invasion. He accused Britain of duplicity in offering to share the West Indies, slave trade, and fisheries, while urging France not to trust American negotiations. But ultimately the sword was mightier than the pen. Britain had "tried fleets and armies, and proclamations, and now you threaten us with newspapers."<sup>38</sup>

Meanwhile, Britain shifted its target toward popular consent. The Commissioners appealed directly to the American people, accusing Congress of fraudulent domination. Carlisle believed that aside from military victory, Britain's last hope, however remote, was to excite public resentment against a Congress stubborn to negotiate reasonably. Addressing "the People of America," the Commission disseminated a point-by-point response to Congress's public rebuke. Once the "happiest People upon Earth," Americans were "fatally misled" to revolt. Their leaders had "Cruelly poisoned" their minds with a "pretended Plan of Despotism," and all over a "trifling" 3 percent tea tax. Candidly describing Britain's pre-war diplomacy as the "Sword in one Hand and the Olive-Branch in the other," the circular accused Congress of seeking "an absolute

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37. Lee to Jefferson, July 20, 1778, in *Letters of Delegates*, 10: 322; Drayton to the Carlisle Commissioners, July 18, 1778, in *Letters of Delegates*, 10: 296, 298, 301–302, 299, 296.

38. Gouverneur Morris' Proposed Resolves, July 18, 1778, in *Letters of Delegates*, 10: 310; Morris, *Pennsylvania Packet* (Philadelphia), July 21, 1778, in *Selected Writings*, 35, 36.

Dominion” over the colonists, rejecting their reasonable demands, abolishing their “Freedom of Debate,” and allying with their French enemies. Presaging centuries of populist rhetoric, the Commission asked the “good People, what is *your* Opinion?”<sup>39</sup>

The message identified a genuine divide and prompted a defensive resolve. Josiah Bartlett hoped that Britain’s “appeal to the people at large” would fail, and his wife Mary reassured him that the people she knew approved of Congress’s posture. Many Americans remained patriotic through the Commissions’ appeals. A *New Jersey Gazette* commentary in May urged women to withhold intimacy from husbands tempted by the peace offer, suggesting genuine concern of defection. An August editorial open letter to the Commissioners in the *Pennsylvania Packet* echoed Morris and Dayton’s tone.<sup>40</sup>

But as resolute as Drayton and Morris were, they spoke primarily for Congress. Congress’s plans to control correspondence revealed fears of fracture. And loyalists differed, from not only Congress but one another. One New York loyalist merchant, losing hope in reclaiming confiscated property, committed suicide upon hearing of North’s offering. Tories regarded the Commission a short-term threat or the effective end of their beloved empire. Others wanted peaceful reconciliation or focused their frustrations on uncompromising American leaders. Admiralty judge Samuel Curwen, regretting Britain’s losses, told his friend John Timmins in London that he lamented the “dangerous, distrustful situation,” finding it more precarious than 1688’s Glorious Revolution or 1745 when Scottish “rebels had penetrated as far as Derby.” Curwen had always “doubted that Congress would accept terms short of independence,” but

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39. Lord Carlisle to Lord Gower, July 1778, Carlisle MSS, 349; Lord Carlisle to Lady Carlisle, July 10, 1778, Carlisle MSS, 355; A British Officer to the People of America: Address on the Action of Congress with Regard to the Conciliatory Bills, Summer 1778, 11: 1112.

40. Josiah Bartlett to William Whipple, July 27, 1778, in *Letters of Delegates*, 10: 360; Bartlett to Whipple, July 27, 1778, in *Letters of Delegates*, 10: 360; From Mary Bartlett, July 10, 1778, *The Papers of Josiah Bartlett*, edited by Frank C. Mevers (Hanover, NH, 1979), 194; “From the Pennsylvania Packet to Their Excellencies Lord Carlisle, William Eden, Sir,” *New-Jersey Gazette* (Burlington), Aug. 12, 1778. John R. Alden holds that although “a few Patriots” took the offer seriously, “No prominent person came forth” advocating reunion even on the favorable terms. Alden, *A History of the American Revolution* (New York, 1969), 387.

the news still "deranged" him. His remaining desperate hopes lay in Americans seeing their interests in a "different point of light from" Congress's "ambitious views" and "lust of power."<sup>41</sup>

Whether hopeful or not, loyalists faced a new world. Morris had told the Commissioners that to "protect the Tories" they should acknowledge the practical reality. The Tories would "take care of themselves." The "little ones" would receive pardon; the leaders deserved none. The British had lost the capacity to protect them, including the four thousand abandoned in Philadelphia.<sup>42</sup>



