# From Confederation to Constitution: The Revolutionary Context of the Great Convention


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Most Americans recall our Revolution in decidedly selective ways. As a people, we are not as eager as we used to be to recollect how truly revolutionary are our roots. Our Bicentennial celebration, for example, focused overwhelmingly on independence d the war with Britain, not on the genuinely revolutionary facets of the struggle too often, we commemorated even independence with hoary myths about tyrannical King George and clever minuteman who used the woods and fences to defeat the British regulars. Perhaps, then, it is not so excusable as it would first appear for some Americans to think that Thomas Jefferson wrote the Constitution as well , the Declaration of Independence in 1776. If we think of the American Revolution as no more than a sudden, brave attempt to shake off English rule, perverse consistency leads easily to a mistake that lumps together all the documents and incidents connected with the Founding. For a better understanding, as another Bicentennial approaches, we would do well to fit the Constitution back into the revolutionary process from which it emerged.


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As John Adams said, the American Revolution was not the war against Great Britain; it should not be confused with independence. The Revolution started in the people's minds at least ten years before the famous shots at Lexington and Concord. It was well advanced before the colonies declared their independence. It continued for perhaps a quarter of a century after the fighting came to an end. It dominated the entire life experience of Americans greatest generation of public men. And it was fully revolutionary in many of the strictest definition of that term. The men who made it wanted not just independence, but a change that would form their own societies and set a new example for mankind. hey wanted to create, as they put on the Great Seal of the United States, "a new order of the ages" which would become a foundation for the happiness of all of their descendants and a model for the other peoples of the world. To their minds, the federal Constitution was a Revolutionary act, an episode in their experimental quest for such an order.

**Republican Experiment** From a twentieth-century perspective, the American Revolution may appear conservative and relatively tame. There were no mass executions. Social relationships and political arrangements were not turned upside down in an upheaval of shattering violence, as they would be later on in France or Russia or any of a dozen other countries we might name. To people living through it, nonetheless or watching it from overseas-the American Revolution seemed very radical indeed. It was not self-evident in 1776 that all men are created equal, that governments derive their just authority from popular consent, or that good governments exist in order to protect God-given rights. These concepts are not undeniable in any age. From the point of view of eighteenth- century Europeans, they contradicted common sense. The notions that a sound society could operate without the natural subordination customary where men were either commoners or nobles or that a stable government could be based entirely on elections seemed both frightening and ridiculously at odds with the obvious lessons of the past. A republican experiment had been attempted once before on something like this scale-in England during the 1640s and 1650s-and the ultimate result had been a Cromwellian dictatorship and a quick return to the ancient constitution of King, Lords, and Commons.

Nevertheless, the Americans dreamed revolutionary visions of perfection, comparable in many ways to revolutionary visions of later times. They sought a new beginning, a rebirth, in which hereditary privilege would disappear and all political authority would derive exclusively from

talent, public service, and the people's choice. And their commitment to the principles of liberty and equal rights did touch and change most aspects of their common life.

No essay of this length can possibly describe all of the ways in which the Revolution altered American society. To understand the Constitution, though, we have to realize, at minimum, that as they fought the War for Independence, Americans were equally involved in a fundamental transformation of political beliefs and thus of political institutions. The decision to separate from England was also a decision that Americans were a people different from the English, a separate nation with a special mission in the world. This people had no way to understand their new identity except in terms of their historical mission, no way to define or perfect their national character except by building their new order. To be an American, by 1776, was to be a republican, and to become consistently republican required a thorough reconstruction of existing institutions.

A republican experiment, in fact, required rebuilding governments afresh. For in the months between the clash at Lexington and the Declaration of Independence, formal governments dissolved in one American colony after another. The people, who had ordinarily elected only one branch of their local governments, simply transferred their allegiance from their legal governmental institutions to extra-legal revolutionary committees, state conventions, and the Continental Congress. Through the first months of the fighting, the conventions and committees managed very well. Power rested with the people in a wholly literal sense, the people followed the directives of these revolutionary bodies, and those bodies turned the popular determination into armies and materials of war.

Some revolutionaries might have been content to see their states continue indefinitely under governmental bodies of this sort. Many patriots were intensely localistic, and they had learned a fierce distrust of any power much beyond the people's easy reach. Other patriots, however, many more of those who exercised great influence, never saw the revolutionary agencies as anything but temporary. A structure that depended so immediately on the people was good enough for an emergency, but hardly suitable for the longer term. For permanence, most patriots admired a governmental structure that balanced and divided power between different and independent parts, not one that concentrated it in single bodies which performed both legislative and executive functions.

