The Beginnings of National Politics

Rakove, Jack N.

Published by Johns Hopkins University Press

Rakove, Jack N.
The Beginnings of National Politics: An Interpretive History of the Continental Congress.

For additional information about this book
https://muse.jhu.edu/book/67880
CHAPTER VII

Confederation Considered

Of all the problems in constitutional theory that engaged the American Revolutionaries, none ultimately proved more challenging or critical than the framing of a federal union. To reduce the evolution of their ideas on this subject to manageable proportions is not an easy task. Much of the difficulty is justly owing, of course, to our natural absorption with the Constitution of 1787. The informative records of debate that were kept in both the Philadelphia and state ratifying conventions, and the polemical literature that appeared during the ratification struggle, are so rich and complex as to seem capable of supporting an endless flood of analyses of the founding fathers’ theories of federalism, democracy, representation, human nature, and other topics too numerous to mention. Although the comparable sources for understanding the Articles of Confederation are far less explicit or impressive, historians have sometimes felt impelled to treat the earlier document in much the same way as they do the Constitution, presuming, that is, that it embodied an equally distinctive set of convictions, consciously held and thoughtfully developed, about the problem of federal government. Certainly this is the interpretation developed by Merrill Jensen, the most influential of modern historians of the confederation. Jensen portrays the Articles as one of the major achievements of the same radical groups who drafted the democratic state constitutions of 1776—as the Constitution was the great work of the conservatives who had resisted the political reforms of earlier years.¹
The chapters that follow offer a different view, one that emphasizes the extent to which the halting and at times haphazard progress of confederation allowed new problems to be raised, old ones once thought solved to be reopened, and others to go unexplored. At the outset of the Revolution, the problem of confederation received little sustained attention. When it was first considered in 1774 and 1775, the task of dividing the powers of government between Congress and the colonies proved far less troubling than might have been expected. Instead, the earliest congressional discussions of confederation tended, like other issues, to be more deeply influenced by the demands of resistance. In the political vocabulary of 1774–75, union still meant agreement on the principles and tactics of opposition to Britain and avoidance of the types of jealousy that had troubled American resistance in the early 1770’s. The initial efforts to draft plans of confederation concentrated, therefore, on minimizing possible sources of intercolonial conflict, particularly those arising from the apportionment of continental representation and the common expenses of war among the colonies, and from specific disputes involving individual provinces. More thorough discussion of a wider range of issues was inhibited by the intimate link between ideas of confederation and independence. Because the establishment of a formal American union would imply that the colonies were demanding something more than a restoration of the imperial situation of 1763, moderate delegates were able to defer direct consideration of confederation until their hopes for reconciliation had finally disappeared—that is, until well into 1776. Yet critical questions involving the character of the American union had already been raised well before Congress began debating the seminal Articles that John Dickinson and twelve other members prepared in June 1776.

Confederation: An Early Chronology

Six drafts of a confederation were prepared in 1775 and 1776. Three of these are generally unknown to scholars; indeed, the existence of two of these texts has been discovered only recently.

At least two and probably three drafts were composed during the summer and fall of 1775. One by Benjamin Franklin was presented to Congress on July 21 but never formally considered
—Congress recessed twelve days later—although it was subsequently referred to the North Carolina Provincial Congress. Silas Deane, one of the first delegates to have recorded an interest in confederation, prepared a second plan, possibly with the assistance of his Connecticut colleagues Roger Sherman and Eliphalet Dyer. Though different in several critical provisions, the Franklin and Deane texts are distinguished by the apparent haste with which they were drawn, a common absorption with problems affecting the immediate unity of the colonies, and a striking lack of concern with the task of dividing power between Congress and the colonies.

Because the Deane draft was manifestly inadequate to the expanding responsibilities of Congress, its revision would have been necessary before it could be seriously considered. It appears to have been substantially revised between the late summer of 1775 and early March 1776, when a third text, here labeled the Connecticut plan, was published in the Pennsylvania Evening Post.* This plan may have been completed by early December

*The editors of the new edition of Letters of Delegates to Congress have suggested a November 1775 date for the composition of Deane’s proposals for a confederation. Several considerations lead me to believe that the proposals were prepared somewhat earlier, probably in late July or early August 1775: (1) Deane had expressed an interest in confederation as early as January 2, 1775, when he briefly discussed the subject in a letter to Patrick Henry. Shortly after returning to Philadelphia in May 1775, he wrote home to ask his wife to send him a copy of the New England Confederation of 1643 (Paul H. Smith, et al., eds., Letters of Delegates to Congress, 1774–1789 [Washington, 1976–], I, 291, 347). (2) In their substantive content, the Deane proposals simply seem too terse to have been framed any later than the summer of 1775. (3) Between mid-August and late November 1775, Governor Jonathan Trumbull sent the Connecticut delegates several letters referring (though in disappointingly brief terms) to a draft set of articles they had apparently left with him. His first letter (August 19) simply mentions that he has “not had time yet to consider them.” The second letter (September 23) notes that Trumbull has “many things to object to . . . and not time to point them out.” But in the third letter (November 17), Trumbull evidently enclosed revisions of his own: “you’ll easily discern the Alterations I have made from that I received.” There is no reason to believe that the Connecticut delegates had sought or needed Trumbull’s comments on the Franklin plan. It is more plausible to infer that the governor was commenting on a draft that he knew the Connecticut delegates were working on themselves and intended to submit to Congress. The laconic tone of the delegates’ reply (December 5, quoted in the text just below) strongly suggests that the draft Trumbull had been referring to since August was not Franklin’s. (The governor’s letters are in the Jonathan Trumbull, Sr., Collection, Connecticut Historical Society, Hartford. I am
1775, when the Connecticut delegates informed Trumbull that "The draught of Articles of Confederation we have not as yet been able to lay before the Congress; business of every kind, and from every quarter, thickening fast at this session." Seven weeks later, moderate delegates successfully opposed a motion introduced by Franklin and Samuel Adams to fix a date for considering the Franklin plan, thereby also precluding the introduction of the Connecticut draft. Instead, at least one of its authors, possibly with the advice of more militant members of Congress, arranged for its publication in a popular whig newspaper; its appearance, following hard on the arrival of texts of the Prohibitory Act, was probably a discreet effort to prod public opinion along the road toward independence.\(^4\) Substantively, the Connecticut plan can be linked to the earlier Deane draft by their common approach to the problem of representation. But in other respects it marked an important step forward, particularly in attempting to sharpen the line separating the spheres of authority allotted to Congress and the individual colonies.