In their last volleys, both Congress and the Commission turned from their rhetorical war of high principles to desperate appeals to the states. By late summer, Congress's invocation of representative constitutionalism gave way to its anxieties about American unity, expressed through a forceful attempt to secure the states' loyalty. Congress gave confident, sometimes disingenuous, reasons for refusing negotiations. Its members pointed to Johnstone's ostentatious efforts to bribe Robert Morris, Washington, and Laurens if they helped reconciliation. Laurens decried the scandalized Commission as "wholly unworthy of . . . further regard," with whom Congress should "hold no conference." Drayton declared it time to "cut off all communication." As Johnstone returned to Britain, Carlisle and Eden, now joined by Henry Clinton, denied knowledge of the bribery efforts and reiterated their peace offer. The Commissioners' attempts to revive negotiation and ratify the Convention of Saratoga,

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41. Brown, *Empire or Independence*, 257; Ritcheson, *British Politics*, 268; *SFM*, 4: 356; *Journals and Letters of the Late Samuel Curwen, Judge of Admiralty, etc., an American Refugee in England, from 1775 to 1784*, ed. George Atkinson Ward (New York, 1842), 163, 200–201. Maya Jasanoff identifies the continuing controversy in considering "loyalists among the victims of republican chauvinism" and affirms that the Revolution "really was a civil war" in which "loyalist claims to British rights echoed those of their American patriot peers" "competing impulses toward liberty and authority." Jasanoff, "The Other Side of Revolution: Loyalists in the British Empire," *William and Mary Quarterly* 65 (Apr. 2008), 205–32, 207, 232. Edward Larkin situates loyalists at the center of the story in "Loyalism," ch. 16 in *The Oxford Handbook of the American Revolution*, 291–310.

42. Morris, *Selected Writings*, 35; Ritcheson, *British Politics*, 276; for more on the military context of the struggle over Philadelphia, see Lender and Stone, *Fatal Sunday*.

which recognized and allowed passage to troops aligned with Britain, provided another opportunity to impugn their authority. Laurens questioned the unilateral ratification's legitimacy. Vacillating between principled rebuke and nuanced consideration, Laurens studied the fine print. Josiah Bartlett nitpicked the Convention for lacking the king's signature. But Congress never intended a fair hearing, bribery and Saratoga aside.<sup>43</sup>

In September, Drayton and Morris's new open letters again contrasted American and British rule and boasted both popular consent and obedience. Drayton wrote of dubious powers, North offering peace while waging war, and the Johnstone scandal. He condemned Britain's use of "Indian allies to massacre the unarmed, the aged, the sick, the infant, the matron, wife and virgin," another reminder of the native occupants of contested territory. Most important, Drayton affirmed sovereignty as arising from the states unified in demanding independence. Congress and unity among states would reinforce each other. Any member tempted by peace might "make *atonement with his head*." This reciprocal deference between Congress and the assemblies produced a novel imperial logic. Congress as "head of the American Empire" was both "supported and obeyed by the people, in every measure tending to the establishment of their Independence." Yet Congress had "no power of themselves." It came "from the support of the people."<sup>44</sup>

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43. *JCC*, Aug. 11, 1778, 11: 771; Laurens to Washington, July 31, 1778, *Letters of Delegates*, 10: 377; Laurens to Rawlins Lowndes, Aug. 7, 1778, in *Letters of Delegates*, 10: 401; William Henry Drayton's Notes for Speech in Congress, Aug. 11, 1778, in *Letters of Delegates*, 10: 426; Declaration by Carlisle, H. Clinton, and Wm. Eden, New York, Aug. 26, 1778, published in multiple papers, including *The New Jersey Gazette* (Burlington), Sept. 23, 1778; in *THOMAS'S Massachusetts Spy Or, American Oracle of Liberty* (Worcester), Sept. 24, 1778; and in *Norwich Packet* (CT), Sept. 28, 1778; Laurens to John Sullivan, Aug. 16, 1778, in *Letters to Delegates*, 10: 453; Laurens to William Livingston, Aug. 21, 1778, in *Letters of Delegates*, 10: 487; Laurens to Washington, Sept. 12, 1778, in *Letters of Delegates*, 10: 628–29; Josiah Bartlett to Mary Bartlett, Sept. 8, 1778, in *Letters of Delegates*, 10: 600.

