CHAPTER VIII

Confederation Drafted

FOR eight months after the summer of 1776, discussion of confederation ceased, a victim of more pressing concerns and the delegates' inability to envision satisfactory solutions to the problems of representation, expenses, and western lands. When debate resumed in May 1777, the delegates quickly realized that these issues remained intractable. Once again discussion lagged, not to be resumed until early fall, when the British occupation of Philadelphia forced Congress to flee to York. There confederation finally acquired an urgency it had previously lacked. Congress was anxious to capitalize on the victory at Saratoga to secure a French alliance at long last, and it was preparing to issue its first set of comprehensive recommendations designed to cope with the alarming specter of inflation. Because completion of the Articles of Confederation would provide a vital boost for both policies, Congress resolved to issue a recognizably imperfect confederation. Some confederation, any confederation, was necessary, whatever defects it contained, and where satisfactory compromises could not be arranged, solutions had to be imposed.¹

Although the substantive differences between the final version of the Dickinson plan and the text Congress ultimately approved in mid-November 1777 scarcely warranted fifteen months of delay, one critical change had been adopted during the opening debates of May. With the arrival of Thomas Burke from North Carolina, the membership of Congress included at
least one delegate who was prepared to articulate a theory of confederation founded on a belief in the primacy of state sovereignty. His arguments seemed compelling, and Congress quickly adopted a new Article affirming that the states were sovereign and that the confederation could exercise only those powers that were expressly delegated to it.

Yet it is questionable whether this redefinition of the theoretical nature of the union actually altered most delegates' perceptions of the extent and character of congressional authority. Few of Burke's colleagues shared his intense interest in the constitutional principles that the Articles of Confederation were to embody. They simply hoped that the Articles would be immediately ratified by the states. The opposition of Maryland destroyed that hope. Still insisting that the union should acquire control over western lands, Maryland refused to ratify until early in 1781. Unratified, the Articles could give Congress none of the additional support it desired; once ratified, they scarcely seemed adequate to the worsening problems Congress faced.

**Thomas Burke and the Problem of Sovereignty**

In the absence of a confederation, it was inevitable that awkward questions would occasionally arise about the proper relations between Congress and the states, many of which were themselves now operating under new constitutions of government. Although the reverses America experienced during the months after independence gave Congress little time to reconsider confederation, several discrete developments revealed how uncertain many delegates were about the precise extent of their authority. What, for example, was the legal status of a congressional recommendation? When Congress advised each state to offer grants of land to soldiers enlisting in the army, the Maryland Convention fired one of the first rounds of its campaign for a national domain by voting to substitute a cash bounty instead. Congress responded by passing a resolution that not only reaffirmed its initial proposal but declared that "the faith, which this house, (by virtue of the power with which they were vested,) has plighted, must be obligatory upon their constituents; [and] that no one state can, by its own act, be released there-
from. . . .” After Maryland issued another protest, however, Con­
gress adopted a more conciliatory resolution, which temporarily
prevented further controversy but left the basic constitutional
issue unresolved.² A different problem was raised in November
1776 when Congress briefly considered sending continental
troops to Delaware to suppress a resurgence of loyalist activity,
even though Delaware officials had not requested assistance.
Some members thought such an intervention would have ex­
cceeded the proper bounds of congressional authority.³

Two overlapping debates that took place in February 1777
evoked a more thoughtful examination of the respective rights
of Congress and the states. One involved deciding whether Con­
gress should approve the proceedings of a convention of the four
New England states that had been held at Providence in Decem­
ber to discuss two pressing problems: the British occupation of
Rhode Island and the general rise in prices.⁴ Much of this debate
centered on the wisdom of endorsing a plan of price regulation
adopted by the meeting, an intricate and controversial subject in
its own right. From the outset, however, the delegates were also
concerned with another question: whether the meeting itself
“was a proper one and whether it did not stand in need of the
Approbation of Congress to make it valid.” Samuel Adams and
R. H. Lee argued that the states had an inherent right to consult
one another whenever they wished, and that because “we were
not yet confederated . . . no law of the Union infringed.” James
Wilson and John Adams replied that congressional approval was
necessary because the convention had “touched upon continen­
tal Subjects.” It was left to Benjamin Rush to restate the issue in
more general terms. The real question, Rush asserted, was not
whether the Providence proceedings required approval, but
whether any meeting should have been held at all. “Their busi­
ness was chiefly continental,” he declared, “and therefore they
usurped the powers of congress as much as four counties would
usurp the powers of legislation in a state should they attempt to
tax themselves.” Partly because it would have been impolitic to
offend New England by repudiating the convention, “All the
Members agreed that the Meeting was right considering the
circumstances”; but, William Ellery added, “after a long meta­
physical debate which took up Part of three Days Congress
were equally divided” as to whether the states had an inherent
right “to meet without the prior or subsequent Approbation
of Congress.” This question, too, was thus left unresolved.5

The results of the other debate of February 1777 were less equivocal. At issue was a report recommending that the states should authorize “any constable, freeholder, or Keeper of any public ferry” to apprehend suspected deserters. The report had been amended to allow local committees of inspection to exercise the same power during the interval that would elapse before the states framed suitable enabling legislation. Protesting vehemently against the adoption of this amendment, Thomas Burke was able to procure its reconsideration, and in the ensuing debate he and James Wilson presented radically different views of the nature of the union.6

The central question in dispute was whether Congress, acting solely on its own authority, could continue to direct local agencies to execute its policies without the intermediate approval of the states. As Burke summarized the debate, “Mr. Wilson argued that every object of Continental Concern was the subject of Continental Councils, that all Provisions made by the Continental Councils must be carried into execution by Continental authority.” Congress could therefore directly empower local officials to apprehend deserters. Wilson’s position was predicated on the absence of any formal confederation defining or limiting the powers of Congress and, perhaps more forcefully, on precedents set during earlier phases of resistance, when “Congress had always directed their resolves to be put in Execution by Committees of Inspection and it was never denied that they had Power” to do so. Like other moderates from the middle states, Wilson believed that the creation of new constitutions had weakened rather than strengthened the hand of government by generating divisive political conflicts within the states, and thus that Congress might see its decisions implemented more efficiently if it continued to work directly through local committees and militia companies.7

In reply, Burke argued, repetitively but convincingly, that it was inherently dangerous to allow Congress to exercise coercive powers within the states,

That it would be giving Congress a Power to prostrate all the Laws and Constitutions of the states because they might create a Power within each that must act entirely Independent of them, and might act directly contrary to them, that they might by virtue of this Power render ineffec-
tual all the Barriers provided in the states for the Security of the Rights of the Citizens . . . [that] the subject of every state was entitled to the Protection of that particular state, and subject to the Laws of that alone, because to them alone did he give his consent . . . That the states alone had Power to act coercively against their Citizens, and therefore were the only Power competent to carry into execution any Provisions whether Continental or Municipal.

