



THE BIRTH OF THE
REPUBLIC
1763-89

By
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The Americans and the Empire

making the grade. It was an outright infidel, Thomas Paine, who declared that government, like dress, is the badge of lost innocence. This common assumption, that men and especially men in power are prone to corruption, was to prove a potent force in keeping Americans traveling together in the same direction.

Still another common denominator lay in the fact that most of the inhabitants of every colony made their living from the soil. There were four or five large cities—Charleston, Philadelphia, New York, Newport, Boston—and several more good-sized towns where merchants and tradesmen flourished, but most people north and south lived on land they cultivated. And probably most of them (research has not yet revealed the exact proportion), especially in the North, owned their land.

This widespread ownership of property is perhaps the most important single fact about the Americans of the Revolutionary period. It meant that they were not divided so widely between rich and poor as the people of the Old World. Standing on his own land with spade in hand and flintlock not far off, the American could look at his richest neighbor and laugh. Though there was as yet no professed belief in social equality, though in every colony there were aristocrats, marked by the fine houses they lived in and the fine clothes they wore, there were no peasants for them to lord it over—except always the slaves. Apart from the slaves the people were much of a piece and did not know what it meant to bow and scrape to a titled nobility.

Ownership of property gave not only economic independence but also political independence to the average American. In every colony that was to join in the Revolution there was a representative assembly, elected by property-holders, which made the laws and levied the taxes. Historians have often as-

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sumed that the property qualification confined the suffrage to a small segment of the population. But if most men owned property, as now seems probable, then most men could vote.

They enjoyed also a common privilege the meaning of which was more difficult to determine: they were all subjects of Great Britain. This privilege—and they counted it such—they shared not only with each other but with people in Canada, Florida, the West Indies, and the East Indies. They were part of the largest empire the Western world had ever known, an empire that in 1763 had just finished defeating its most serious rival, France, in the long and bloody Seven Years' War.

For Americans the great thing about this empire, apart from the sheer pride of belonging to it, was that it let you alone. The average colonist might go through the year, he might even go through a lifetime, without seeing an officer of the empire. His colony had not been founded under imperial direction but by private enterprise operating under what amounted to a license from the King of England. In most colonies the King appointed the governor and gave him directions, but it was one thing to give directions and another to carry them out; the colonists had long since discovered that their governors were helpless to take action without the assistance of the representative assemblies. Though the governors could veto their laws, as could the King, the assemblies held the power of the purse and generally got their way.

Apart from the royal governors the only imperial officers normally encountered in the colonies were those charged with enforcing the Navigation Acts. These were acts passed by the British Parliament to regulate colonial trade so that raw materials were produced for the mother country and manufactured

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nance, and George III, the conscientious farmer who ascended the throne in 1760, never failed to acknowledge the supremacy of his Parliament.

The colonists joined in the applause for Parliament. Though they had not participated directly in its past triumphs, they had enjoyed an analogous experience which they identified, in a way they might not have been able to define, with that of their English cousins. For while Parliament was winning control in England, the colonial assemblies were winning it overseas and had tamed the royal governors almost as effectively as Parliament tamed the King. Indeed, the one had assisted the other, for when Parliament got rid of James II in the Revolution of 1688, New England and New York threw off the government James had established and restored the assemblies he had temporarily suspended. The supremacy of Parliament had thus become associated in the colonial mind with the supremacy of the assemblies. Both stood for English liberty, for laws made by consent of the people. Both meant that Englishmen were freer than all the rest of the world.

The relations of mother country and colony had not been seriously affected by the shifts of power in England. Apart from trade regulations the laws the Americans lived by were made, as always, by their own representatives. Whatever directions came to them from England came, as always, from the King through the royal governors.

What the colonists did not understand was that the King, because of the supremacy of Parliament, did not speak merely for himself when he sent them orders. The orders were in effect Parliament's as much as his. As long as they were sent through the governors, there would be no trouble: the colonial assemblies could obey or disobey as they saw fit. But what

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year a bill for extending to the colonies the kind of stamp duties that Englishmen paid on legal documents, certificates, and other paper items.

The Americans were thus confronted with the first great challenge of the Revolutionary period. The new act, usually called the Sugar Act, was in form a revision of the old customs laws; but its purpose was novel, to raise money, and this purpose was frankly stated in the preamble. The colonists had long since learned the importance of the power to tax, from the struggle of their own assemblies with the royal governors and from Parliament's struggle with the King. For them as for other Englishmen, Parliament's exclusive power to tax was the most important feature of its supremacy over the King, the most important guarantee of English liberty. It was for this principle that John Hampden had gone to prison when he refused to pay a tax demanded by the King alone; it was this principle that Parliament had secured when it gave the throne of James Stuart to William of Orange in 1688; and it was this principle that John Locke, the philosopher, had insisted upon in justifying that revolution: men's property must not be taken away without their consent, given either in person or by their representatives. For Locke, as for other Englishmen and for the colonists, property was not merely a possession to be hoarded and admired; it was rather the source of life and liberty. Without security for his property no man could live or be free except at the mercy of another. Property and liberty were one and inseparable, and without them life was not worth living.