None of these initial three drafts had any major impact on the seminal text that John Dickinson prepared in June 1776; their importance rests instead on what they reveal of the delegates' earliest conceptions of confederation. Each reflects the constraints of the months between the outbreak of war and the growing recognition of the inevitability of independence—the period when Congress was caught, John Adams complained, "between hawk and buzzard." A concern with preserving intercolonial unity, still defined in the rhetoric of harmony, outweighed any perceived need to draft a comprehensive constitution for what was implicitly becoming a federal system.\(^5\)

I would argue, therefore, that the Deane sketch was prepared during the August 1775 recess, but that it served essentially as a working paper from which the Connecticut delegates, perhaps with assistance from Trumbull, went on to prepare a second draft. I would also suggest, though it is impossible to prove, that the Pennsylvania Evening Post "Proposals" may have been the draft alluded to in the delegates' letter of December 5. Although different in many key respects, the two texts are strikingly similar in their approach to the critical question of representation. It is also possible that Roger Sherman played the major role in preparing the Connecticut plan, for in June 1779 John Adams recalled that Sherman had "made an Essay towards a Confederation about the same time" as Franklin (L. H. Butterfield, *et al.*, eds., *Diary and Autobiography of John Adams* [Cambridge, 1961], II, 391).
of government. At the same time, moderate delegates refused to allow Congress to exceed the American constitutional claims of 1774 and 1775, thereby requiring each draft somehow to remain consistent with their lingering hope of securing a reconciliation that would leave the colonies within the British empire—something that the unilateral creation of a confederation could only make more difficult.\(^5\)

These considerations no longer applied in June, when, in the wake of the final two-day debate over independence, Dickinson and a committee of twelve other members set to work on a new plan of confederation. Historians have previously labeled the text that the committee presented to Congress on July 12 as the Dickinson plan; but it can now be identified as the committee's revision of an earlier draft that Dickinson submitted to his colleagues and which has been preserved among his own private papers rather than the official papers of the Continental Congress.\(^6\) This first draft apparently served as a working copy for the committee, for on it Dickinson made additions and corrections incorporated in the second draft, and deleted whatever the committee objected to—sometimes lightly, so we know what was proposed, sometimes with tightly curled lines of ink, so that the objectionable phrases are now indecipherable. Debate on this second draft was intermittently conducted in a committee of the whole Congress between July 22 and August 20, when Congress voted to print eighty copies of the Articles as they had been further revised.\(^7\) The existence of these three drafts thus allows us to reconstruct the second major phase of congressional consideration, when, due to Dickinson's innovative proposals, the delegates first began to think systematically about the structure of a confederation.

**Initial Conceptions**

On September 12, 1787, as the delegates to the Philadelphia Convention were preparing to sign the new Constitution, Nathaniel Gorham meekly rose to ask—"if it was not too late"—whether the population ratio that was to govern the size of the House of Representatives might not be altered. Many delegates must have groaned inwardly at Gorham's proposal, since this question had been strenuously debated during the preceding weeks; but with
an unprecedented endorsement from George Washington, his motion carried. This little episode provided a fitting conclusion to the Convention’s labors. For of all the issues that had troubled the Revolutionary generation’s attempt to create a federal government, none ultimately proved more difficult than the problem of apportioning representation among the states—not because the theoretical questions involved were especially complex but, perhaps rather ironically, because the conflicting interests they evoked were disarmingly obvious.

Thirteen years earlier, James Duane had launched the opening debate of the First Continental Congress by asking whether voting in Congress would be “by Colonies, or by the Poll, or by Interests.” That is, should each colony or, alternatively, each delegate have one vote, or, as Patrick Henry quickly proposed, should each colony possess “a just Weight in our deliberations in proportion to its opulence and number of inhabitants, its Exports and Imports”? The basic conflict that would divide the small and large colonies (states) until 1787 was thus immediately exposed. Spokesmen for the larger colonies, notably Henry, insisted that representation should be apportioned on what was called, in eighteenth-century usage, an “equal” basis, taking into account disparities in population and, if feasible, wealth as well. Delegates from the smaller colonies, already evincing what J. R. Pole has aptly described as their “corporate self-consciousness,” argued “that a little Colony had its All at Stake as well as a great one,” and therefore deserved an equal vote in Congress.

In fact, as virtually all the delegates admitted, the First Congress had no practical alternative to giving each colony one vote; nor did its agenda demand a different solution. Simply allowing all the delegates to vote as individuals would not have answered the claims of delegates from the larger colonies: Massachusetts, the second most populous colony, had sent only four delegates, while Delaware, the smallest, had sent three. The two central objections against attempting to apportion votes were summarized by Richard Bland, who agreed, with several other speakers, “that we are not at present provided with materials to ascertain the importance of each Colony.” The absence of reliable data made it impossible to fix any formula for allocating votes within Congress according to the population—much less the trade, produce, and property—of the colonies. But Bland adduced a second reason that was peculiarly appropriate to the political context of
1774 when he observed: “The Question is whether the Rights and Liberties of America shall be contended for, or given up to arbitrary Power.” Bland was reminding his colleagues that their essential task was to frame measures and policies acceptable to all of the colonies. What had justified holding a Congress in the first place was the common conviction that the legislation against Massachusetts endangered the rights of all the colonies. If that were the case, and if, as the Connecticut delegates later noted, Congress hoped to reach decisions through consensus rather than simple pluralities, the apportionment of representation was irrelevant. On September 6, then, Congress resolved to give each colony one vote; but this resolution stipulated that future sessions need not be bound by this precedent.10

Once this issue was resolved, even if only temporarily, the First Congress ignored other opportunities to give further consideration to the formal structure of American union. Its emerging positions on American rights emphasized a restoration of the status quo ante, and thereby precluded serious discussion of the possibility, explicitly advanced in the Galloway plan, that the creation of some sort of American confederation could be proposed as a step toward reconciliation. Nor did the framing of the Association evoke thoughts of confederation, since the delegates were confident that local committees and conventions would be able to enforce its provisions.

By early 1775, however, a few delegates were beginning to consider the subject of confederation more seriously. To some extent, their initial concern was simply to guarantee that Congress would continue to meet annually—a reflection, perhaps, of a latent belief that developments in 1775 would replicate the experience of 1766 and 1770, when Parliament had repealed offensive legislation without proposing an acceptable solution to the basic issue of its claim to supremacy. Silas Deane went a step further when, in a letter to Patrick Henry, he suggested that the colonies should create a union akin to the New England Confederation of 1643, which had been essentially a defensive alliance against Indian attack.