In this debate the advantage lay decisively with Burke because, unlike Wilson, he could support his position by pointing to the actual provisions of the new state constitutions and their attendant bills of rights. While Congress had postponed confederation, most of the states had acted to define the powers of their governments and the rights of their citizens. They had thereby ended the general state of constitutional uncertainty that had previously enabled Congress to operate much in the way Wilson described and hoped to perpetuate. The good of the “common cause” no longer provided a sufficient justification for the exercise of congressional power. Burke’s argument was powerful, and when he was through, Wilson was forced to back down. R. H. Lee scoffed that “it was a Misfortune to be too learned,” but John Adams admitted that the “articles of War must be enacted into Laws in the several States,” if they were to have their desired effect.

What was striking about Burke’s role in this debate was not only his success but his presumption. He had first appeared in Congress only three weeks earlier, as the Providence convention was coming under consideration. Unlike other new members who typically entered Congress somewhat unprepared for the duties and burdens awaiting them, Burke arrived with an acutely defined sense of his responsibilities. No other delegate was more determined to act strictly as an ambassador from a sovereign state or found that role, which was not easily maintained in the close quarters of Congress, more comfortable. On his first day in Congress he informed Governor Richard Caswell of his intention “hereafter to trouble you with a letter every post,” and to “give my sentiments of the different political principles which I shall perceive to actuate the several States, the measures intended to be pursued, the intelligence we receive, and the important decisions in Congress.” He was a scrupulous correspondent, and if Caswell actually had little use for the stream of letters and abstracts of debates he received from Burke, the historian is more
fortunate, for they provide not only a valuable record of the doings of Congress and Burke’s opinions but also, in their ingeniously, almost pompously self-serving style, a revealing insight into his character and temperament as well. In Burke, personality and politics fused: assertive and unyielding in debate, acutely sensitive to private honor and personal privilege, this youthful and ambitious Irish immigrant felt few compunctions about calling Congress back to what he perceived to be the first principles of republican government.8

The debates he witnessed during February and March 1777 only confirmed his intuitive reservations against concentrating power in Congress. Precisely because he was so intent on representing the interests of North Carolina, he detected numerous occasions when the rights and interests of other states seemed threatened. On his first day in Congress he noticed that “a considerable jealousy is entertained of the northern states.” Three days later a debate about the declining level of attendance in Congress produced an attempt to “Embarrass several states.” The next day a motion to raise the interest on loan office certificates seemed contrived to benefit some states at the expense of others. Another week passed, and Burke thought North Carolina slighted when arrangements were made for the middle and southern states to hold conferences similar to the Providence convention.9

At first Burke concluded that the threat to liberty lay in the ambitions of the landless states, which would “endeavour by degrees to make the authority of Congress very extensive” in order eventually to “pass resolves injurious to the rights of those states who claim to the South Seas.” But when, in early March, he composed a lengthy letter summarizing his first five weeks of attendance at Congress, he found it less easy either to pinpoint the source of danger or to provide a coherent explanation for the conduct of his colleagues. Two seemingly contradictory observations troubled him. He was convinced that his fellow delegates were sincere patriots who were neglecting domestic pleasures and interests “to attend public business under many insurmountable difficulties and inconveniences,” and who had no discernible “motives for increasing the Power of their body Politic.” Yet his brief experience at Congress had already taught him “that unlimited Power can not be safely Trusted to any man or set of men on Earth.” Why, then, was a Congress composed of “generous
and disinterested” men so often preoccupied with debates about increasing its own power?10

Had Burke been able to identify factions that consistently favored or opposed the growth of congressional power, this question could have been quickly answered. But so convenient an alignment did not in fact exist. “The advocates do not always keep the same side of the Contest,” he informed Caswell.

The same persons who on one day endeavour to carry through some Resolutions, whose Tendency is to increase the Power of Congress, are often on an other day very strenuous advocates to restrain it. From this I infer that no one has entertained a concerted design to increase the Power; and the attempts to do it proceed from Ignorance of what such a Being ought to be, and from the Delusive Intoxication which power naturally imposes on the human Mind.

It was this “Delusive Intoxication” that would prove destructive of liberty, he believed, rather than any overt clash of parties committed to rival ideologies of nationalism or state sovereignty—parties whose existence this intensely suspicious man was unable to detect. Indeed, Burke’s attempts to identify more immediate dangers and sinister motives were inconclusive. Although his most vivid fear was that Pennsylvania, Massachusetts, and Virginia would combine to subvert the liberties of the smaller states, he offered no example of the common interests they shared to make such a project reasonable. “Patriotism in America must always be partial to the particular States,” he argued, for no man could gain political preferment except by satisfying his constituents; but he then illogically concluded that it was this provincial chauvinism that would make the confederacy dangerous to the states.

Burke was, in short, an unreconstructed whig whose image of power reflected the traditional axioms of eighteenth-century opposition thought, with its obsession with the insatiable and corrupting nature of power itself. His initial reaction against the dangers of an overmighty Congress was in part derived, it is true, from a genuine attachment to the importance of preserving the independence of the states—an attachment that many other delegates shared, but in a more abstract, less compelling way. It may also have reflected a sensible reaction to the history of his native Ireland, whose patronage-ridden subordination to a central government provided almost a perfect example of the dan-
gers of corruption. Still, the remarkable rapidity with which Burke found his doubts confirmed suggests that his convictions were sparked by an academic understanding of power rather than the experience of its exercise, and this set him apart from most of his colleagues. Their approach to the problem of confederation was increasingly governed by immediate pressures of finance, diplomacy, and the need to enhance the authority of Congress. But Burke, the newcomer, viewed this issue in terms of framing an enduring federal constitution, and was more concerned about indefinite future threats to liberty than current dangers. Indeed, as confederation was being completed in the fall, Burke confessed to Caswell: “I fear I differ very widely on this subject with a majority of Congress. I deem a time of peace and tranquility the proper time for agitating so important a concern”—a luxury other members felt Congress could not afford.¹¹