This was the security that Englishmen had won in the course of a long history. Parliament was a representative body, and as such it enjoyed the sole authority to grant the property of Englishmen in taxes. But when it presumed on this authority to

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may be taken away at the Pleasure of another?" And lest the members of Parliament think that customs duties used for revenue were less objectionable than other taxes, the New Yorkers took care to point out that "all Impositions, whether they be internal Taxes, or Duties paid, for what we consume, equally diminish the Estates upon which they are charged. . . . The whole Wealth of a Country may be as effectually drawn off, by the Exaction of Duties, as by any other Tax upon their Estates."

James Otis, the popular leader of the Massachusetts Assembly, made this same point in a pamphlet published during the summer of 1764. He had evidently heard that some Englishmen thought an "external" tax on trade more permissible than an "internal" or direct tax. He therefore specifically stated, "There is no foundation for the distinction some make in England, between an internal and an external tax on the colonies." And though the Massachusetts Assembly had been willing to tone down its own official protest, it endorsed Otis's pamphlet by formal vote and shipped copies of it off to London.

In London, Grenville was not to be disheartened by these and other colonial objections to his measure. He had one of his subordinates, Thomas Whately, write an answering pamphlet, in which it was acknowledged that English liberty forbade taxation without consent. Whately in fact went even further and denied that any laws whatever could be imposed on British subjects without their consent. But, he insisted, no such thing was involved in the Sugar Act or any other act of Parliament affecting the colonists; for though they were not actually represented in the House of Commons, though they could not vote for any member, neither could most Englishmen, who were excluded by property qualifications or by residing in boroughs

Sugar and Stamps, 1764-66

subject. Though Americans could not agree on boundary lines and Indian wars, they could agree without argument on opposition to taxes. At the invitation of Massachusetts nine colonies even sent delegates to a congress in New York in October, 1765, where they formally joined in another set of resolutions and petitions denying the authority of Parliament to tax them.

The resolutions and the actual resistance to the Stamp Act both bespeak a long-standing belief that was merely awaiting utterance; but the utterance was itself an event of the first importance in inaugurating the American search for principles. The problem of putting into words the dimensions of an authority hitherto unmeasured was an experience that set minds roaming along new and unexplored paths. Englishmen frequently spoke of Parliamentary supremacy in absolute terms; the Americans were certain that it had limits short of the right to tax them. But where? Soon after news of the Stamp Act arrived, a widely circulated newspaper article observed: "No Parliament can alter the Nature of Things, or make that good which is really evil. . . . There is certainly some Bounds to their Power, and 'tis Pity they were not more certainly known." In drafting their resolutions and declarations, the Americans were obliged to survey the bounds and map out, in however crude and tentative a fashion, the area of human freedom.

In making their surveys the leaders of the search found it easy to state the one thing they were certain Parliament could not do: tax people who were not represented in it. The resolutions all state this limitation clearly and without qualification. Now, as in the previous year's protests against the Sugar Act, there was no evidence of the distinction between internal and external taxes which, as we shall see, was later imputed to the

Sugar and Stamps, 1764-66

reasoning were arguing that Parliament ought to be expanded by the admission of American members. A few Americans, notably James Otis, had suggested this possibility, but others perceived that the suggestion was impracticable. The American representatives would be a small minority, unable to affect the outcome of any issue in which British interests were opposed to American. Their presence would merely justify the kind of oppression the colonists now feared. The Stamp Act Congress therefore expressed the feeling of the great majority when it stated "That the People of these Colonies are not, and from their local Circumstances cannot be, Represented in the House of Commons in Great-Britain."

With the rejection of both virtual and actual representation in Parliament, the road lay open to a radical conclusion, namely, that the colonies were wholly beyond the control of Parliament. A few bold and anonymous souls took hesitant steps along this road. For example, a writer in the *Providence Gazette* of May 11, 1765, who signed himself "A Plain Yeoman" denied any connection between Great Britain and the colonies except "that we are all the common subjects of the same King." Another newspaper article, signed "Phileleutherus," asserted that the members of Parliament had "no more Legislative Authority over us than those that lived before the Flood." But no responsible American statesman was ready as yet to explore such strange territory.