Something of this kind appears most absolutely necessary, let Us turn which way We will. If a reconciliation with G Britain takes place, it will be obtained on the best terms, by the Colonies being united, and be the more like to be preserved, on just and equal Terms; if no reconciliation
is to be had without a Confederation we are ruined to all intents and purposes. United We stand, divided We fall, is our motto and must be. One general Congress has brought the Colonies to be acquainted with each other, and I am in hopes another may effect a lasting Confederation which will need nothing, perhaps, but time, to mature it into a complete & perfect American Constitution, the only proper one for Us, whether connected with Great Britain or not.  

This idea grew more compelling with the outbreak of war. Instead of framing policies to be implemented by local committees and conventions, Congress now had to supervise an army and its administrative machinery. Although Congress was removed from the immediate, regular exercise of those coercive powers that most urgently demanded the sanction of constitutional legitimacy—unlike local officials, the delegates did not personally have to collect taxes, raise troops, or stifle dissent—it seemed reasonable to conclude that its own expanding authority required definition. The argument Massachusetts had advanced in requesting permission to resume civil government, that “the sword should in all free states be subservient to the civil powers,” could be applied at the continental level as well. 

Moreover, the expenses attendant on the organization of an army allowed the problem of representation to be reexamined from a new perspective. Advocates of reapportionment could now argue that it was unreasonable to continue the voting procedures of 1774, since Congress would be taking actions requiring the expenditure of large sums of money and the allocation of other resources necessary to the conduct of war. Massachusetts, Pennsylvania, and Virginia would obviously have to contribute far more than Rhode Island, New Jersey, or Delaware: yet were each of these colonies to have an equal voice in congressional decisions?

Two further developments of 1775 reinforced earlier concerns about the risks of conflict—or “intestine broils,” as they were sometimes referred to—among the colonies. One was the deteriorating situation in the Wyoming Valley of northeastern Pennsylvania, where rival settlers from the Quaker colony and Connecticut seemed on the verge of bloodshed over their contested land claims: a graphic reminder of the divergent interests that could pit individual colonies in confrontation with one another. And from Boston came reports of outbursts of provincial and regional animosities among officers and troops drawn from
different colonies, a natural result, perhaps, of this encounter of parochial cultures, but nevertheless a painful contrast to the rhetoric of uniting for the common cause. Southern officers, including Washington himself, described the New England regiments in contemptuous terms—"they are an exceeding dirty and nasty people," the commander-in-chief complained—and their arrogance was deeply resented by New Englanders. Congress could do little to alleviate the underlying sources of these petty rumblings, but their simple expression was a reminder of the potential for intercolonial conflict.

Not surprisingly, therefore, both the Franklin and Deane plans of union were primarily concerned with removing possible sources of discord among the colonies, and particularly with providing a solution to the problem of representation. Franklin clearly intended to exploit the circumstances of war to reverse the 1774 resolution favoring the smaller colonies. Articles VI and VII of his draft proposed that representation and the common expenses should both be apportioned according to the same rule: the "Number of Male Polls between 16 and 60 Years of Age" residing in each colony; while Article VIII, though loosely drawn, provided that each delegate would have one vote, with all questions presumably to be decided by a majority of the members present. The equation between expenses and representation was unquestionably designed to dramatize the justice of the larger colonies' claims for reapportionment. But at the same time Franklin may have hoped to allay the smaller colonies' fear of subjugation by incorporating a simple formula for allocating the costs of war within the confederation itself, thereby removing it as a source for later political dispute. Too, by allowing the delegates to vote individually, rather than weighting each delegation's vote, Franklin may have meant to suggest that interests which transcended provincial boundaries would be effectively represented in Congress, and that many questions would arise which would bear no relation to the size or corporate integrity of the colonies.

By contrast, the Deane "Proposals" sought to strike a compromise between the resolution of 1774 and the logic of reapportionment. Deane proposed that each colony be given one delegate for every twenty-five thousand "Souls" of its population, and that "In determining on Supplies of Men, or Money, and in passing Accts. Laid before them & other Concerns of a Lesser Nature,"
a simple majority of the delegates would be decisive. But, “In determining on Warr, or peace, on the privileges of the Colonies in General, or of any one in particular”—that is, on all those issues of general policy that had been so critical in 1774 and in which all the colonies were presumed to have an equal interest—“a majority both of Colonies, and Numbers [i.e., delegations and delegates]” would be required. In embryonic form, this was the genesis of the Connecticut Compromise of 1787, which would solve the problem of continental representation by allowing the states to be represented both as aggregates of population and corporate units.

The Deane and Franklin drafts shared a second major similarity: both defined the respective powers of Congress and the colonies in terms that seem remarkably brief and imprecise, coming after a decade of sensitive debate over the proper relation between the colonies and Parliament. Only four of Franklin’s thirteen Articles and seven of Deane’s sixteen dealt with this problem directly; neither draft provided the colonies with explicit safeguards against the abuse of congressional authority. Both implied, in effect, that the duties appropriate to these two levels of Revolutionary government could be readily agreed on. Franklin suggested that “Each Colony shall enjoy and retain as much as it may think fit of its own present Laws, Customs, Rights, Privileges, and peculiar jurisdictions within its own Limits,” including a right to “amend” its existing charter. Congress in turn would be entrusted with powers of deciding on war and peace, foreign alliances, and reconciliation; resolving disputes between colonies; planting new colonies; and making “such General ordinances”—commercial, financial, postal, and military—as “particular assemblies cannot be competent to.” Deane scarcely bothered to enumerate the powers of Congress, contenting himself instead with allowing each colony, “in every respect, [to] retain its present mode of internal police & legislation,” while prohibiting the colonies from entering into separate negotiations “with those with whom they are, or may be, Contending,” or from levying duties “on any Wares, or Merchandize,” without the permission of Congress. The proceeds of such duties would go to the continental treasury. Congress was empowered to resolve disputes between colonies, but only after their own efforts at mediation had failed. Concerned with the restoration of a semblance of legal government throughout America, Deane also sug-
gested that Congress should appoint the governors and lieutenant governors of the royal, but not the proprietary, governments; councillors, judges, and other royal officials in those colonies were to be elected by the lower houses of assembly, to serve during good behavior, and to have a right of appeal to Congress if they were "displaced" and felt themselves "injured."