Nevertheless, when Congress resumed its consideration of confederation in late April, the novelty of Burke’s perspective enabled him to secure what would become the most important addition to the Articles finally completed in November: a thorough revision of the Article reserving to each state “the sole and exclusive Regulation and Government of its internal police, in all matters that shall not interfere with the Articles of this Confederation.” Burke thought this provision “resigned every other power” to the confederacy, and would allow later Congresses “to explain away every right belonging to the States and to make their own power as unlimited as they pleased.” He therefore moved an amendment designed to affirm that “all sovereign power was in the states separately, and that particular acts of it, which should be expressly enumerated, would be exercised in conjunction, and not otherwise; but that in all things else each State would exercise all the rights and power of sovereignty, uncontrolled.” The actual wording of his amendment was somewhat more ambiguous. It declared that each state would retain “its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated” to Congress.¹²

Everything we know about this revision comes from a letter Burke wrote a few days later, in which he recorded four intriguing aspects of its passage: that it was “at first so little understood that it was some time before it was seconded”; that R. H. Lee and James Wilson voiced the principal opposition; that eleven states
voted in its favor, Virginia against, and New Hampshire divided; and finally, his own surprised pleasure in discovering "the opinion of accumulating powers to Congress so little supported." What inferences can be drawn from these statements?

One is that most delegates apparently found this amendment not merely less controversial than Burke anticipated they would, but also, as their initial lack of interest in it perhaps suggests, less significant than he believed it to be. Burke's conviction that his amendment was necessary rested, after all, on an opinion that his colleagues were insensitive to the growth of congressional power. Yet however dangerous he found the wording of the earlier draft of this Article to be, none of the delegates who had participated in the debates of 1776 would have imagined that it opened a path for the sort of tyranny Burke envisioned. They may have thought that Burke's amendment provided a modest shift in emphasis or a useful clarification of meaning, but not the critical transformation its author assumed it portended. The expansive language of the amendment would have the advantage of reassuring the states about the security of their rights—an important consideration, given existing doubts about the prospect for ratification—but until the powers that were to be "expressly delegated" to the union were enumerated, its actual impact on the authority of Congress remained speculative. Indeed, the excessive character of Burke's fears probably prevented him from realizing that his amendment was less innovative than he thought. Certainly Congress could scarcely have disposed of this issue so easily had it believed the basic structure of the confederation hinged on its outcome.

Although Burke did not summarize the arguments that were made against his amendment, the very fact that Lee and Wilson joined together in opposition is significant, for the two could not normally be called political bedfellows. Lee, the old radical, had been an early proponent of armed resistance, independence, and republican government; Wilson, an active member of the moderate caucus, had supported independence reluctantly and remained a severe critic of the new constitutions. Lee represented Virginia, with its vast western claims; while Wilson, a delegate from landless Pennsylvania, was himself one of the speculators interested in overturning Virginia's title. In 1787, of course, the two men also divided over the federal Constitution. At the very least, then, their joint opposition to Burke suggests the difficulty
(if not futility) of attempting to transpose what little we know about alignments on other issues to the question of confederation, or of assuming that simplistic labels—"radical" and "conservative"—can be applied to the participants in this debate. If this vote did reflect some overt clash of nationalist and states'-rights ideologies, it is also difficult to explain why the New York members, who composed as "conservative" a delegation as any, would have supported Burke.

With these qualifications, it is nevertheless unquestionable that Burke made a critical contribution to the evolution of American notions of confederation. He was the first to ask how conventional ideas of sovereignty were to be reconciled with the establishment of a confederation. And once this question, hitherto surprisingly ignored, was posed, there could be little doubt that the states were a more appropriate repository for sovereignty than was the union. The states were the constituent parties of the union: they elected and instructed the members of Congress, and their consent was indisputably necessary for the ratification of confederation. The states possessed governments constructed in the normal meaning of the term, exercising legislative, executive, and judicial functions, while Congress remained, so to speak, structurally anomalous.

Yet Burke's solution was satisfactory only in the theoretical sense of defining the one locus where sovereignty ultimately had to reside. For a pragmatic division of the functions of sovereignty was, as has already been suggested, inherent in the nature of American union from the very start. The same confederation that would acknowledge the sovereignty of the states would also simultaneously detach substantial areas of authority from their control and expressly delegate these powers to Congress. And in the exercise of its exclusive responsibilities, Congress was not to be subject to the veto or even the supervision of the states. The framers of the Articles did not presume that the states were free to accept or reject congressional decisions as they pleased. Where the authority of Congress was clearly defined, implicit obedience was due to its decisions. The final draft of 1777 thus preserved the language of 1776: "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." The Articles contained no provision empowering Con-
gress to use coercive authority against the states because, quite simply, it was difficult to believe they would willfully defy its decisions. By the early 1780’s that presumption would seem naïve—though even then the inability of the states to comply with congressional policies was often more important than their refusal to do so; but in the context of 1777, it was consistent with the early experience of Congress.*

From this first success Burke evidently concluded that his colleagues would prove receptive to further changes, and in early May he introduced a second amendment, which sought both to provide additional safeguards against congressional power and to solve the persistent problem of apportioning representation. Burke proposed converting Congress into a bicameral legislature, composed of a General Council, where members

*Richard B. Morris has recently suggested that “The adoption of Burke’s amendment does not necessarily mean that the Articles endorsed a ‘compact’ view of the formation of the Union, in which the states agreed to confederate and delegate limited aspects of their sovereignty to a central government. Rather, since the Articles recognized in Congress exclusive authority over peace and war . . . [it] may be read as simply retaining in the states all aspects of internal sovereignty not expressly delegated to the United States” (Morris, “The Forging of the Union Reconsidered: A Historical Refutation of State Sovereignty over Seabeds,” Columbia Law Review, 74 [1974], 1057). Although Burke was critical of the range of powers the Articles assigned to Congress, he himself also admitted that “The United States ought to be as one Sovereign with respect to foreign Powers, in all things that relate to War or where the States have one Common Interest” (Burke, Notes on the Articles of Confederation [November 1777), in Edmund Burnett, ed., Letters of Members of the Continental Congress [Washington, D.C., 1921–36], II, 554). The question of where sovereignty initially resided is, of course, one of the oldest topics in American constitutional history, the source of what Gordon Wood has aptly characterized as “a continuing if fruitless debate . . . over the priority of the union or the states” (Wood, The Creation of the American Republic, 1776–1787 [Chapel Hill, 1969], 355). Morris’s essay provides, in my opinion, the most important and sensible analysis of this issue. His principal conclusion is that “The central government [i.e., Congress] alone possessed those attributes of external sovereignty which entitled it to be called a state in the international sense, while the separate States, possessing a limited or internal sovereignty, may rightly be considered a creation of the Continental Congress, which preceded them in time and brought them into being.”