The Stamp Act Congress which convened in New York in October, 1765, acknowledged in its first resolution "all due Subordination" to Parliament, and though the members found it difficult to state exactly what subordination was due, they did raise the question, in their petition to the House of Commons, "whether there be not a material Distinction in Reason

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and sound Policy, at least, between the necessary Exercise of Parliamentary Jurisdiction in general Acts, for the Amendment of the Common Law, and the Regulation of Trade and Commerce through the whole Empire, and the Exercise of that Jurisdiction, by imposing Taxes on the Colonies." There was a distinction, in other words, between taxation and legislation, and the right to legislate did not necessarily include the right to tax. Taxes were a gift, given by the people through their representatives, and consequently only a representative body could grant them. Legislation, however, might be permissible to a government regardless of its composition. Parliament, because of the representative character of the House of Commons, had powers of taxation as well as legislation for Great Britain, but for the rest of the Empire, which was not represented in the House of Commons, Parliament had legislative powers only.

The colonies found confirmation for this distinction in the fact that the procedure of Parliament in granting taxes was unique: ordinary legislation could originate in either the House of Commons or the House of Lords, but a tax was given and granted to the King by the Commons who alone could initiate it. It was their gift. And for the Commons of Great Britain to give away the property of the King's subjects in America seemed absurd. Thus the Connecticut Assembly declared that "an act for raising money by duties or taxes differs from other acts of legislation, in that it is always considered as a free gift of the people made by their legal and elected representatives; and that we cannot conceive that the people of Great Britain, or their representatives, have right to dispose of our property."

Here then was the boundary of Parliament's authority in America. It could legislate, but it could not tax.

"Legislation" is a big word, and the colonists probably did not

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intend to attribute unlimited lawmaking power to Parliament. They certainly did not approve legislation curtailing the right of trial by jury, for they condemned as unconstitutional the extension of admiralty jurisdiction over the Navigation Acts. They also stated in the Virginia Resolves and the other resolves modeled on Virginia's that Parliament could not alter the "internal polity" of the colonies, by which they meant the form of government. But the big issue of 1765 was taxation. It would be time enough to place clearer limits on legislation if the need should arise.

This political position was the first stopping point in the American journey. Perhaps it might better be called the starting point, for it was essentially a description of the imperial constitution as Americans thought it had been before George Grenville appeared. Parliament, exercising the powers of legislation, supervised and regulated the trade of the empire but otherwise let the colonists alone and in particular did not tax them. If England had been willing, the colonists would have been happy to settle down again on this position and search no further. They wanted, as yet, no more freedom than they had enjoyed in the past. But they wanted no less, either, and were willing to fight for it.

In 1766 they did not have to fight, because in February of that year England repealed the Stamp Act, and for a time it looked as though the old state of things would be restored.

Troops and Tea, 1768-74

ment required an extraordinary unanimity in order to be successful, and it quickly broke down.

There followed three years of commercial prosperity in which business was better than ever before and questions of constitutional right were little asked. During this period merchants did import tea and paid the tax on it. They also imported molasses and paid the tax on that. Both these taxes were levied for the purpose of revenue, and it seems appropriate therefore to ask here a question that everyone who examines the American Revolution must sooner or later face: Were the colonists sincere in their declarations of principle or were they merely trying to avoid the unpleasant task of paying taxes that they ought to have paid? This book has proceeded on the conviction that the colonists' attachment to principle was genuine, but it is only fair to say that many historians are inclined to doubt the strength of the attachment. One reason for their doubt is the fact that the colonists submitted to the tea and molasses duties during the period 1770-73.

It is of course impossible to tell why men act as they do. Today we have learned so much of the irrational springs of human behavior from Marx and Darwin and Freud that we are disposed to see all declarations of principle as a camouflage, conscious or unconscious, for some baser motive. But in exercising our new insight we sometimes attribute to the men of previous ages an extraordinary simple-mindedness and demand of them a standard of righteousness which only an angel or a fanatic could meet. If the American colonists were sincere, we say, why did they not state at the outset exactly what they believed and then stick to it without faltering? We forget that to have done so they would have had to know what they be-

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lied much better than any of us do and to have adhered to it with a superhuman consistency.

But, it is urged, the principles which the colonists proclaimed were designed simply to further their own economic interests. Can they have been sincere in defending a principle from which they stood to benefit? The colonists would have found this question difficult to understand: the principle of no taxation without representation had been originally invented or discovered by Englishmen who also hoped to benefit from it; and Americans were simply using the principle for its intended purpose. We will see no incongruity in their coupling of principle and self-interest if we will remember that constitutional principles have been created and continue to exist for the protection of the people who live under them. They are seldom referred to unless people fear or feel harm from their violation, and then the greater the harm the greater the clamor. Edmund Burke, who consistently opposed the attempt to tax the colonies, described the origins of constitutional principles when he said that assertions of right were "a sure symptom of an ill-conducted state."