If the intended scope of congressional power could be measured by the absence of clear limits and precise restraints, both plans would have given Congress substantial authority indeed. Yet there is little evidence to suggest that Franklin and Deane were consciously thinking of using confederation to enhance the authority of Congress at the expense of the colonies. What seemed to be at stake in 1775 was not the creation of an enduring nation state but the continued legitimation of a resistance movement whose responsibilities were rapidly growing more extensive and complex. Both drafts therefore gave as much if not more attention to confirming the status of Congress—fixing its size and composition, basic rules of procedure, time and place of meeting—as to defining its powers. Such an offhand treatment of what would otherwise be regarded as the central problem of constitution-writing remained possible because the apparent ease with which Congress had acquired and exercised power suggested that the extent of its authority was not a subject of major political concern. Congress already possessed unquestioned control over the conduct of war and diplomacy; it was issuing bills of credit to serve as a circulating currency; and through the Association it had enacted regulations affecting the daily activities of thousands of Americans. If in the name of preserving the unity and security of resistance it now seemed sensible to allow Congress to settle disputes between colonies or, as Franklin proposed, supervise Indian relations, did this mark any great departure from prevailing notions of its responsibilities?

Nevertheless, had these plans been exposed to serious discussion, their elastic definition of the authority of Congress would almost certainly have been challenged. The Connecticut plan that was published in early March 1776 seems to have been framed with this consideration in mind. Its clarity and precision contrasted sharply with the verbal looseness of its predecessors—in part a mark of the evident haste with which the two earlier drafts had been written. More revealing were the limits the Connecticut plan would have imposed on the powers of Con-
Unlike the Franklin plan, it did not empower Congress to create new colonies, regulate commercial and financial affairs, or act in those matters affecting the general welfare that "particular assemblies cannot be competent to." Other clauses strengthened the residual rights of the colonies by explicitly reserving to each colony "the sole government and direction of its internal police," while forbidding Congress "to impose or leavy taxes, or interfere with the internal policy of any of the Colonies." In several places it replaced the vague wording of the earlier drafts with explicit clauses that would be easier to interpret. Thus where Franklin had granted Congress a blanket power to resolve disputes between colonies, the Connecticut plan stipulated that Congress could "hear and determine controversies between Colony and Colony according to the right of the parties by the rules of law or equity." And where Franklin barely mentioned the continental army, the Connecticut plan devoted an entire Article to the appointment of officers and the regulation of the militia.

Yet these revisions notwithstanding, most of the provisions of the Connecticut plan remained essentially similar to the two earlier drafts. As before, Congress retained exclusive authority over all major aspects of resistance, including the conduct of foreign policy, decisions of war and peace, and the regulation of the army; as before, all matters of "internal police" were reserved to the colonies, though now somewhat more explicitly. The Connecticut plan preserved Franklin's formula equating the apportionment of representation and common expenses; and it amended the Deane scheme of voting, by proposing that "the concurrence of a majority of the Colonies represented, and also a majority of the Delegates present, shall be necessary to make a vote of the Congress" on all issues—not merely, as Deane had suggested, those involving major policy decisions.

What, then, was the significance of the revisions the Connecticut plan did propose? Again, the absence of any contemporary discussion of its features forces us to rely on inference rather than concrete evidence. The Connecticut plan was more sensitive to the preservation of the autonomy of the colonies than the earlier drafts. Yet on balance the restraints it would have imposed were probably intended not so much to redress an emerging constitutional imbalance between Congress and the colonies as to erect a rigorous boundary separating their respective spheres of authority. For the Connecticut plan retreated from Franklin's ex-
Confederation Considered

Pansive notions precisely in those areas—the regulation of commerce and settlement of western lands—where the exercise of congressional power might bring the union into conflict with the specific interests of particular colonies. A confederation that confined the authority of Congress to the business of resistance might not prove adequate at some later date—a moot point in 1776—but it would have the advantage of encouraging its prompt and uncontroversial approval. For confederation was, as the debate over representation had already revealed, perhaps the first major issue that stood to compromise the rhetoric of Revolutionary unity by forcing each colony to weigh its interests against those of its “sisters.” Its association with the specter of independence made confederation an inherently sensitive issue as it was, as North Carolina’s refusal even to discuss the Franklin plan had shown.  

Enough political contention would be generated by the creation of new colonial governments without the further complication of a controversial confederation. By carefully distinguishing and even isolating the spheres of congressional and provincial authority, the Connecticut plan was implicitly intended to minimize potential sources of conflict between them—a goal entirely consistent with the larger political considerations governing other congressional actions.

Outside of Congress, however, there were several whig leaders who did criticize the notion of strictly separating the provincial and federal levels of government or who believed that the colonies should not be left to their own devices in framing new constitutions. As early as December 1775, Joseph Hawley advised John Adams that “An American Parliament with legislative authority over all the colonies” should be promptly established. To Elbridge Gerry, then preparing to leave Massachusetts for the beginning of a long congressional career, Hawley was even more explicit. A confederation, he argued, should consist of “a Supreme Legislative and Executive instituted in a just proportion from all the colonies . . . with subordinate legislatures for each Colony”; and the decisions of the supreme legislature should be considered as “the most solemn acts instead of Recommendations” and “shall bind the whole and every part.” Other writers suggested that Congress should play a direct role in the reconstruction of provincial government. Thomas Ludwell Lee questioned whether the Virginia Convention should have included a “proviso which reserves to this Colony the power of forming its
own government” in its resolutions calling for a declaration of independence. “Would not a uniform plan of government prepared for America by the Congress, & approved by the Colonies, be a surer foundation of unceasing harmony to the whole?” he asked his brother Richard Henry Lee. New Hampshire’s John Wendell doubted that Congress could “interfere with the Civil Policy of any Colony,” but thought it could recommend specific reforms for the new constitutions; while John Langdon believed that after independence Congress could go even further and “interfere in any Government that seems to go wrong.”