This conclusion is essentially consistent with the interpretation I have sought to develop in this book. A reconstruction of the precedents, events, and atmosphere of 1774–76 does not validate a states’-rightist interpretation of the origins of the union. In addition to congressional prerogatives over war and diplomacy, the procedures used to authorize the creation of new governments in 1775–76 clearly demonstrate that sovereign powers were vested in Congress from the
would vote as individuals and the states be represented according to some unstated rule of apportionment, and a Council of State, where each state would have one member. Every proposed act of Congress would be introduced in the General Council, "read three times and three times assented to," and would then require the approval of the Council of State. Once properly passed, "every act, Edict and ordinance" was to be considered "binding on all and Every of the United States."  

On this proposal, however, Burke met defeat: "the Qu: Shall the Congress consist of two houses passed in the Negative," Charles Thomson noted, "So whole dropt." According to the terse notes recorded on Burke's own copy of these resolutions, several objections were raised against his proposal. One was that it would produce "Delays in Execution." Procedural safeguards were laudable in theory but could well prove unwisely obstructive in time of war, when Congress had to act expeditiously. Indeed, some delegates questioned whether Congress was really start and that the emerging provincial regimes were regarded as subordinate bodies. This view has recently been endorsed by Samuel H. Beer in his 1977 presidential address to the American Political Science Association, "Federalism, Nationalism, and Democracy in America," American Political Science Review, 72 (1978), 9-21.

In the search for constitutional precedents, then, "the national theory . . . is a superior version of what actually happened," as Beer has observed. Yet it is equally important to recognize the extent to which the location of sovereignty remained a potential source not only of conflict but—what was perhaps more revealing—of confusion as well. The precedents of 1774-76, the location of sovereign powers in Congress, many delegates' intuitive sense of responsibility to the union, and the detailed provisions of the Articles, all militated against what might be called an implicitly states'-rightist conception of the union. But other considerations worked against a protonationalist view: the framing of many state constitutions by specially elected conventions, the apparent thrust of Burke's Article, the inability of Congress to enforce its decisions, and a sense that the notions of popular sovereignty enshrined in emerging republican theory were workable at the state level but difficult to apply on any larger scale (a point Edmund Morgan has recently advanced in his review of the new edition of the delegates' correspondence, New York Review of Books, March 9, 1978, 17). The reconciliation of the conception of unitary sovereignty with the realities of an implicitly federal polity was thus a source of controversy and uncertainty even before 1787, not because the Articles endorsed state sovereignty, but because the issues were imperfectly understood. It was hardly surprising, therefore, that the post-Revolutionary decades produced a growing dispute over the priority of the union or the states. The emerging debate has been reexamined in Kenneth Stampp, "The Concept of a Perpetual Union," Journal of American History, 65 (1978), 5-33.
a legislative body at all, arguing instead that it was an “Executive Body resembling [the] King.” According to this view, Congress had simply supplanted the crown in the exercise of two functions traditionally at the heart of royal power, war and diplomacy, functions that were executive in nature. Its apparent resemblance to a legislative body was thus both superficial and illusory, and Burke’s proposal would merely compound the illusion. Finally, even admitting that Congress was a representative body, some delegates argued that Congress should represent either the states as corporate units or as aggregates of population, but not both. There should be “No Combination Except one or the other,” because the “Idea of Distinctions resembled the British Constitution.”

By rejecting this amendment, Congress lost a useful opportunity to consider two issues of more general importance. First, the very idea of bicameralism carried with it an implicit suggestion that the formal structure of the confederation should somehow conform to the divisions of authority customarily expected of other governments. Despite the substantial scope of its authority, Congress thus remained something of a theoretical anomaly, apparently not subject to the same laws and precautions that were meant to check the abuse of power in other governments. It was difficult even to find a term that would accurately describe the nature of Congress. Was it “a deliberating Executive assembly,” as Burke would observe in 1779; “not a legislative but a diplomatic assembly,” as John Adams asserted in 1787; or “both legislative and executive,” as Thomas Jefferson noted in challenging Adams’s definitions? Second, though Burke favored bicameralism primarily as a check against the abuse of power, his amendment did offer a promising solution to the familiar problem of representation, one that in fact directly anticipated the eventual solution of 1787. That problem was in effect left unsolved, for any scheme of apportionment worked out within the confines of a single-chamber Congress would antagonize either the small or large states or require some hybrid scheme of voting that might well prove as cumbersome, and thus objectionable, as bicameralism.

The defeat of this amendment marked the beginning of a growing separation between Burke and the rest of Congress over the importance of confederation. Even before these opening debates Burke had questioned whether a formal confederation
was necessary or need comprise anything more than a “defensive alliance.” During the months that followed, he continued his attacks against entrusting too much power to Congress, carrying them at year’s end to the North Carolina assembly, which at first, under his prodding, gave the completed Articles only a partial ratification. Other delegates who shared his belief in the importance of preserving the autonomy of the states came to detest him. James Lovell criticized his “obstinate Vanity”; William Whipple, who had once thought Burke “the best man I have seen from that Country,” spoke derisively of his “Oratory and impudence”; and when Burke returned from North Carolina in March 1778, Eliphalet Dyer observed that “The Disturber—I mean B—ke has just come after Inducing N[or]th C[aroli]na to dissent from Confederation in a great part of it. [I]s now in Congress to the universal sorrow &c of every Member.” Ironically, the man who had succeeded in incorporating the principle of state sovereignty in the Articles of Confederation emerged as that document’s first major critic.