The colonists met the ill-conducted attempt to tax them with an almost unanimous assertion of the principle that taxation was the exclusive right of their own elected representatives. They maintained this principle throughout the Revolutionary period, not simply as an abstract statement of political theory, not simply as a means of evading a particular tax, but as a way of safeguarding the property which they regarded as the only security for life and liberty. Neither the stamp tax nor the Townshend duties were formidable in themselves, but the colonists saw in each the entering wedge of a movement to deprive them of control over their possessions. They fought for

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of tea late in 1773 were greeted everywhere by determined bands of citizens who urged the captains to turn about and go back whence they came. In most cases the captains agreed, but in Boston Governor Hutchinson, still smarting over the publication of his letters, decided to stage a showdown: he would not permit the ships to leave the harbor without unloading their cargo. The people of Boston and the surrounding towns took up the challenge and on the night of December 16, 1773, unloaded the tea themselves—into the harbor.

With the Boston Tea Party the patience of the ministry abruptly ceased, and in March and April, 1774, an angry Parliament enacted a series of laws, known as the Coercive Acts, to bring the bumptious Bostonians to their knees. The first act closed the port to all commerce. The second altered the Massachusetts government by giving the King, instead of the assembly, the power of appointing the Governor's Council. It also forbade town meetings except for the election of town officials. The third provided that any magistrate, customs officer, or soldier indicted for a capital offense within the colony could be brought to England or Nova Scotia for trial, where he would not have to face a hostile local jury. The fourth provided for the quartering of troops once again within the town of Boston. To carry these acts into effect General Gage, commander-in-chief of British forces in North America, was commissioned as governor of Massachusetts.

Though again the blow was aimed at Massachusetts and especially at Boston, the other colonies were expected to learn from it that Boston had been wicked and was receiving a merited thrashing. Instead, they concluded that Boston was martyred because it stood foremost in defense of colonial rights, and they took up collections and showered the beleaguered

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city with provisions. Their suspicions of England's motives increased when Parliament, with an unfailing instinct for bad timing, chose this moment (June 22, 1774) to pass an act establishing in the conquered Canadian province of Quebec (under military rule since 1763) a civil government with no representative assembly and with special privileges for the Catholic church. This was bad enough in itself, but the Quebec Act, as the measure was called, extended the boundaries of the province into the Mississippi Valley as far south as the Ohio River. New York, Pennsylvania, and Virginia henceforth would have at their borders a government conducted entirely without the consent of its subjects, a close and constant reminder of what all the colonists now felt sure was in store for them should they fail to surrender their property whenever Parliament demanded it.

While Americans pondered the significance of this, the Bostonians, not at all repentant for their sins, adopted a solemn league and covenant against all trade with Great Britain and invited the other colonies to join in it. Thanks to the committees of correspondence, the proposal received prompt consideration, but before taking action some colonies thought it advisable to get together in an intercolonial congress. This suggestion prevailed, and in September, 1774, the first Continental Congress met at Philadelphia.

**EQUAL RIGHTS
AND
EQUAL MEN
1774-76**

Fifty-five men rode into Philadelphia in September, 1774, and began at once to take each other's measure, at dinner parties and breakfasts as well as on the floors of Carpenter's Hall. John Adams sized them all up: John Rutledge of South Carolina ("his appearance is not very promising"); William Livingston of New Jersey ("nothing elegant or genteel about him . . . but very sensible and learned"); and Charles Thomson ("the Sam Adams of Philadelphia"), who was elected Secretary of the Congress at its first meeting even though he was not a delegate.

While John Adams was ticking off the members in this fashion, his cousin, the real Sam Adams, was already at work pulling the wires he had learned to manage so dexterously in Boston. Those delegates who had hoped the Congress would take a humble tone were dismayed to see how quickly his influence made itself felt. "He eats little," observed Joseph Galloway of Pennsylvania, "drinks little, sleeps little, thinks much, and is most decisive and indefatigable in the pursuit of his objects." Skilfully prodded by Adams, the Congress began its work by approving the "Suffolk Resolves"—so called because

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they had been adopted September 6 by a convention in Suffolk County, Massachusetts—which daringly declared that no obedience was due to the Coercive Acts.

With the members already committed to so radical a position it was a foregone conclusion that they would reject the plan of conciliation that Galloway proposed and adopt instead the non-importation, non-exportation, non-consumption agreement they had met to consider. They did so on October 20, but first they engaged in a more significant activity, a reassessment of their relation to the mother country. In the debates on this subject they discovered how far they had travelled in the nine years since the Stamp Act Congress. The delegates to that meeting had agreed that Parliament had no right to tax Americans, but only the rashest proposed to set limits on its legislative authority. Now the question was whether Parliament had any authority in the colonies at all. Many Americans had arrived long since at the conclusion that it did not.

They had reached this point with the aid of Parliament itself. Englishmen had derided and denounced their distinction between legislation and taxation, and Parliament convincingly demonstrated that their liberty could be destroyed as easily by the one as by the other. What no one showed them (and few attempted) was why Parliament should have a right to either. Grenville had once claimed that Americans were subject to Parliament because they were "virtually" represented in it, but this argument was reduced to rubble by Daniel Dulany. Nothing had since been offered to take its place except the Declaratory Act, in which the members of Parliament assured themselves that they had authority by announcing that they had it. If anyone thereafter wanted to know where it came from, it came from the announcement!