44. Drayton to the Carlisle Peace Commission, Sept. 4, 1778, in *Letters of Delegates*, 10: 568, 569. Colin G. Calloway's broad discussion of American Indians in *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities* (Cambridge, UK, 1995) is still useful. The year 1778 featured the important fighting that provoked Washington's "Western Expedition" early the next year. See Jane T. Merritt, "Native Peoples in the Revolutionary War," in *Oxford Handbook of the American Revolution*, 241–43.

Morris continued to identify Congressional authority in consent, but shared with Drayton the theme of coercive capacity. The Commission erred, explained Morris, in assuming Congress led rather than represented the people. Americans had "rid of one King without getting another." Morris's republican vision conflicted with Drayton's enforced unity, but he stressed the question of effective imperial reach. Intoxicated by "hopes of conquest," Britain had before refused to budge, and now it could not enforce its will. Yet the formula now applied to Congress, refusing what most Americans sought in 1775.<sup>45</sup>

Carlisle's increasingly belligerent language also signaled recognition that force would determine the outcome. In August he predicted that recalcitrant Americans would learn that Britain "can still be an object of terror." A month later he championed "any means in her power" against American-French collaboration. Tactics once deemed "inhuman and impolitic" would now be "neither cruel or unwise." In October he reflected on changing his mind. He had hoped that "liberal, specific, and intelligible" offers coupled with "most active and spirited military operations" would persuade Americans of reunification. France's alliance dashed his hopes, the "clouds began to spread around us," and he considered "totally abandon[ing]" his mission.<sup>46</sup>

The Commission and Congress turned toward the population with both promises and threats. Carlisle, Clinton, and Eden issued a final "Manifesto and Proclamation" in October, promising "blessings" of peace and threatening a "train of evils." It directly asked the colonies, plantations, provinces, public, and individuals to join the king and defend religious liberty against Catholic France. Britain would pardon capitulating rebels, except prisoners of war, and regard France's conspirators as mortal enemies. Whereas "benevolence" had before "checked" its tactics, Britain would now consider "every means in her power" to combat "her ruin and . . . the aggrandizement of France." The Commissioners vowed never to recognize independence. Such a concession would personally embarrass them. Americans had forty days to decide.<sup>47</sup>

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45. Morris, *Pennsylvania Packet* (Philadelphia), Sept. 19, 1778, in *Selected Writings*, 39, 41.

46. Minutes by Lord Carlisle, Aug. 29, 1778, Carlisle MSS, 362; Carlisle on French alliance, Sept. 29, 1778, in *SFM*, 5: 529; The Earl of Carlisle to the Rev. Mr. Ekins (private), Oct. 1778, Carlisle MSS, 376.

47. Carlisle Commission Proclamation and Manifesto, given Oct. 3, 1778.

The Manifesto went out under the flag of truce as the Commissioners talked realpolitik with George Germain, identifying “the sword” rather than “popular affection and confidence” as Congress’s source of authority. They hoped to have weakened “the Spirit of the Revolt,” but Congress’s stubborn despotism had led Americans astray. Only “the Tyranny of their Leaders” had severed Americans’ loyalty to the king, Germain concluded. As he understood it, most wanted peace, but Congress obstructed direct, open negotiations. Contact with loyalists distorted his perspective. Two years later he estimated half of Americans loyal, suppressed by the “tyranny of Congress.”<sup>48</sup>

As Congress repeated its message—independence, withdrawal, or war until victory—Morris and Drayton returned to Britain’s governing logic. Under his own name, Morris addressed General Burgoyne’s complaints about unilateral modifications to the Saratoga Convention, asking why the British felt bound by an allegedly violated Convention. He repeated the critiques of the Crown’s treating Americans as British subjects. But such points now raised questions about American power. If America’s independence was justified, real, enforceable, and unchallengeable, why fixate on Britain’s legitimacy? Morris also revealed a breach in U.S. legitimacy in condemning Lord Dunmore’s offer to emancipate anti-rebel slaves, a threat as real as slaves’ lack of loyalty. Drayton disingenuously criticized the Commission for leaving prematurely and raised the fundamental point that God had ordained independence. Having tried the “art of persuasion” and “corruption,” Britain’s “arts have failed,” its “force has failed,” and America would never again “compliment Great-Britain with our obedience.”<sup>49</sup>

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48. Commissioners to Germain, Oct. 15, 1778, *SFM*, 12: 1178, 1180; Germain to Commissioners, Oct. 15, 1778, *SFM*, 12: 1185; O’Shaughnessy, *Men Who Lost America*, 187.