Confederation Completed

Once the two Burke amendments were disposed of, discussion of confederation quickly foundered. The familiar problem of representation created the first snag, but the two other critical issues of 1776—western lands and common expenses—also reappeared in an obstructive role. Having discovered that these problems had survived the winter intact, Congress soon lost momentum. “We every now and then take it into Consideration,” Samuel Adams noted at the end of June, but during the rest of the summer formal debate about confederation apparently ceased. Little that was new could be said about the old issues: the basic arguments and positions were too well defined. “I believe most if not all the Members have already made up their Minds,” Adams informed James Warren, adding, “The Sentiments in Congress [on these issues] are not various, but as you will easily conceive, opposite.” Turnover in the membership of Congress may have been a further source of delay; late in July, James Lovell observed that confederation had fallen a “martyr to the change in Delegation which takes place between the periods of
second and third distant discussions upon the same point."\textsuperscript{18}

With no workable compromises in sight, Congress turned to more pressing business. Privately, however, many delegates were chafing at this further delay. “I grant it should be well considered, and digested with judgement,” R. H. Lee noted in mid-July during a brief stay at his Virginia plantation; “but such excessive refinement, and pedantic affectation of discerning future ills in necessary, innocent, and indeed proper establishments, I cannot bear with patience.”\textsuperscript{19} By early summer there was a growing feeling that Congress might soon be forced to decide whether a flawed confederation was not better than none at all. Even Charles Carroll, whose Maryland constituents had instructed him to oppose any plan that failed to give Congress control over western lands or that included slave labor in the assessable wealth of a state, thought that the impasse could not be allowed to continue indefinitely. “The absurd claim to the back lands will not be given up,” he informed his father on June 23; “however I think it better to confederate even on these terms than not to confederate at all.” Three days later he wrote:

I am pleased to find a very considerable, nay a very great majority of Congress as anxious for a confederacy as I am or you can be: the necessity of this measure is now obvious to every man, yet I fear the confederacy will not be formed on principles so mutually advantageous as it ought & might be, but in my opinion an imperfect & somewhat unequal Confederacy is better than none.\textsuperscript{20}

Another three months would elapse, however, before Congress, fleeing Philadelphia and Howe’s army for the isolated security of York, finally forced itself to resume discussion of confederation in early October.

No sudden compromise or conceptual breakthrough preceded this decision. The major outstanding issues remained immune to satisfactory compromises because each was too intimately involved with the calculated interests of the states to be neatly resolved. Yet after months of delay and equivocation, a point had been reached where virtually all of the delegates agreed that the necessity of completing confederation at last outweighed the inevitable danger that some states would be antagonized by whatever solutions were eventually imposed. Like other issues, confederation ultimately proved susceptible to
the larger demands of resistance; and in the fall of 1777, two considerations—one financial, the other diplomatic—warranted its prompt completion and ratification.

After months of growing apprehension over the steady depreciation of continental currency, Congress was finally preparing its first comprehensive program to cope with inflation. Framed during the same period when it was debating confederation, this program called upon the states to initiate several drastic measures. They were to collect $5 million in taxes to be remitted to the continental treasury, cease their own emissions of paper currency, and impose both regional price restraints on "labour, manufactures, internal produce, and commodities imported from foreign parts" and temporary price controls on military supplies. Because these recommendations were more controversial and potentially more explosive than any of the requisitions for men and supplies that Congress had previously made upon the states, and because inflation was increasingly coming to be seen as the most dangerous source of popular "disaffection," the delegates realized they could no longer afford to ignore the nebulous character of their own authority. By itself confederation could not make tolerable measures that were inherently unpalatable. But it could help induce the state legislatures to enact the necessary taxes and regulations and, in more elusive ways, work to enhance popular confidence in Congress itself—a vital if unmeasurable component of the value of any paper currency. Simply demonstrating that a permanent federal union did exist might go a long way toward reassuring the public that its various financial instruments would ultimately be redeemed. The final approval and publication of this financial program was therefore to be delayed, William Williams noted in late October, because the delegates "conceive it will go out with much more weight with or after the Confederation." 21

Diplomatic considerations were the second source of this new sense of urgency about confederation. Although the delegates lacked any reliable intelligence about the progress of their commissioners' negotiations with France, the course of the 1777 campaign fostered a new confidence that an alliance would soon be concluded, particularly after Congress received word of Burgoyne's surrender in mid-October. In 1777, as in 1776, the delegates believed that the existence of a formal confederation would
strengthen their commissioners’ bargaining position, partly as a matter of protocol, but also by providing the French court and other European powers with reassuring evidence of the new nation’s political stability and its determination to secure independence. Like the Declaration of Independence before it, confederation was a diplomatic signal to potential allies; and in the fall of 1777, when Congress was eager to capitalize on Saratoga, it was a signal that could no longer be withheld.

Once the decision to resume debate was taken, Congress needed only ten days to resolve the issues that had impeded confederation so long. The questions of representation and western lands each required only a day of debate. On October 7, Congress rejected three motions for apportioning representation by population or the size of state contributions to the continental treasury, and reaffirmed that each state would have one vote. Only Virginia and a handful of other delegates, including John Adams, favored reapportionment; against the interests of their own states, Massachusetts and Pennsylvania voted with the majority. The question of western lands was similarly resolved on October 15, when Congress rejected three proposals to allow the union to ascertain western boundaries and dispose of the lands lying beyond them. On the final vote on this issue, only Maryland and a lone New Jersey delegate were recorded in favor of national control of the American interior, though here too other states were interested in contesting the sweeping claims of the landed states.

The problem of apportioning expenses among the states was more troublesome, and ultimately consumed five days of debate before Congress narrowly approved an amendment making the value of all granted lands, “and the buildings and improvements thereon,” the standard to be employed. Here no compromise at all was possible. The four New England states voted solidly against this provision, believing that it was highly discriminatory against their region, whose lands were more densely settled and better improved than most of the other states. The four southern states present voted solidly in its favor, largely because slaves had been exempted from the formula. Pennsylvania and New York divided. New Jersey cast the deciding vote and may even have dictated this solution, since John Witherspoon had introduced an identical amendment during the debates of 1776.
The remaining Articles of the August 1776 draft were reconsidered between October 21 and November 7. Six were approved as written. The states were still prohibited from negotiating with foreign powers; nor could they make formal agreements with one another or maintain naval or permanent military forces without the consent of Congress. Canada was again invited to join the union, but no other new state could be admitted without the approval of nine states. Perhaps most important, Congress again confirmed that “Every State shall abide by the determinations” of Congress “on all questions which by this Confederation are submitted to them.” Two other Articles were marginally amended.