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Faced with this impenetrable assumption of omnipotence, the colonists gradually reacted with an equally absolute but somewhat more rational denial. Parliament, they believed from the beginning, had no authority to tax them, because they were unrepresented. By the same token, if legislation and taxation were indivisible, Parliament had no right to legislate, and so no authority at all over them.

How the claim of absolute authority generated its opposite may be seen at closer range in Massachusetts. When the committees of correspondence in the various towns there began to list their grievances, Governor Hutchinson was alarmed to see how extensively they denied the validity of Parliamentary legislation. He decided to recall them to their senses by another affirmation of their total subordination, with more arguments than Parliament itself had hitherto deigned to offer.

In January, 1773, he read the House of Representatives a long lecture on the subject. "I know of no line that can be drawn," he told them, "between the supreme authority of Parliament and the total independence of the colonies." Hutchinson was the learned author of a history of the colony; and well aware of the American reverence for historical precedent, he drew upon his authority as a scholar to demonstrate that the founders of the colony had always acknowledged the supremacy of Parliament. But Hutchinson was up against a sharper wit and a keener mind than his own.

The House in drafting its answer called upon John Adams, a lawyer from Braintree, more learned in the law than his cousin Samuel and quite as learned in history as the governor. With his assistance an argument was prepared which showed that the founders of the colony had supposed themselves beyond the control of Parliament—and showed it by citations

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from Hutchinson's own history. With devilish ingenuity Adams even pointed out how the very King who granted the colony's first charter had supposed the same thing. The King, of course, was Charles I, who tried to do away with Parliament altogether! From here the answer went on with relentless logic to turn the governor's own words against him: "Your Excellency tells us," it said, "you know of no line that can be drawn between the supreme authority of Parliament and the total independence of the colonies. If there be no such line, the consequence is, either that the colonies are the vassals of the Parliament, or that they are totally independent. As it cannot be supposed to have been the intention of the parties in the compact, that we should be reduced to a state of vassalage, the conclusion is, that it was their sense, that we were thus independent." Independent, of course, meant independent of Parliament, not of the King.

Hutchinson had maintained that if the colonies threw off Parliamentary supremacy, they would form distinct kingdoms like England and Scotland. "Very true, may it please your Excellency," replied the committee, "and if they interfere not with each other, what hinders, but that being united in one head and common Sovereign [the King], they may live happily in that connection, and mutually support and protect each other?" When the House of Representatives adopted this reply to the governor as their own, they committed the whole province to the very position that Hutchinson had hoped to forestall, that Parliament had no authority in the colonies whatever.

Hutchinson and the Adamses, in their different ways, brought Massachusetts to this point in 1773. Other Americans reached it in other ways and at other times. Benjamin Franklin got there as early as 1766 and waited quietly for his countrymen

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In this somewhat equivocal resolution the members with one breath denied the right of Parliament to legislate for them and with the next volunteered to abide by that wonderful old state of things that existed in 1763. In such a mood of reluctant defiance they broke up on October 26, 1774, after providing for another congress in the following spring.

As they prepared to cast off the authority of Parliament, Americans were genuinely eager to keep their grip on the past. They had ransacked English and colonial history for precedents to justify their constitutional position, to show that they were still true to the traditions of Englishmen; and they had been remarkably successful in finding the precedents they wanted. But while they clung so persistently to the past, they were actually moving, if only half consciously and unwillingly, away from it. They were in fact on the verge of a discovery that would turn the course of history in a new direction, a discovery that is still reverberating among us and liberating us from our past as it was soon to liberate them, in spite of themselves, from theirs.

This discovery was nothing more or less than the principle of human equality. In 1774 the Americans may not have realized how close they were to it, but there were others who perceived, however dimly, that the whole course of their resistance to Parliament was leading them in that direction. As early as 1767 the French chargé d'affaires in London, following closely the British family quarrel, remarked that the Americans did not aspire to independence but simply to equality of rights with the mother country. The Frenchman's analysis was correct, but he did not dream how far beyond this the demand for equality might carry a people. Lord North was more perceptive. "I can never acquiesce," he said in 1770,

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the line of march from all sides and peppered the British columns as they reeled toward Boston. After the last redcoat entered the city, the militia encamped outside it, and the siege of Boston began.