The revolutionaries had been reared as Englishmen, in a tradition that instructed them that liberty was incompatible with the unchecked rule of the majority or with a government composed of only a single branch. Proper constitutions, they believed, depended on consent, but governments existed in order to protect the liberties of all. The revolutionaries had decided that good governments should have no place for aristocrats or kings, but they continued to believe that immediate and undiluted rule by the majority could not provide the wisdom and stability that governments require, nor could it offer proper safeguards for the rights of all. Thus, as they moved toward independence, the revolutionary started a long search for a governmental structure in which liberty and representative democracy could be combined. This was what they meant by a "republic."

Most of the revolutionary states established written constitutions before the end of 1776. Although they differed greatly in details, these constitutions tended to be similar in broader lines. The colonial experience, together with the quarrel with Great Britain, had taught a powerful fear of the executive and of the executive's ability to undermine the independence of the other parts of government by use of patronage or "influence." Accordingly, most states created governors too weak to do such harm. Most stripped the governors of the majority of their traditional powers of appointment and deprived them of the traditional right to veto legislation. Most provided for election of the governors by the legislative branch. Most confined the chief executives, in short, to the job of enforcing the legislatures wills.

According to these constitutions, the legislative power would remain within the people's hardy grip. The concept of a balance required two legislative houses, but hostility to privilege was far

too sharp to let the second house become a bastion for any special group, in imitation of the English House of Lords. Moreover, in societies without hereditary ranks, it was difficult to reach agreement on a genuinely republican method for selecting the few men of talent and leisure whose superior wisdom, lodged in an upper house, was traditionally supposed to check the passions of the multitude. The revolutionary senates differed relatively little in their makeup from the lower houses of assembly. Democratic Pennsylvania did without an upper house at all and placed executive authority in the hands of a council, rather than a single man, though this was such a radical departure from general ideas that it quickly created an anti-constitutional party in that state.

Nearly all the revolutionaries would have failed a modern test of loyalty to democratic standards. Even the most dedicated patriots were eighteenth-century men, and eighteenth-century thinking normally excluded many portions of the people from participation in the politics of a republic: adherents to unpopular religions, women, blacks, and even very poor white males.

Accordingly, not even Pennsylvania departed so far from tradition as to give the vote to every male adult. And yet most states moved noticeably in that direction. Most lowered the amount of property one had to own in order to possess the franchise. Several gave the vote to every man who paid a tax. All the states provided for annual elections of the lower house of legislature and, often, for annual elections of the senate and governor as well. Every part of these new govern governments would be chosen by the people or by those the people had elected. And the legislatures in particular were filled with men whose modest means and ordinary social rank would have excluded them from higher office in colonial times. In a variety of ways, these governments were far more responsive to the people than the old colonial governments had been. They were also far more closely watched. The revolutionary air was full of popular awareness of the people's rights.

The revolutionary movement disestablished churches, altered attitudes toward slavery, and partly redefined the role of women in American society. Eventually, of course, revolutionary concepts paved the way for an extension of the rights of citizens to all the groups that eighteenth-century patriots excluded. But whatever else the Revolution was or would become, its essence lay originally in these thirteen problematic experiments in constructing republican regimes. It would succeed or fail, in revolutionary minds, according to the success of these regimes in raising the new order and fulfilling expectations that republicanism would defend and perfect this special people and the democratic social structure that they hoped would become the envy of the world.

**A Permanent Confederation** Americans did not intend, at the beginning, to extend the revolutionary experiment in republican government from the states to the nation as a whole. Republics were expected to be small. The Revolution had begun as an attempt to protect the old colonial governments from external interference by a distant Parliament and king. Traditional loyalties and revolutionary ideas were both keyed to the states.

Still, the argument with Britain taught Americans to think that they were a single people, and the War for Independence built a growing sense of nationhood. There was a Continental Congress before there were any independent states. Congress declared American independence and recommended that new state governments be formed. Congress assumed the direction of the war.

The Continental Congress was an extra-legal body. It had simply emerged in the course of the imperial quarrel and continued to exert authority with the approval of the people and the states, all of which sent an unspecified number of delegates to help take care of common concerns. As early as June 12, 1776, these delegates initiated consideration of a plan to place their authority on formal grounds. But the experiences that had led to independence made

Americans powerfully suspicious of any central government, and there were many disagreements in the Congress. Meanwhile, there was also the necessity of managing a war.

Not until November 17, 1777 did Congress finally present a formal proposal to the states. This plan, the Articles of Confederation, called upon the sovereign states to join in a permanent confederation presided over by a Congress whose authority would be confined to matters of interest to all: war and peace; foreign relations; trade with the Indians; disputes between states; and other common concerns. Each state would continue to have a single vote in Congress. In matters of extreme importance, such as war and peace, Congress would act only when nine of the thirteen states agreed. Since Congress would not directly represent the people, troops or money could be raised only by requisitioning the states.