Nevertheless, these were minority views, possibly more attractive to local observers upset by trends in provincial politics than to members of Congress concerned with husbanding their own authority. While America had remained poised between independence and reconciliation, it had been necessary for Congress to retain the prerogative of sanctioning changes in the colonial governments on an individual basis—the precedent established in the case of Massachusetts. But the pressures of 1776 made this model of reform obsolete. Once independence became imminent, growing popular enthusiasm for a republican reformation and the natural temptation to imagine America as a society reduced to an actual state of nature led most whig thinkers to agree that the authority to reconstitute legal government now rested in the people at large. “Every Province should be viewed as having a right, either with or without an application to the Continental Congress, to alter their form of Government in some particulars,” ran the argument of “Spartanus,” one of the more radical writers of 1776. When Congress issued its May 15 resolution demanding the creation of new governments “under the authority of the people,” it formally recognized the emergence of a new constituent power.18

The role of Congress or a confederation received little attention when Americans began debating the reconstruction of their governments, however. Public discussion centered instead on devising suitably republican constitutions for the individual states. Tracts on government seldom gave more than a paragraph to describing the general powers of Congress. Moreover, a broad consensus about its role prevailed among writers with such markedly divergent opinions as John Adams, his Virginian protagonist Carter Braxton, and the anonymous authors of two ardently republican essays, “The Interest of America” and Four
Letters on Interesting Subjects. Each could have endorsed Braxton’s encapsulated view that Congress should “have power to adjust disputes between Colonies, regulate the affairs of trade, war, peace, alliances, &c. but they should by no means have authority to interfere with the internal police or domestic concerns of any Colony.” Adams was similarly succinct. A confederation, he wrote at the conclusion of his Thoughts on Government, should consist of a Congress whose “authority should sacredly be confined to these cases, namely, war, trade, disputes between colony and colony, the post-office, and the unappropriated lands of the crown.” Braxton, a delegate from land-rich Virginia, would have contested only the last point.19

The writers of 1776 found no contradiction between advocating an avowedly republican reform of the provincial governments and recommending that Congress be endowed with substantial authority over matters of general concern. Joseph Hawley could argue that the decisions of Congress should be literally binding on the colonies but still express a hope that “all the colonies . . . will as soon as possible assume Popular forms of Government and indeed become several little republicks—I freely own myself a republican and I wish to see all Government on this Earth republican, no other form is a Security for right and virtue.” A writer like “Spartanus” could assert that Congress “should not interfere or meddle with Provincial affairs, more than needs must,” and add that not only every colony but “each county, yea, and each town, [should be left] to do as much within themselves as possible.” Yet in the end, he admitted, “some things must be left to the General Congress,” and his list of its responsibilities was no less generous than others:

1. Making, and managing war, and making peace. 2. Settling differences between provinces. 3. Making some maritime laws, or general regulations respecting trade; otherwise one Province might unjustly interfere with another. 4. Ordering a currency for the whole Continent, for it would be best, that as soon as may be, there should be one currency for the whole. The General Congress might order the quota for each Province. 5. The forming of new Provinces. 6. The sale of new lands. 7. Treaties with other nations, consequently some general direction of our Indian affairs.

Moreover, the powers that such writers agreed Congress should possess were to be exercised freely. The author of Four Letters
on *Interesting Subjects*, one of the most innovative and democratic pamphlets of 1776, argued that “in matters for the general good,” Congress “ought to be as free as assemblies” and unfettered by “[p]ositive provincial instructions [which] have a tendency to disunion.”

Perhaps because tory polemicists engrossed the market for criticism of Congress, none of the whig writers of 1776 subjected the extensive powers it was exercising to serious constitutional scrutiny. Thus while the creation of new provincial governments generated intense and complex debate, the problem of confederation was treated with a remarkable casualness. In part, of course, this disparity reflected the essentially provincial character of American society, where local arrangements of power deeply affected areas of vital interest to large numbers of citizens. Yet in 1776 and the years to come, the real power Congress exercised was also substantial. Its decisions about war and peace, currency and supply, may often have been difficult to implement, but they were scarcely trivial in their consequences. And Congress was itself a novel political entity whose anomalous character defied conventional description and therefore deserved consideration. Nevertheless, the popular impulse to reexamine the basic principles of government exhausted itself at the provincial level of politics. Only in Connecticut—whose existing charter, widely regarded as a model for republican government, required no revision—was a serious question raised about the status of Congress when a Litchfield County convention proposed that members of Congress be elected by the people.

For the most part, it was left to the delegates themselves to raise occasional objections about the authority of Congress. Oliver Wolcott, a new member from Connecticut, wondered whether the Litchfield proposals would not remove delegates from the effective supervision of their assemblies and leave the colony “absolutely bound . . . by every Act their Delegates should do, as they would have all the Authority absolutely and independently which the People could give them.” Abraham Clark of New Jersey worried that Congress might gain absolute control over the colonial militia. Thomas Jefferson thought the new constitutions should restrict the delegates’ tenure and eligibility for reelection. And after Congress partially sanctioned an abortive scheme to remove the proprietary governor of Maryland, that
Confederation Considered

colony's delegation expressed reservations about the potential abuse of congressional power. 23

Such objections were consistent with the Connecticut plan's emphasis on maintaining a clear separation between Congress and the colonies; they did not, however, change the general atmosphere in which the problem of confederation was initially considered. The deference that Congress commanded in the early years of the Revolution left it immune from close theoretical scrutiny. Removed from the daily exercise of coercive power, charged with framing general policies that all patriots felt obliged to support, venerated as "the collective wisdom" of the continent, Congress seemingly did not need to be subjected to the same constitutional restraints that other levels of government required.

The Dickinson Plan

THROUGH the early months of 1776, John Dickinson had resisted allowing Congress to discuss confederation; only in late May did he acknowledge that its preparation could no longer be delayed. 24 Given his reluctance, it might seem surprising that Dickinson rather than Franklin was named as Pennsylvania's representative to the thirteen-man committee appointed on June 12 to draft articles of confederation. 25 But, once appointed, it is less surprising that he played a dominant role in the committee's labors. His colleagues had always valued his literary talents, and framing a confederation was the sort of political activity that Dickinson would have relished, even as he was privately preparing to resign from Congress.