49. *JCC*, 12: 1015; Morris, *Pennsylvania Packet* (Philadelphia), Oct. 20, 1778, *Selected Writings*, 46–51 (responding to a September letter from Henry Clinton to Congress); *ibid.*, 45–46; Drayton to the Carlisle Commissioners, Oct. 24, 1778, in *Letters of Delegates*, 11: 109. Sylvia R. Frey explores the complex relationship between African Americans and the Revolution in *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton, NJ, 1993). By 1778, the Continental Army had become more open to African American enlistees. See Gary B. Nash, “The African Americans’ Revolution,” in *Oxford Handbook of the American Revolution*, 250–72, quotation on 256.

Congress condemned the attempt to divide Americans and took the threat seriously. It issued a defiant counter-manifesto. Britain had "butchered" Americans, deserved "contempt," and now sought to taint their "souls with the blackest of crimes." Afraid of failing to foment treachery, Britain threatened "weak minds" with "more wide devastation." Congress also made threats: "exemplary vengeance" would prevent disunity. While claiming a deferential population, Congress would prevent the Manifesto's free distribution, enlisting "the executive powers of these United States" to capture its carriers, flags of truce notwithstanding. Yet Congress encouraged newspapers to publish the Manifesto to expose its "insidious designs."<sup>50</sup>

A flag of truce could not enforce itself. Congress's display of censorious power, inspired by fears of internal dissent, provoked internal confusion. Congress sought to control the Manifesto's distribution, perhaps to determine the narrative or flaunt power. Whether Congress genuinely feared "dissentions, animosities and rebellion," its language prioritized the national unity it increasingly stressed from April to October. U.S. officials detained British troops carrying the Manifesto with flags of truce. Samuel Adams said those carrying the "insulting Paper . . . calculated to promote a Rebellion" would be "blindfolded . . . confined & dealt with according to the Laws of Nature and Nations." Faced with efforts "to divide and mislead," American troops hesitant to arrest would "be made answerable." But the captives' treatment confused some Americans. James Dick, commissary of Naval Prisoners in New York, felt uneasy detaining an officer "contrary to all Faith and confidence." Rear Admiral James Gambier demurred at placing "an officer of the King" with a flag of truce in a "common prison," questioning the logic of treating as "seditious" a Manifesto addressed to Congress.<sup>51</sup>

It now became clear. America's governing logic suffered from some of

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50. Oct. 30, 1778, *SFM*, 12: 1199; *JCC*, 12: 1016.

51. Adams to Timothy Matlack, Oct. 16, 1778, in *Letters of Delegates*, 11: 60; Report of John Hay to Virginia and Maryland, Oct. 29, 1778, *SFM*, 12: 1198; Laurens to John Houstoun, Oct. 18, 1778, in *Letters of Delegates*, 11: 73; Henry to Johnson, Oct. 20, 1778, in *Letters of Delegates*, 11: 82; Henry to Johnson, Oct. 21, 1778, in *Letters of Delegates*, 11: 94; James Dick, the commissary of Naval Prisoners, to John Beatty, New York, Oct. 27, 1778, *SFM*, 12: 1194; Nov. 15, 1778, *SFM*, 12: 1214.

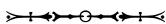
the same tensions of which Congress accused Britain. It relied on imperfect representative consent, backed by military might. The breach in national unity extended beyond loyalists, enslaved people, and Indians, to those American troops unhappily ordered to detain British officials carrying the Manifesto. Lee reconciled the paradox of treating the Manifesto as contraband. It was a “prostitution” to use the flag of truce to appeal “to each State, and to all the people in each.” Although only Congress could address the states, American leaders now regarded their own dissenters the way Britain regarded them.<sup>52</sup>

Despite outward confidence, Congress could not rely fully on coercive authority, and now sought from the states explicit legitimation. Josiah Bartlett wrote to John Langdon of New Hampshire, urging unanimous state resolutions declaring “Entire Confidence” in Congress, “Solely vested” with diplomatic power solely “on the principles of our absolute Independence.” New Hampshire resolved that it “highly approve[d]” of Congress’s rejection of the Commission and the arrest of traitors. Virginia’s Edmund Randolph also condemned the Manifesto as an “Attempt . . . calculated to divide and mislead” and decried any “correspondence with the enemies of America.” Pennsylvania’s General Assembly unanimously condemned the argument that Congress lacked treaty power as an “insidious design of dividing and disuniting the citizens.” The Pennsylvania press published a poetic parody of the Manifesto’s insolence toward Congress’s authority, and summed up the nuanced factors that served American power: “Well then if congress will disclaim/Their horrid independent name,/We promise to take special care/ That they shall never more declare/United States of colonies,/Or call the French their good allies;/Things which requir’d the full consent/Of all and each constituent.”<sup>53</sup>

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52. Lee to Adams, Oct. 29, 1778, in *Letters of Delegates*, 11: 148.