The Articles of Confederation did not issue from a systematic, theoretical consideration of the problems of confederation government. For the most part, they only codified the structure and procedures that had emerged in practice in the years since 1774. Most of the country scarcely noticed when they finally went into effect, which was not until February, 1781-three years after they were first proposed. Maryland, which had a definite western border, refused its consent until Virginia and the other giant states, whose colonial charters gave them boundaries which might stretch from coast to coast, agreed to cede their lands beyond the mountains to the Confederation as a whole. Then, for most of the rest of the 1780s, Americans lived in a confederation of this sort.

Historians have long since given up the old idea that the Confederation years were a period of governmental folly and unmixed disaster. The Articles established a genuine federal government, not merely a league of states. The union was to be permanent, and Congress was granted many of the usual attributes of sovereign authority. Great things were accomplished. The states secured their independence and won a generous treaty of peace, which placed their western border at the Mississippi River. The country weathered a severe post-war depression. Congress organized the area northwest of the Ohio for settlement and eventual statehood. In fact, the Northwest Ordinance of 1787 established the pattern for all the rest of the continental expansion of the United States, providing that new territories would eventually enter the union on terms of full equality with its original members and thus assuring that America would manage to escape most of the problems usually confronted by an expanding empire. It was not an unimpressive record.

**Thirteen Squabbling States** Nevertheless, the Articles of Confederation came under increasing criticism from an influential minority even before they formally went into practice. This minority was centered in the Congress itself and around the powerful executive officials created by the Congress, especially Robert Morris, a Philadelphia merchant who was appointed Superintendent of Finance in 1781. Morris and his allies were necessarily concerned with the Confederation as a whole, and they found it almost impossible to meet their responsibilities under this kind of government. By the time the war was over, the Confederation's paper money was entirely worthless -- "not worth a Continental," as the phrase still goes. The Confederation owed huge debts to army veterans, to citizens who had lent supplies or money during the war, and to foreign governments and foreign subjects who had purchased American bonds. Dependent on the states for revenues, Congress could not even pay the interest on these obligations. All the states had war debts of their own, and in the midst of a depression, their citizens were seldom willing or even able to pay taxes high enough to make it possible for the republics to handle their own needs and meet their congressional requisitions as well. By 1783, Morris, Alexander Hamilton, James Madison, and many other continental-minded men were insisting on reform. They demanded, at the very least, that Congress be granted the authority to levy a tax on foreign imports, which might provide it with a steady, independent source of revenue.

The need for revenue, however, was only the most urgent of several concerns. Lacking a direct connection with the people, Congress had to work through and depend on the states for

nearly everything. Unable to compel cooperation, its members watched in futile anger as the sovereign republics went their separate ways. Some states quarreled over boundaries. Troubled by the depression, others passed competitive duties on foreign imports. The states ignored Confederation treaties, fought separate wars with Indians, and generally neglected congressional pleas for money.

As this happened, American ambassadors in foreign lands -- John Adams in England and Thomas Jefferson in France-discovered that the European nations treated the American confederation with contempt. The European powers refused to make commercial treaties that would lower their barriers to freer trade and ease America's commercial problems. England refused to remove her soldiers from forts in the American northwest, insisting that she would abide by the treaty of peace only when the states began to meet their own obligations to cease persecuting returning loyalists and to open their courts to British creditors who wanted to collect their debts.

Nevertheless, the nationalists in Congress were frustrated in their desire for reform. The Articles of Confederation could be amended only by unanimous consent, but when Congress recommended an amendment that would give it the authority to levy a five percent duty on imports, little Rhode Island refused to agree. When Congress asked for power to retaliate against Great Britain's navigation laws, the states again could not concur.

Repeatedly defeated in their efforts at reform, increasingly alarmed by mutual antagonisms be between the states, which had grown serious enough by 1786 to threaten an immediate fragmentation of the union into several smaller confederacies, the men of continental vision turned their thoughts to fundamentals. A much more sweeping change, they now suspected, might be necessary to resolve the pressing problems of the current central government. And if the change went far enough, a few of them began to think, it might accomplish something more. It might restore the Revolution to its proper course.

The Revolution, after all, involved a dream of national greatness; and the dream was going wrong. A people who had hoped to be a model for the world was fragmented into thirteen petty, squab squabbling states. The states would not or could not-subordinate their separate interests to the good of the Confederation as a hole. Even worse, too many of the states fell short of fulfilling revolutionary expectations within their individual bounds. The early revolutionary constitutions had delivered overwhelming power to the people's immediate representatives in the lower houses of assembly. As these lower houses struggled to protect the people from hard times, they frequently neglected private rights and seldom seemed to give a due consideration to the long- term good. As clashing groups in different states competed to control their house of representatives, nobody could feel certain what the law might be next year, when one majority replaced another. The lower houses of assembly were essentially unchecked by the other parts of government, and to many revolutionaries it appeared that the assemblies proceeded on their ways with slight regard for justice and little though about tomorrow. The rule of law appeared to be collapsing into a kind of anarchy in which the liberty and property of everyone might depend on the good will of whichever temporary majority happened to control his state. No one could feel secure in the enjoyment of his rights.