With Dickinson's first draft, far more lengthy and complex than any of its three predecessors, discussion of confederation shifted to new and more expansive ground. Recognizing that only Congress as a whole could resolve the politically sensitive problems of apportioning representation and expenses, he skipped over the issues that had seemed most troublesome in 1774 and 1775, leaving a blank space in his manuscript for the later insertion of the approved solutions. For Dickinson, the problem of confederation involved more than alleviating the most obvious potential sources of jealousy among the states. His
ideas reflected instead the fears of division and disunion that moderate delegates, particularly those from the middle colonies, had voiced during the previous months, as America drifted gradually but inexorably toward independence. What concerned Dickinson was not only the allocation of votes and expenses but a wider range of issues that stood to precipitate conflicts both within and between individual states as well as between the states and Congress. Implicit in his conception of confederation, then, was the premise that the states were incapable of entirely regulating their activities in the best interest of union, and that any plan of confederation would therefore have to impose restraints on their sphere of action—and not merely in areas that obviously required the general direction of Congress. Dickinson rejected the underlying thrust of the Connecticut plan, which had sought to block out exclusive spheres of authority for Congress and the states. He envisioned a confederation whose own needs would enjoy clear precedence over the rights of the states; that would be empowered to interfere in some aspects of their internal police; and that would limit their ability to exercise powers inimical to the union.

Dickinson revealed something of his concern by devoting the early portion of his draft to Articles restraining the authority of the states. He accepted the common formula used by the Franklin and Connecticut plans to reserve to each colony “as much as it may think fit of its own present Laws, Customs, Rights, Privileges, and peculiar Jurisdictions,” but to it he added the proviso, “in all Matters that shall not interfere with the Articles of this Confederation.” Moreover, in Dickinson’s view this confirmation of “present” laws and practices did not confer upon the states an absolute control over the future regulation of their internal police. For in the very next Article—the most innovative of the entire draft—Dickinson plunged into a topic that was intimately connected with government and politics in virtually all of the states: the rights of religious dissenters. Here Dickinson sought to freeze the pattern of church-state relations existing in each of the states by prohibiting the new governments from enacting any additional laws requiring dissenters to support established churches, imposing religious tests as a qualification for holding office or exercising any other civil liberty, and compelling “persons conscientiously scrupulous of taking an oath” to swear the
same, "it being the full Intent of these united Colonies," the Article concluded,

that all the Inhabitants thereof respectively of every Sect Society or religious Denomination shall enjoy under this Confederation, all those Liberties and Privileges which they have heretofore enjoyed, without the least abridgment of their civil Rights for or on Account of their religious Persuasion, profession or practise.

Although such language implicitly endorsed liberal notions of religious toleration, Dickinson was not calling for an immediate, total disestablishment of religion. Each of these clauses contained a stipulation sanctioning the validity of "the usual Laws & Customs subsisting at the Commencement of this war." His immediate concerns were more narrowly political, and thus provide a key for understanding his distinctive approach toward confederation. Recognizing the extent to which sectarian rivalries lay at the very center of domestic political strife—most dramatically in the middle colonies, where a Presbyterian "interest" stood opposed to Quakers in Pennsylvania and Anglicans in New York, but to lesser degrees elsewhere as well—Dickinson hoped to use the confederation to prevent religious hostilities from being injected into the foreseeable struggles for power that would accompany the formation of new state governments. By allaying fears that dominant sects might use their political power to harry their opponents, adoption of this Article might dampen, and possibly even eliminate, a dangerous source of internal conflict.

Succeeding Articles sought to assert the superiority of the confederation in other ways. There was nothing novel in forbidding the states to conduct negotiations with foreign nations, but Dickinson went further by proposing that the states not be allowed to "enter into any Treaty, Confederation, or Alliance whatever" with each other, "without the previous and free Consent & Allowance of the Union." The next two Articles would have prohibited the states from enacting measures discriminating against the inhabitants of other colonies, most importantly in matters of trade, where it was provided that "The Inhabitants of all the united Colonies shall enjoy all the Rights Privileges Exemptions & Immunities in Trade Navigation & Commerce in every Colony, and in going to & from the same, which the Natives of each Colony enjoy." The states were individually author-
ized to lay duties on imports and exports, but not in violation of foreign treaties concluded by Congress. Where the Connecticut plan had prohibited Congress from maintaining a standing army in time of peace, Dickinson reversed the prohibition and applied it to the states. He also proposed that, under certain circumstances, Congress could raise troops within a state without the approval or participation of local authorities. And in case a state felt that it had been unfairly treated by Congress in matters regarding the amount of its “Losses or Expenses,” it could not “endeavour by Force to procure Redress of any Injury or Injustice supposed to be done . . . by not granting to such Colony or Colonies such Indemnification, Compensation, Retribution, Exemption or Benefits of any kind, as such Colony or Colonies may think just and reasonable.” Nor could individual states make war against Indian tribes without the permission of Congress. A further Article barred the purchase of any Indian lands until the territorial limits of the colonies had been ascertained; after which time all future purchases were to be made through the authority of Congress and for the benefit of the union.

The committee on confederation, which met “at all opportunities” during the second fortnight of June 1776, did make several changes in Dickinson’s prohibitory Articles. It rejected outright the Article on religious toleration and the provision authorizing Congress to raise troops without the intercession of state officials. A clause prohibiting the states from laying duties or regulatory fees on imports from other states was also deleted. But the drafting committee let stand the other restrictions Dickinson had proposed to circumscribe the residual authority of the states. Changes in wording clarified their meaning or made them seem slightly more innocuous but did not defuse their essential implications. Although we know virtually nothing about the internal workings of the committee, it seems likely that Dickinson was able to persuade his colleagues that most of these restrictions should be retained.

The committee may have been more actively involved in the task of detailing the positive powers and functions of Congress, which were extensively described in Article XVIII of the revised draft that was presented to Congress on July 12. The manner in which this Article appears in the first draft—with numerous interlineations, marginal notes and queries, deletions, and a separate sheet of revisions and additions—strongly suggests that it
was subjected to considerable debate and emerged as the work of the whole committee.

The committee rejected several of Dickinson's most innovative proposals. It deleted a clause assigning Congress sole power for "establishing & regulating Fees" arising from interstate commerce, and it was unresponsive to Dickinson's suggestions that Congress be empowered to lay embargoes or call out the militia without the approval of the state governments. A provision for the appointment of "a Chamber of Accounts, an Office of Treasury, a Board of War, & a Board of Admiralty" was likewise omitted, thereby precluding discussion of the utility of formally dividing the confederation into legislative and executive branches. Dickinson himself questioned whether the status of these administrative agencies had to "be defined, as they are to act under the Congress." The committee decided instead that it would be sufficient to empower Congress to appoint a "Council of State"—whose authority, because it would operate only during the recess of Congress, was detailed at length in the following Article—"and such committees and civil Officers as may be necessary for managing the general Affairs of the United States."