When the Second Continental Congress assembled on May 10, 1775, the members found themselves conducting a war and voted to raise a regular army, of which it was hoped the forces encircling Boston would form the nucleus. To command this "Continental Army" Congress chose not a New Englander but a Virginian, George Washington, and he hurried off to Massachusetts to take charge. Even before he arrived, the militiamen gave the soldiers in Boston one of the worst days in the history of the British Army. On the night of June 16 the Americans invested Breed's Hill, adjacent to Bunker Hill in Charlestown, overlooking Boston. When the British decided to remove them the next day, the result was an unbelievable slaughter of the redcoats who came marching up the hill in close order. In the Battle of Bunker Hill, as it was called, the British showed a courage that wiped out the stain of their hurried retreat from Concord two months before; they kept coming until the Americans ran out of ammunition, and when the day was over the English regiments held the hill. But it would be a long time before they attempted another frontal assault on the raw militia whom they had thought to topple so easily.

Gunpowder is a great equalizer, and after the Americans had matched their muskets against the British, they were more confident than before in denying the authority of Parliament. But there still existed among the members of Congress a forlorn hope that the situation might somehow be retrieved. Though they had had enough of Parliament, and would fight

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rather than submit to its laws, some of them thought that it might be possible to maintain loyalty and subordination to the King. If their assemblies could be recognized as co-ordinate with Parliament, Americans might still join with Englishmen in subjection to a common sovereign. In this hope, while they prepared to seek foreign aid and organized for an extended war, the members addressed a last petition to George III—the Olive Branch Petition, it was called—urging him to prevent the efforts of Parliament under a corrupt ministry to enslave them.

The Americans did not yet realize that the King was an Englishman of only moderate abilities and a vision that reached no farther than that of his ministers and his Parliament. In the preceding ten or twelve years the members of Parliament had demonstrated that they were unfit to rule an empire. They were, in fact, what the most recent historical scholarship has shown them to be: parochial and provincial. Though in theory each member was supposed to represent the whole kingdom (Grenville had said the whole empire), actually they were wedded to local interests in their particular boroughs and counties. They did not even have a sufficiently large vision to associate in political parties on a national scale. The whole business of Parliament seldom rose above the level of log-rolling.

The man who kept the logs rolling was the King. In the absence of any better politician it was he who brought miscellaneous factions together to form a working majority for whatever measures he and they could agree on. George III was good at the job, but he was no bigger than the men he managed. In order to play the role the colonists assigned him, he would have been obliged to abandon the one he was en-

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gaged in and stand entirely above Parliament. It might even have been necessary for him to resume the veto power and disallow bills in which Parliament sought to legislate for the colonies.

Had he wished to do this, he could scarcely have succeeded, and the few friends of the Americans in Parliament would have been the first to denounce the attempt as a resumption of Stuart tyranny. George III, however, had no such wish. Though he wanted desperately to keep his American colonies, he was wholeheartedly committed to the supremacy of Parliament and ready to go any length to defend it against his rebellious subjects. While the Continental Congress prepared its last appeal to him, his ministers negotiated for 20,000 Russian mercenaries to accomplish what the regular troops in Boston seemed unable to do. When the Czarina refused to hire out her subjects, the ministers satisfied themselves with Hessians instead. The King himself treated the Olive Branch Petition with contempt. Two days after its arrival in August, 1775, he issued a proclamation declaring the colonies in rebellion, and in December he agreed to an act of Parliament prohibiting all intercourse with them and commanding the seizure of their ships on the high seas.

Americans would evidently have to choose between their rights and their King, and in spite of everything the King had done or failed to do, the choice was not easy. While they were gathering their courage to make it, a new voice spoke out in words that imparted all the courage needed—the voice of Thomas Paine, an Englishman who had appeared in Philadelphia less than a year before Bunker Hill. In January, 1776, he published a piece called *Common Sense* which was immediately read throughout the colonies. It was read because it said

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superbly all the things that Americans were waiting to be told.

The colonists were only fooling themselves, Paine said, if they hoped to enjoy freedom under George III. Not only was the King as bad as his ministers and his Parliament; he was worse; he was the author of their troubles.

The ruler Paine described may not have been the real George III. It may be, as modern scholars have emphasized, that George was playing the only role a responsible monarch could play in the existing situation of politics in Great Britain. But if British politics demanded such a monarch, it was high time for the colonies to cut loose. If Paine misconstrued the motives of the King, he did not misconstrue the facts: there was simply no room in the existing British Empire for a people who wanted the rights that Americans demanded.