**Liberty in Peril** During the 1780s, in other words, the feeling grew that liberty was once again in peril. Alarm was most intense among the men whose duties, education, or experience encouraged them to pin their patriotic feelings on the continent as a whole: certain members of Congress; most of the best-known revolutionary thinkers; most of the former officers of the continental army; many merchants, public creditors, and other men of wealth. Men of social standing were distressed with the way in which the revolutionary principles of liberty and equality seemed to shade into a popular contempt for talent or distinction. Too often, to their minds, the best men lost elections in the states to self-serving, scrambling demagogues, and the revolutionary constitutions made it far too easy for these demagogues to set an ill

considered course or even to oppress the propertied minority in order to secure the people's favor. Continued confiscations of the property of people who had sympathized with Britain and continued use of paper money, which threatened men's investments and their right to hold their property secure, were grievances of particular importance to those who had investments and positions to defend.

And yet the sense of fading hopes and failing visions was not exclusively confined to men of wealth. Anyone whose life had been immersed in revolutionary expectations might share in the concern. Every state seemed full of quarrels. Every individual seemed to be on the scrape for himself. No one seemed to have a real regard for common interests, a willingness to recognize that selfish interests must be limited by some consideration for the good of all. Public virtue, to use the phrase the revolutionaries used, seemed to be in danger of completely disappearing as every man and every social group sought private goods at the expense of harmony and other people's rights. But virtue, revolutionaries thought, was the indispensable foundation for republics, without which they could not survive. If public virtue was collapsing, then the Revolution was about to fail. It would degenerate into a kind of chaos, from which a tyrant might emerge, or else the people, in disgust, might eventually prefer to return to hereditary rule. So, at least, did many fear. Guided by the same ideas that had impelled them into independence, they saw a second crisis, as dangerous to liberty as the crisis that had led them into Revolution. As they had done in 1776, they blamed their discontents on governments that lacked the character to mold a virtuous people and fit them for their special role. Once more, they turned to constitutional reform. They saw in the problems of the Confederation government not merely difficulties that would have to be corrected, but an opportunity that might be seized for even greater ends, an opportunity to rescue revolutionary hopes from their decay.

The constitutional reformers of the 1780s had several different motives and several different goals. Some had an economic interest in a constitutional reform that would enable the central government to pay its debts and act to spur the economic revival. All wanted to make the government adequate to its tasks and able to command more respect from the rest of the world. Some wanted more: to reconstruct the central government in such a way that its virtues might override the mistakes that had been made in some of the states. They wanted to redeem the reputation of democracy and save the republican experiment from a process of degeneration which threatened to destroy all that they had struggled for.

Shays' Rebellion handed them their chance. Out in western Massachusetts, hard times, large debts, and the high taxes prompted by the state's attempt to handle its revolutionary debt drove many farmers to distress. They first petitioned for relief, but when the legislature refused to issue paper money or to pass the laws required to protect their property from seizure, petitions gave way to rebellion. Farmers forced the courts to close in several counties, and Daniel Shays, a revolutionary captain, organized an armed resistance. The rebels were defeated with surprising ease. The state called out the militia during the winter of 1786, and Shays' forces disintegrated after a minor fight. The incident was nonetheless, for many, the final straw atop a growing load of fears. Armed resistance to a republican government seemed the ultimate warning of a coming collapse.

Earlier in 1786, delegates from five states had met at Annapolis, Maryland to consider better means of regulating interstate and international trade. Nationalist sentiment was strong among the delegates. Hamilton and Madison were there. The participants quickly agreed that little could be done about commercial problems without a revision of the Articles of Confederation. They said as much in a report to Congress and their states, and Congress endorsed their recommendation for the meeting of a national convention to consider ways to make the central government "adequate to the exigencies of the union." Badly frightened by events in Massachusetts, whose constitution was widely thought to be among the best, every state except Rhode Island answered the call. From this context and in hope that it might save both liberty and union, the Constitutional Convention emerged.

## Suggested Additional Readings

Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (1969)

H.James Henderson, *Party Politics in the Continental Congress* (1974)

Jack N. Rakove, *The Beginnings of the National Politics: An Interpretive History of the Continental Congress* (1979)

Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, translated by Rita and Robert Kimber (1980)

Jackson Turner Main, *The Sovereign States, 1775-1783* (1973)

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