Despite these revisions, however, the powers that Article XVIII would have given Congress were extensive. The most important, granting exclusive control over peace and war and the conduct of foreign relations, were probably also the least controversial. Other clauses relating to the administration of the army and navy and the general conduct of the war were unlikely to have produced serious differences of opinion. To give Congress exclusive control over war and diplomacy, to allow it to emit bills of credit, borrow money, and apportion the common expenses among the states, merely ratified the pragmatic and virtually instinctive decisions and precedents that had been adopted since 1774, and that only tories had opposed.

Where the Dickinson plan went further was in conferring on the union the exclusive power of "Settling all Disputes and Differences now subsisting, or that hereafter may arise between two or more Colonies concerning Boundaries, Jurisdictions, or any other Cause whatever," and in giving Congress virtually absolute control over the disposition of western lands, including the powers of "Limiting the Bounds" of colonies whose charters, like Virginia's, purportedly ran to the South Seas, and creating new
states in territories “to be thus separated” from the older states or purchased from Indians. Just as sectarian differences loomed as one of the most ominous sources of political dispute within the states, so the control of unsettled or disputed lands seemed to constitute the greatest obstacle to harmony among them. The Susquehannah controversy remained a source of conflict between Pennsylvania and Connecticut. Within Congress, much of the animosity that regularly separated the New York and New England delegations could be traced to the problem of Vermont, whose residents had taken advantage of the Revolution to secede from New York.

Even more important were the resentments that states lacking western lands harbored against those whose colonial charters gave them possession of enormous tracts across the mountains. Although the politics of western lands were often manipulated by small groups of speculators who were intent on invalidating the claims of Virginia, the landless states’ persistent efforts to create a national domain also had a more substantive foundation. States such as Virginia and Connecticut could expect to defray much of their share of the war’s cost by selling their western lands to the settlers who were likely to emigrate there in the near future. But the landless states would be obliged to raise their portion by taxation, a problem that would be exacerbated in the case of Maryland, Delaware, and New Jersey—the three states most strongly committed to the idea of a national domain—by their commercial dependence on either Philadelphia or New York. 28

Against the potential abuse of all these powers, Article XVIII offered four securities. Congress could not “impose or levy any Taxes or Duties ... nor interfere in the internal police of any Colony, any further than such Police may be affected by the Articles of this Confederation.” None of its major powers could be exercised without the approval of delegations from nine states, or any other question decided without the votes of seven. Finally, certain restrictions would be placed on the delegates themselves: they could serve only three years out of every six in Congress; must not simultaneously hold any other salaried office under the United States; and would be subject to recall at any time. Congress would be required to publish its journals monthly, and to record and enter roll calls whenever any delegate requested. But nothing in the Dickinson plan suggested that
the states enjoyed a discretionary right to judge or refuse to obey decisions of Congress.

In drafting and revising these Articles, Dickinson and the committee seem to have intended to present as comprehensive a plan as possible, recognizing that many of their proposals were inherently controversial and would have to be, as Dickinson periodically noted on his copy of the second draft, "submitted to Congress" for thorough reconsideration. This would clearly be the case with all provisions relating to the disposition of western lands, as well as the solutions the committee proposed for the familiar problems of voting and expenses: retaining the formula of one vote for each colony, but apportioning the quota of expenses according "to the Number of Inhabitants of every Age, Sex and Quality, except Indians not paying Taxes." Whether the committee in general supported Dickinson's conception of confederation or merely believed that it provided a usefully broad basis for further debate is uncertain; none of its members figured prominently in the fragmentary notes of later debates recorded by Jefferson and John Adams.

But for Dickinson, at least, these Articles were consistent with the concerns he and other moderates had previously voiced while warning Congress of the dangers of disunion. When to both drafts Dickinson added a marginal query suggesting "The Propriety of the Union's guaranteeing to every colony their respective Constitution and form of Government," he certainly conveyed his fear that the creation of new constitutions would produce political turmoil within the states. When he proposed creating a national domain or prohibiting the states from discriminating against each other's citizens, he recognized how easily questions of interest could evoke interstate conflicts. Dickinson clearly intended to use confederation as a vehicle not only for defining the powers of Congress but also for limiting the authority of the states. Yet in its essential provisions, the Dickinson plan was neither a blueprint for consolidating thirteen provinces into one unitary polity, nor an attempt by alarmed "conservatives" to counter excessively democratic or "leveling" tendencies in the states by transferring power to a strong national government. The right of the states to maintain their own systems of taxation, economic regulation, currency finance, and jurisprudence—all those aspects of "internal police" that most substantially affected actual competition among rival classes and
interests—remained unimpaired. Expansive as the Dickinson plan was, its dominant concerns were still centered on resistance. The restraints to be imposed on the states were largely designed to preserve existing congressional prerogatives and autonomy in all matters affecting the conduct of war and diplomacy, or to minimize the most obvious sources of internal conflict capable of disrupting the unity that all whig leaders continued to agree was necessary to American success.

**Congress Debates**

The committee submitted its report to Congress on July 12. By then, John Dickinson had left Congress, apparently with a sense of relief, for in early August he informed Charles Thomson that “no youthful Lover ever stript off his Cloathes to step into Bed to his blooming beautiful bride with more delight than I have cast off my Popularity.” In his absence, there seems to have been no one left to defend his conception of confederation, and in the debates that took place between mid-July and August 20, important revisions were made by the committee of the whole.29

Yet on two critical questions the committee’s recommendations survived the general debate intact. Despite strenuous objections from members representing more populous states, Congress agreed to continue to vote by states. The opposing arguments had changed little since 1774, but now they were expressed with a new vehemence and impatience, perhaps in part because two Scots, James Wilson of Pennsylvania and John Witherspoon of New Jersey, played a leading role in the debate. The apparent absurdity of according Rhode Island equal weight with Massachusetts—“by the effect of magic,” Wilson scoffed, “not of reason”—again encountered the insistent fear that, as Witherspoon asserted, “if an equal vote be refused, the smaller states will become vassals to the larger.” How their enfeoffment would come about remained obscure; Jefferson and Adams recorded no answer to Wilson’s retort that “I defy the wit of man to invent a possible case or to suggest any one thing on earth which shall be for the interests of Virginia, Pennsylvania & Massachusetts, and which will not also be for the interest of the other states.” But there was little room for compromise. Roger Sherman repeated the cumbersome suggestion advanced in the Con-
necticut plan, that a majority both of delegations and delegates should be required for any decision; while Samuel Chase proposed that all money matters should be approved with "the voice of each colony . . . proportioned to the number of it's [sic] inhabitants," an ingenious suggestion that would have applied the logic of reapportionment to the one area of public policy where it seemed particularly appropriate. Neither of these hybrid schemes was considered practicable. John Adams attempted to break this impasse by reminding Congress that "the question is not what we are now, but what we ought to be when our bargain shall be made . . . we shall no longer retain our separate individuality, but become a single individual as to all questions submitted to the confederacy." Therefore, he concluded, "all those reasons which prove the justice & expediency of equal representation in other assemblies, hold good here." Logic alone, however, could not overcome the instinctive objections of the smaller states. They were more stubborn, while the larger states at least knew they could never be "swallowed" by the smaller. The practice of voting by states therefore remained unchanged.30