Paine, however, did not deliver his message in sadness; his mission was not simply to destroy a lingering faith in the House of Hanover but to liberate Americans from the very idea of monarchy. Hitherto the demand for equality had found expression in assertions that equated Americans with Englishmen. Englishmen were taxed only by consent; therefore Americans must be. Englishmen had a right to be represented in their own legislative body; therefore Americans should have such a right and their assemblies be co-ordinate with Parliament. But Paine made bold to extend the inquiry. Why, he asked, should any man be exalted above others as a king was? “Male and female,” he said, “are the distinctions of nature, good and bad the distinctions of Heaven; but how a race of men [hereditary kings] came into the world so exalted above the rest, and distinguished like some new species, is worth inquiring into, and whether they are the means of happiness or of misery to mankind.” The result of his inquiry was to show that the

Equal Rights and Equal Men, 1774-76

During the years of controversy from 1763 to 1776 Locke was popular reading among the colonists. While attempting to discover the constitutional limits of British authority, they had ever in mind the elementary principles by which he taught them to measure a government's performance. The rights they demanded, for example, the right not to be taxed except by consent, they regarded as "natural" rights, rights which it was the very purpose of government to recognize and protect. They demanded these rights both as Englishmen and as men, for the English government had been the pattern for Locke's study; and hitherto, at least, Englishmen almost alone among the peoples of the world actually did enjoy the rights which Locke believed all men were entitled to.

When the Americans prepared to resist rather than submit to a government that had exceeded its authority, the ideas of Locke became increasingly relevant. As early as the Stamp Act crisis, colonial writers began discussing the process of dissolving government, and the Sons of Liberty prepared to put the ideas into practice. The group at New London, Connecticut, for example, resolved on December 10, 1765: "1st. That every Form of Government rightfully founded, originates from the Consent of the People. 2d. That the Boundaries set by the People in all Constitutions, are the only Limits within which any Officer can lawfully exercise Authority. 3d. That whenever those Bounds are exceeded, the People have a Right to reassume the exercise of that Authority which by Nature they had, before they delegated it to Individuals."

Ten years later, after fighting began, while they continued to hope against hope that the King would restore their rights in a constitutional manner, Americans were talking more and more about the state of nature, the origin of government, the

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limits of authority, and the rights of man. All these ideas were fused in Thomas Paine's denunciation of monarchy. At one stroke he propelled Americans into the great discovery of human equality toward which they had been moving unwittingly ever since they first denied Parliament's right to tax.

There is an exaltation, an excitement, about *Common Sense* that conveys the very uncommon sense of adventure Americans felt as they moved toward independence. With it would come new perils, but also new opportunities, new freedoms. They knew they were on the threshold of a great experience not only for themselves but perhaps for the whole world. "The cause of America," Paine told them, "is in a great measure the cause of all mankind." And they believed him.

On May 15, 1776, the Virginia House of Burgesses voted to instruct its delegates in Congress to propose independence, and on the same day the Congress adopted a resolution sponsored by John Adams, advising the various colonies to assume complete powers of government within themselves. On June 7 Richard Henry Lee, following the instructions of his Virginia constituents, moved a resolution formally declaring the colonies independent. On July 2 this resolution was adopted and two days later the famous declaration to the world, drafted by Thomas Jefferson.

The Declaration did not go as far as Paine had gone: it was directed only against the "present" King of Great Britain and would not have precluded a monarchical form of government for the United States or for any of its constituent parts. But the Declaration, like *Common Sense*, was much more than a repudiation of George III. It put into words, even more effectively than Paine did, the principle which had been forming in the American mind, "that all men are created equal." The

War and Peace, 1776-83

Canada, hoping to bring that area into the Revolution on their side. By the spring of 1776 it was clear that this expedition had failed. Though the failure was both military and political, Americans reassured one another that no such thing could occur among themselves. If the Canadians lacked the noble urge to be free, if they would not help themselves, then they deserved slavery. Meanwhile American patriots would establish their rights on battlefields closer to home.

The assurance of the Americans was ultimately justified by events: they did win, and their greatest asset was, in fact, their desire to be free. Though this desire did not enable them to maintain in the field a force equal to that of the British, the American armies could always count on popular support. It is true that many Americans took the British side—no one will ever know how many—but the majority in every colony gave active or tacit support to the patriot cause. At the beginning of the war all the royal governors fled, and only in Georgia, the least populous of the revolting colonies, was British civil government re-established during the remainder of the war.

The revolution, in other words, was a people's war, and it is doubtful that the British could ever have won more than a stalemate. They might defeat the American forces in the field, as they often did, but victory did not enable them to occupy the country without a much larger force than they ever had. Americans generally owned guns and knew how to use them. A century and a half of defending themselves against French and Indians, the reliance many placed on guns to protect their crops from animals and to provide themselves with meat—these had given them a familiarity with firearms that common people of the Old World lacked. It was this experience that told at Concord and at Bunker Hill. And it would tell again whenever

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to keep government subordinate to it. There was no reason, they thought, why a government which had got out of hand might not be replaced by a proper one without destroying the social fabric for which government should form a protective coating. One could simply peel off the old government and put on the new.

John Locke himself, the great authority on the subject, had never claimed that the dissolution of government would throw a people back into the state of nature. He in fact emphasized that society came into existence before government and could survive a change of government, as English society had done in 1688. If England could do it in 1688, America could in 1776.