53. Bartlett to John Langdon, Oct. 27, 1778, in *Letters of Delegates*, 11: 128–29; New Hampshire State Papers, 8: 803–804, Nov. 17, 1778, discussed in *Letters of Delegates*, 11: 129 fn1; *SFM*, 12: 1215; [untitled], *Pennsylvania Packet*, published as *The Pennsylvania Packet or the General Advertiser* (Philadelphia), Nov. 12, 1778; “From the New York Packet,” *Pennsylvania Evening Post*, published as *The Pennsylvania Evening Post*, Nov. 2, 1778, Vol. 4, Issue 547, 405 (parody apparently originating in New York). The state-level political reaction to the Commission can be folded into the story of failed constitutions and republican experimentation culminating in postwar conception of sovereignty. See Horst Dippel, “The Changing Idea of Popular Sovereignty in Early American Constitu-



In 1778 Congress made greater claims of sovereignty over North America than what Britain had exercised. The fate of the Tories highlighted the tensions of power and principle. Loyalist James Rivington warned in June against a "Burthen of Taxes" worse under Congress than before. As the Commissioners left in November, loyalists begged them to stay. A transatlantic nostalgia took root. While British journalists blamed America for the failed negotiations, others pondered more favorable terms to turn America against France. Samuel Curwen relayed Captain Hendley's hope that Americans "seemed discontented" and yearned "for peace and a connection with their old friends." A friend of Hon K. Sewell in Bristol reassured him that Americans suffered "universal poverty and distress" under Congress's "tyranny" and hoped for "a single effort to crush the rebellion." Three years later the Loyalist "Declaration of Independence" decried Congress's refusal "even to receive" the peace offer more generous than what Americans "had unanimously declared would be satisfactory," for the sole purpose of securing power. Congress's rebuke of the Commission obscured such ideological heterogeneity.<sup>54</sup>

The Carlisle Peace Commission brought both the theoretical and practical predicament of national power into sharp relief. In theory, Congressional sovereignty was non-negotiable before 1778, but the Commission provoked Congress to define itself more clearly as sovereign, uncompromising, and anxious of weakness and disunity. In practice, Congress's rhetoric appears secondary to the realities of continental power. Eden worried that the Philadelphia withdrawal doomed his cause. Indeed, the withdrawal revealed Britain's weakened ability to rule North America, starkly contrasted to Congress's unshakable eagerness to

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tionalism; Breaking Away from European Patterns," *Journal of the Early Republic* 16 (Spring 1996), 21-45.

54. Brown, *Empire or Independence* (Rivington quoted on 255), 288; Lutnick, *American Revolution and the British Press*, 128-31; *Journals and Letters of the Late Samuel Curwen*, 207; Curwen, writing to William Browne in Wales, in *ibid.*, 208; "A Declaration of Independence by the Loyalists," *Royal Gazette* (New York), Nov. 17, 1781 (also Appendix A in Claude Halstead Van Tyne, *The Loyalists in the American Revolution* [New York, 1902], 311).

speaking for a unified nation. Emboldened by Saratoga and the French Alliance, Congress believed it could win the war and effectively consolidate power. Far from being predictable and therefore trivial, Congress's rejection of the Commission's terms exposed anxieties over its effective power to rule, which it sought to secure by transforming its leadership of an anti-British Insurrection into an authority suppressing Insurrection against itself.<sup>55</sup>

But brute force, while necessary to lasting rule, was not sufficient. Congress, as well as the Commissioners, knew the limits of conquest, and so directed efforts of persuasion toward the states and the people. Beneath the proud diplomatic and constitutional claims of 1776 festered the paradox of rule, reliant on both coercion and consent. Compelled to clarify its claim of authority, Congress resorted to both power politics and public appeals. Perhaps the independent American state had no singular birthday, but rather watershed moments that drew out the tensions of its rising power. Congress's rejection of the Carlisle Peace Commission was such a moment. In forcing Congress to confront and manage the paradox of rule, the Commission left its mark in the early history of the American nation-state.<sup>56</sup>

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55. William Eden minute, July 29, 1778, *SFM*, 5: 508; Carlisle to Eden, July 29, 1778, *SFM*, 5: 509.

56. On the process of independence as a matter of continuity rather than a moment of rupture, see Hendrickson, *Peace Pact*, 116–20.