The committee of the whole also approved the proposed formula for apportioning expenses to the total population of each state. When Samuel Chase moved that only "white inhabitants" should be counted, an ugly debate ensued, centering on the question whether slaves should be regarded as property akin to farm animals, or as productive workers who contributed as much to the wealth of a state as the free farmers and artisans of the north. Here, too, the opposing interests were too sharply drawn for compromise, and Chase's amendment was defeated in a strictly sectional vote.31

On these two questions, then, the suggestions of the drafting committee were adopted. But when Congress began debating the substantive powers to be lodged in the confederation, it made several major changes in the Dickinson plan. Every provision giving Congress exclusive authority over the American interior was struck out: Article XIV, governing the purchase of Indian lands; Article XV, on determining state boundaries; and those clauses of Article XVIII empowering Congress to create a national domain from the excessive western claims of the landed states and other territory wrested from British control during the war. The claims of Virginia had, for the moment, prevailed against the ambitions of Maryland, some of whose leading politi-
cians were personally interested in overturning Virginia’s title. In addition to these revisions, Congress rejected the sixth and seventh Articles, which contained the prohibitions against state measures that would discriminate against citizens of other states.

These deletions suggest that most delegates had consciously repudiated Dickinson’s essential notion of confederation. For while Congress did retain the clause giving the confederation sole authority to resolve disputes between states, it eliminated a potentially broad area in which its powers and the vested interests of individual states could easily overlap and come into conflict. The result was a plan whose remaining provisions were still largely the work of John Dickinson but whose conception lay closer to the notion of confederation advanced several months earlier in the Connecticut plan. The effective powers of government were to be divided into two general spheres of authority, with the respective functions of Congress and the states clearly and exclusively distinguished. The delegates thereby stripped the Dickinson plan of its original thrust. The “intestine divisions” that were now to be avoided no longer involved political conflict within or between states but centered instead on the possibility of competition between the states and Congress. Here as on other occasions Dickinson had devised a complex scheme designed to allay fears and answer objections that he found peculiarly alarming. Some of his colleagues certainly shared his fears, but Dickinson’s remedies, which would have required Congress to impose its authority upon the states, threatened to raise as many problems as they would solve. This was what Edward Rutledge meant when he complained that the Dickinson draft shared “the Vice of all his Productions . . . I mean the vice of refining too much.”

The American union would enjoy greater stability if the powers that seemed most appropriate to Congress and the states were rigorously defined and separated. Underlying these revisions of July–August 1776 were growing doubts as to whether any draft of confederation that Congress could approve would be promptly ratified by the states. When debate had begun in July, several delegates predicted that the whole business could be quickly completed; but their optimism was soon dispelled. By late August, when Edward Rutledge complained that “we have made such a Devil of it already that the Colonies can never agree to it,” the future progress of confederation seemed highly uncertain. The decisions regarding repre-
sentation, expenses, and western lands embodied in the text that Congress ordered printed on August 20 reflected no compromise or consensus but loomed instead as formidable obstacles to final agreement within Congress or ratification by the states. Each delegation had been forced to calculate how the interests of its constituents would be served as each of these issues was resolved, and each delegation had to ask whether any formal confederation should be concluded at all if satisfactory compromises were not reached. During the debate of 1776 threats of disunion flowed freely. James Wilson warned that Pennsylvania would never confederate if Virginia clung to its western claims. The Virginia delegates replied that those claims were inviolable, and that their constituents would never accept a confederation that required their sacrifice. Thomas Lynch, Jr., spoke for many southern delegates when he warned: “If it is debated, whether their slaves are their property, there is an end of the confederation.” John Witherspoon was similarly adamant in opposing the arguments for proportional representation.34

The revisions made by the committee of the whole removed several of the provisions that the states in general might have found most objectionable, but they could not assuage all the reservations particular states would inevitably feel. After August 20 other concerns intervened to prevent the further consideration of confederation. But delay was, in any event, unavoidable: these three issues had evoked such conflicting interests that they were, for the time being, insurmountable. In the late summer of 1776, when Congress was still reasonably confident of its authority, it seemed more prudent to defer public discussion of confederation than to raise potentially controversial issues touching, in different ways, on the interests of all the states.

This caution and the character of the amendments made to the Dickinson plan suggest, therefore, that Congress was sensitive to the likely reception confederation would encounter in the states. Yet nothing in any of the three versions of the Dickinson plan indicates that the delegates believed that Congress was to be subject to the supervision or control of the states. As Congress would not be allowed to tamper with their internal police, the states were expected to obey and implement its decisions unequivocally. Indeed Article XII, which had enjoined the states from forcibly resisting congressional decisions “concerning the Services performed and Losses or Expenses incurred by every
Colony,” was amended to read simply: “Every State shall abide by the Determinations of the United States in Congress Assembled, on all questions which by this Confederation are submitted to them.”

In practice, then, this division of power meant that, in their separate spheres, both Congress and the states were to exercise certain functions of sovereign government, and that a division of sovereignty was implicit in the structure of American federalism from its very inception. The theoretical difficulties raised by such a division of power were formidable. Few political adages were more familiar than that which stated that *imperium in imperio* —a state within a state, or two sovereign authorities in one society—was “a solecism in politics.” Although in their opposition to Parliament the colonists had in fact been groping toward modern theories of federalism, the notion that sovereignty ultimately had to reside in some one discernible place was still orthodox. Yet the most surprising feature of the drafts and deliberations of 1775–76 was, finally, that the question of sovereignty was never directly raised. No one had yet asked where sovereignty would be located when the principal functions of government were parceled out between Congress and the states.