Two significant changes were made, however, in Article XIV, which detailed the powers and authority of Congress. After considerable debate, the delegates approved a proviso stipulating that “the legislative rights of any State, within its own limits [shall not be] infringed or violated” by any treaty Congress might make. Congress imposed a second limitation on its authority when it established a carefully detailed procedure for mediating disputes between states, an area where John Dickinson had originally hoped to see the union vested with broad powers. Although many of the clauses Dickinson had inserted toward that end had been trimmed during the revisions of 1776, the committee of the whole had retained a clause allowing Congress to decide “all disputes and differences” between states. This was now struck out. The quasi-judicial procedure erected in its place made Congress “the last resort on appeal” for resolving such disputes, but only after an aggrieved state had lawfully requested a hearing and other intermediate processes in which Congress would play a merely supervisory role had been exhausted. Article XV, which had initially enumerated the powers of the Council of State that was to meet when Congress recessed, was also thoroughly revised. The Committee of the States, as it was now called, was to perform whatever functions “the consent of nine states, shall, from time to time, think expedient,” but not to reach decisions on matters normally requiring the assent of nine states.25

While each of these changes suggests that Congress was sensitive to the need for safeguards against its own power, the final phase of discussion witnessed the adoption of several additional provisions that marked a significant reversion toward John Dickinson’s original conception of confederation. On November 10,
Congress appointed a committee to consider “sundry propositions” submitted as additional Articles. The committee acted quickly, reporting seven Articles the next day. Of these, four were adopted essentially as reported, two were approved with significant amendments, and one authorizing Congress to discipline its own members was rejected. One clause pledged the states and the public faith to the “Payment and Satisfaction” of all charges and debts Congress had previously contracted, and thus confirmed the states’ obligation to implement the fiscal decisions of Congress while incidentally reinforcing the plan of financial reform Congress was about to recommend to the states. The states would also be required to give “full Faith and Credit” to each other’s legal acts and to extradite persons accused or convicted of “treason, felony, or other high misdemeanor in any State”—though Congress balked at extending the former provision to include the recovery of private debts or the latter to apply to persons “charged or Suspected of any Crime.” The new procedures for adjudicating disputes between states were extended to cover “all controversies concerning the private right of soil, claimed under different grants of two or more states.” Finally, Congress carefully considered and approved a set of four restrictions on the residual powers of the states. First, citizens of each state “shall be entitled to all privileges and immunities of free citizens in the several states”; second, they could travel freely between states, “and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants”; third, such restrictions could not prevent them from removing personal property to their state of residence; and fourth, no state could lay duties “on the property of the United States, or either of them.”

Although these changes added nothing to the powers already “expressly delegated” to Congress, the new restrictions they imposed on the states were similar to those originally proposed by John Dickinson in 1776, and in apparent contradiction with the theory of state sovereignty Thomas Burke had advanced in April 1777. Each of these prohibitions involved some function of government related to the internal police of the states but whose exercise could prove inimical to the tranquility of the union. The exercise of these prerogatives of sovereignty was not, however, to be transferred to the union, but simply denied to the states. There were, in other words, some rights of sovereignty
that would neither be reserved for the states nor delegated to Congress. Without materially impairing the states' ability to regulate their own affairs, the confederation would nevertheless establish certain limits on their sovereignty other than those required by the exigencies of war and diplomacy.

With these additions approved, Congress immediately appointed a committee "to revise and arrange the articles." Their work, too, was quickly completed and laid before Congress two days later (on November 15). Their editorial labors made the final text agreed to that day more elegant and compact than its predecessor. Previously dispersed but related clauses were now united to produce a text numbering three fewer Articles than before, although little had been expunged while several new provisions had been added. Congress immediately ordered the Articles to be printed, but met with a few delays from its Lancaster printer, who would do only a page a day. "I had rather be a Hogg-driver," Jonathan Dickinson Sergeant complained, "than attend his press."27

In the meantime it approved a circular letter to the states that recalled "the difficulty of combining in one general system the various sentiments and interests of a continent divided into so many sovereign and independent communities," and urged that the Articles be given prompt consideration. Against the wishes of several New England delegates, who possibly hoped to organize opposition against the formula for apportioning expenses, Congress fixed March 10, 1778, as the date for proceeding with final ratification. If this note of haste contrasted all too visibly with their own dilatory proceedings, the delegates could nevertheless adduce numerous reasons for prompt ratification. "More than any other consideration," the circular letter observed, "it will confound our foreign enemies, defeat the flagitious practices of the disaffected, strengthen and confirm our friends, support our public credit, restore the value of our money, enable us to maintain our fleets and armies, and add weight to our councils at home, and to our treaties abroad."28
The Limits of Constitutional Thought

As it is difficult to avoid approaching the Articles of Confederation from the perspective of the Constitution, so, too, it is customary to portray these documents as the embodiments of two antithetical theories of federalism, one emphasizing the sovereignty of the states, the other the supremacy of the nation, and to conclude that the Revolutionary generation had to choose between their alternative conceptions of the nature of the union. In the context of 1787–88, that choice could clearly be made, since the perceived failings of the Articles inspired the framing of the Constitution. It does not therefore follow, however, that the Articles represented an explicit, conscious, prescient disavowal of the Federalist principles of 1787–88. The basic issues that were posed during the framing of the Articles differed sharply from many of those that arose a decade later; the Continental Congress and the Constitutional Convention did not confront the same alternatives. Although there were several important similarities between the two sets of debates—the problems of apportioning representation and expenses were as much at issue in 1787 as they had been before—the political conditions governing the framing of these two documents were radically different, and they deeply affected the way in which the critical issues were defined. The 1787 Convention drew upon years of congressional experience and of constitutional experiments in the states, and was able to conduct its deliberations at a leisurely pace, free from interruption and troubled only by the discomfort of a Philadelphia summer. The framers of the Articles enjoyed no similar advantages. The membership of Congress changed between different periods of debate, and even when the delegates mustered the will to resume discussion, they found, as Eliphalet Dyer complained in September 1777, that “ten thousand necessaries are dayly Crouding in” to hinder sustained progress.29

Conducted under these and other constraints, the debates of 1776–77 did not encourage the development of coherent, systematic, and rival ideologies of nationalism or state sovereignty. Thomas Burke and James Wilson were, in this respect, exceptional; they spoke, as Burke recognized, for no discernible factions in Congress but from their own unusually refined grasp of
the central importance of the location of sovereignty. Most delegates probably accepted Burke’s definition of state sovereignty without sharing his exaggerated fear of congressional power; most probably rejected Wilson’s view of the inherent sweep of congressional authority without giving up an intuitive belief that in certain critical cases Congress must reign supreme.

Nor would it be accurate to describe the Articles as a victory of radical democrats over conservative nationalists. There is little evidence to suggest that those who were most critical of the prevailing character of state politics looked to the creation of a strong confederation for relief. It was James Duane who described the Articles as “a liberal Plan, calculated to establish general Security, and Social Intercourse, among the States; and to extinguish All territorial Disputes,” and who thought that “There are only two points that can admit of much Debate: The Equality of each State in Congress; and the Ratio, for assessing their respective Quotas of the publik charges.” It was Benjamin Harrison, commercial and political ally of Robert Morris, who worried that Congress had been endowed, through its treaty power, with the “power of regulating the Trades, and of course granting a monopoly of the whole, or any part of it to any Nation it pleases,” and who was relieved when Morris relayed his personal opinion that Congress had no such authority. And if, on the other hand, the Articles fulfilled the intentions of American radicals seeking to secure maximum autonomy for the states, it is difficult to understand why Burke so vigorously condemned the excessive powers they gave to Congress or why R. H. Lee should have criticized the “pedantic affectation of discerning future ills in necessary, innocent, and indeed proper establish­ments” that the North Carolinian, more than anyone else, evinced.31

The intellectual and imaginative boundaries that surrounded these first attempts at framing a national government are thus as revealing as the initial solutions mapped within them. At a time when constitution-writers in the states were displaying an acute sensitivity to redesigning the architecture of government, transferring power from executive to legislature, the framers of the Articles never thought of confederation as an exercise in creating a conventional structure of government. For the idea that the confederation was essentially only a league of sovereign states was ultimately a fiction. Congress was in fact a national govern-
Confederation Drafted

ment, burdened with legislative and administrative responsibilities unprecedented in the colonial past, and the most debilitating weakness it suffered ultimately lay in its own inefficiency. Aware that its reluctance to delegate power squandered time and energy, Congress nonetheless continued to concentrate its constitutional labors on distinguishing the powers of the union and the states, never considering whether its own internal workings did not pose more serious questions.

By the same token, the Articles did not establish regular procedures for coordinating the administration of the critical financial and logistical policies that were to be framed by Congress but largely implemented by the states. Most of the difficulties Congress later experienced in seeing its recommendations put into practice reflected the delegates' inability to imagine or devise effective means of coordinating state and national politics. Abstract designs of sovereignty could barely be tested in a system so prone to mechanical inefficiency, where the clash of sovereign wills mattered far less than irregular correspondence, dilatory proceedings in the assemblies and Congress alike, and the staggering array of problems that the war itself created. The delegates' failure to give serious attention to these aspects of confederation, understandable as it may have been, marked the limits of their earliest conceptions of the problem of union.

Nothing in the general reception the Articles received suggests that Americans were deeply interested in discussing the nature of the union they were forming. No pamphlets were written about them, and when the Articles were printed in American newspapers they appeared only as another scrap of news, probably less important than reports of victory at Saratoga and almost certainly less controversial than a growing number of essays proposing remedies for inflation. Only in New England were the people at large asked to comment on the Articles, \[32\] and the town meeting replies that the assemblies received were predictably concerned with the valuation of lands proposed in Article 8.*

The occasional references to confederation that appear in surviving private correspondence are either cursory or concerned with the necessity of its prompt completion. It was "of such infinite importance," General Henry Knox fulminated, "that my heart turns with horror from the man or men who

*The final draft of the Articles used arabic rather than roman numerals.
would in any wise impair it—it is so essential to our existence that . . . I damn him who has any local attachments whatever” that might impede its ratification, although that, he admitted, “perhaps is carrying the matter too far.” The Articles must be “Ratified by all the States,” Josiah Bartlett was told by a New Hampshire constituent, “for this Simple Reson that when any Sociaty Gets Divided in Sentiment it is verry hard to unite them.” The New Hampshire assembly apparently agreed. Its members had agreed to ratify the confederation, Bartlett informed the state’s delegates, not from “an Opinion of the perfectness of the Articles,” but rather because they believed it was “a Matter of so much Importance” and because they appreciated “the Difficulties naturally attending such an Union by so many States differing in so many Circumstances.”

It was thus the act of confederating that mattered, not the substance of confederation. “An indifferent one is better than none,” John Jay reminded James Duane; “upon this Principle I mean for my own Part to act.” If the Articles and the exhortatory address accompanying them have their “Weight,” Duane replied, “the States will come to a Conclusion to endeavour to obtain Improvements which they conceive important, but to consent to the present Plan rather than delay a Measure essential to their Safety.” Only rarely did someone like Elisha Boudinot, a minor New Jersey official, wonder whether a confederation based only on mutual fear of a common enemy could last, or venture a “weak Opinion” that “Congress have not reserved enough Power for themselves.” Criticism of the Articles from the opposite perspective was similarly rare. Thomas Burke did prepare a lengthy memorandum attacking their aggrandizing tendencies, while an anonymous newspaper essayist declared it would be dangerous to allow Congress to appoint postal officials, “for it invests them with too great a Power of Multiplying their Dependents, and thereby endangering the States in Future.”

But not until the early 1780’s did allegiance or antipathy to the Articles come to represent reasonably coherent views about the nature of federal government.

Congressional reaction to the various amendments to the Articles that were proposed by the states demonstrated the delegates’ continuing commitment to ratification for its own sake. Not surprisingly, the initial March date for proceeding with ratification proved impractical. Another three months elapsed before,
on June 20, 1778, Congress began considering the state amendments, and even then several states had yet to be heard from. Anxious to complete confederation before the anticipated arrival of the first French minister to the United States, Congress made up for this delay with a vengeance. It raced through the thirty-six proposed amendments in a week, seriously debating few, rejecting all, recording only one roll call of individual delegates, before finishing with a rush on June 25. Only one amendment received the support of as many as five states, while fully twenty-five found one or two delegations alone voting in their favor. Even before debate began, most members had agreed that the Articles should be ratified exactly as drafted, and that it was best to avoid the new round of delays that the resubmission of a revised text to the states would inevitably evoke. “There were many Amendments proposed from the States, but none were adopted,” the Connecticut delegates reported in early July; “it seemed to be the Opinion of Congress that an immediate Confederation was of greater moment to the Interest of the States, than any present Alteration of the Articles to accomodate the Opinion of particular States on the Amendments proposed.”

The one serious threat to ratification came from the instructions that the Maryland assembly had issued to its delegates. Arriving just as debate was to begin, these instructions seemed so critical that Congress departed from its prescribed order of business to consider them first. In December 1777, Maryland had adopted resolutions reiterating its firm conviction that Congress should be vested with both the control of the unsettled American interior and the power to ascertain the western boundaries of the states. In June 1778, noting that “they have hitherto received no answer” to these resolutions, the assembly ordered its delegates not to ratify the Articles until its amendments had been considered and appropriate answers conveyed to the state, and until the delegates in turn received express authorization to sign.

Probably hoping to issue its response before the assembly adjourned, Congress took up the Maryland amendments first, not, however, with the intention of bowing to their demands, but in the belief that a prompt reply reaffirming the priority of completing confederation would induce Maryland to yield. Even before they presented their case, the Maryland delegates themselves conceded the futility of their assignment. Congress quickly and overwhelmingly rejected the two lesser Maryland
proposals. But the third, pertaining to western boundaries, required more debate before it too was defeated, although narrowly, six states to five, with New York divided and North Carolina, which would have voted with the majority, absent. The five landless states—Maryland, Delaware, New Jersey, Rhode Island, and Pennsylvania—comprised the minority. The margin of defeat might possibly have been greater had not the Maryland delegates requested a roll call, since that forced other delegates to vote as the particular interests of their states demanded. Significantly, this was the only amendment on which a roll-call vote was taken; on all the others, Congress took the unusual step of noting only the number (not the names) of states voting on either side of the question.

The rejection of the Maryland amendments sealed the fate of all the others, which in fact received only perfunctory attention. Many of these were trivial or could properly be called perfecting amendments; but several raised more serious objections. Massachusetts and Connecticut predictably challenged apportioning common expenses according to the value of improved lands, while several other states recommended that the property of each state should be reassessed at fixed intervals. Three northern states favored apportioning troop requisitions according to the total population of each state rather than “the number of white inhabitants,” a provision that obviously favored the southern states. South Carolina in turn sought to restrict the guarantees of reciprocal rights to whites alone. New Jersey was the only state to propose giving Congress a significant new power, suggesting, as it would continue to do into the 1780’s, that Congress be authorized to regulate interstate commerce. Finally, only two substantial limitations on the authority of Congress were proposed by the states. Connecticut and New Jersey moved that Congress not be allowed to maintain a peacetime army, while South Carolina proposed that the consent of eleven states be necessary for major decisions within Congress.

Rather than wait for Maryland and New Jersey to authorize their delegates to sign, Congress proceeded with the formalities of ratification. Eight delegations were already empowered to sign the Articles; North Carolina was known to have repealed its partial ratification and agreed to confederate in full; Georgia, though not yet heard from, was expected to sign; while Delaware, it was learned in mid-June, had not issued express instruc-
tions because it had never received an official copy of the Articles. On July 9, the authorized delegations signed the confederation, and on the 10th Congress approved an imploring letter that appealed to the “patriotism and good sense” of the dissenting states to trust “to future deliberations to make such alterations and amendments as experience may shew to be expedient and just.”

Many members clearly expected that Maryland, New Jersey, and Delaware would now abandon their obstructive campaign, and in pursuing this strategy of *fait accompli*, the majority may well have been joined, perhaps even encouraged, by delegates from the dissenting states themselves. Thomas McKean, Delaware’s lone representative, favored immediate ratification, and on July 13 Nathaniel Scudder wrote a lengthy letter to John Hart, the speaker of the New Jersey assembly, lamenting that Hart had not “taken more Pains to convince the members of the Necessity of granting the Powers of Ratification.” For, Scudder argued, “every State must be expected to be subjected to considerable local Disadvantages in a general Confederation. Indeed upon the whole I am fully [of the] Opinion that no Plan can or will ever be adopted more equal or less generally injurious to the confederated States than the present.” Samuel Chase had informed him, Scudder added, that Maryland might well follow New Jersey if the latter yielded; and the two men had agreed to use their influence among their constituents to further the cause of ratification.

The congressional appeal apparently did work in New Jersey and Delaware, which voted final approval of the Articles in November 1778 and January 1779 respectively. Both states were still committed to the creation of a national domain; when the Delaware act of ratification was laid before Congress, it was accompanied with a memorial justifying the claims of the landless states. Nevertheless, contemporary accounts suggest that the congressional letter of July 10 had influenced the decisions of both assemblies. New Jersey “had acceded to the Confederacy,” Elisha Boudinot reported, “not from a Conviction of the Equality & Justness of it, but merely from an absolute Necessity there was of complying to save the Continent,” even though in so doing it had “sacrificed its particular Rights on the publick Alter.”

Samuel Chase’s prediction that Maryland, too, would capitu-
late proved characteristically rash, however. In mid-December 1778 its assembly again refused to ratify the Articles until Congress was empowered to ascertain the western bounds of the states and until all of the states enjoyed common rights to the lands that would then lie beyond. Maryland clung to this position for another two years, and the Articles remained an empty letter. Leading Maryland politicians were directly interested in preventing the confederation from sanctioning the rights of the landed states, for they were shareholders in the speculating companies whose prewar Indian purchases could be redeemed only by the annihilation of Virginia's title. During the next two years, Maryland, Virginia, the land companies, and Congress itself engaged in a tangled series of maneuvers, issuing remonstrances, protests, and resolutions whose immediate effect was to leave the Articles of Confederation unratified until 1781.

In the end, the simple passage of time perhaps mattered more than the maneuvers that first prevented and then eventually produced ratification. By 1781 many delegates were convinced that the Articles were obsolete, irrelevant to changing political circumstances. As finally drafted, they had given Congress no authority to formulate a national land policy; but by 1781 the cessions of individual states were pointing toward the creation of a national domain. The Articles said little about the exercise of executive power; Congress was about to launch a major administrative reorganization. In 1777 the delegates had generally presumed that the states would pay implicit obedience to their recommendations; four years later Congress was desperately wondering how to command and compel that obedience. In 1777 and 1778 Congress had rushed to complete confederation to bolster its sagging currency; but depreciation continued unabated, so in February 1781 Congress asked the states for authority to collect an impost. Each of these developments revealed new gaps between the naïve expectations of 1776-78 and the uncomfortable reality of the early 1780’s.

An examination of the conditions and circumstances governing the framing of the Articles of Confederation thus suggests, more than anything else, the extent to which political exigencies imposed powerful limits on the sweep of formal constitutional thought. It was not only in the Articles, however, that members of the Continental Congress defined and expressed their earliest conceptions of the nature of the federal union. Informally and
implicitly, the procedures and working habits of the delegates
tell us as much about these ideas as the occasional notes of de­
bate, letters, and memoranda that remain our principal sources
for the framing of the Articles.