Since these ideas prevailed among the majority, the change from British to American government was made with very little fuss. After Lexington the royal governors fled back to England without waiting for the Declaration of Independence. Provincial congresses, in most cases almost indistinguishable from the old assemblies, assumed provisional control of their respective areas. The Continental Congress in May, 1776, advised the people to set up regular governments on their own authority, and by July 4 they had already begun to do so.

In constructing these new governments the ex-colonists did not forget the century and a half during which they had lived in contentment under British rule. They still possessed an admiration for the British constitution that was only slightly tarnished by their recent experiences. Until their final repudiation of the King they had insisted that they were contending only for what the constitution required. They still believed that it was they who stayed true to it while King and Parliament betrayed it. The fact nevertheless remained that it had been betrayed: for all its excellence it had not been proof

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against tyranny. The problem was to design a government containing all the virtues of the British constitution but with added safeguards to prevent the kind of deterioration they had just witnessed.

There were actually two kinds of government to build, central and local. They began discussing the central one, as we shall see, even before independence but were unable to finish it for several years. In forming the local state governments they were more successful: ten were completed by the end of 1776 and the rest by 1780. They were not perfect, but they did furnish greater protection to human liberty than could be found in any other part of the world at the time.

The most striking thing about these state governments is that they all had their wings clipped by written constitutions in which their powers were strictly limited and defined. In Rhode Island and Connecticut the old colonial charters continued to serve this purpose, but in each of the other states a special document was drafted. The British constitution was unwritten, and in the recent dispute each side had pelted the other with historical precedents. Though the colonists gave as good as they got in this fracas, they had had enough of it and were now unanimous in feeling that their new governments should have something more than tradition to limit and guide them.

A written constitution, then, was their first line of defense against tyranny, and it generally contained a bill of rights defining certain liberties of the people which government must not invade under any pretext: general warrants and standing armies were forbidden; freedom of the press, the right to petition, trial by jury, habeas corpus, and other procedures that came to be known as "due process of law" were guaranteed.

In their haste to get a properly limited government in oper-

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ation most states allowed their provincial congresses to assume the task of drafting a constitution and putting it into effect. The people of Massachusetts seem to have been the first to see the danger of this procedure. When their provisional legislature handed them a constitution in 1778, they refused the gift, not merely because they did not like it, but also because they had decided that the people should endow the government with a constitution and not vice versa. If, they reasoned, a government can make its own constitution, the government can change it and thus fall into tyranny. Accordingly a special convention was held in 1780 and a constitution established by the people acting independently of government. Other Americans, equally concerned with the dangers of usurpation, saw at once the desirability of the Massachusetts procedure. Though by this time it was too late for most states to use it, the new method was shortly followed in creating a government for the United States.

Though drafted by provincial congresses rather than popular conventions, the state constitutions did nevertheless proceed on the assumption that the people are the source of political power. Virginia, the first to complete one, began it with a bill of rights which asserted that "all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them." Other states copied this provision and supported it by various devices to prevent their governments from slipping the reins of popular control.

It was of elementary importance that every officer of government be elected directly or indirectly by the people. There must be no office of hereditary right, no king, no house of lords. Some constitutions made express provisions to this effect; others

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the more extravagant schemes of a thoughtless multitude. It was also a place where ambitious men of great prestige might be safely and happily isolated without endangering the liberties of the masses. Though America might grant no titles of nobility, Adams was convinced that every society grows aristocrats as inevitably as a field of corn will grow some large ears and some small. Whether by wealth, birth, or talents, some individuals would gain an influence over the others; the function of the upper house was to furnish a place where their influence might be restrained within defined limits.

Adams was not very clear about the way these natural aristocrats were to be prevented from infiltrating the lower house too, but by letters to influential friends and by a well-timed pamphlet he did succeed in persuading every state except Pennsylvania to make its new legislature bicameral. Since most colonial assemblies had contained an upper house in the form of the Governor's Council, it was easy enough to continue the institution on an elective basis.

While they carried out in these institutions the principle that all power emanates from the people, the constitutions were less consistent in applying another principle which most of them enunciated: that all men are born free and equal. Though power emanated from the people, it did not emanate from all of them equally. Western areas in the colonies from Pennsylvania southward had not enjoyed under royal government a representation in proportion to their population. And though they gained a few seats in the new governments, they still had less than their share, especially in South Carolina. There were also people, varying in number from state to state, from whom no power emanated at all, because they did not have enough property to vote. The property qualification for voting was reduced

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everywhere except in Massachusetts, but in no case was the suffrage thrown open to all adult men or any women. In spite of the fact that the Americans had scoffed at the notion of virtual representation, they were still practicing a limited form of it themselves.

In explanation of this failing it should be remembered that except in Virginia and perhaps in South Carolina, where the number of tenant farmers was unusually high, the vast majority of white Americans could probably meet the property qualifications required of them. Moreover, the Revolution had begun as a dispute over the security of property, and it was a common assumption that government existed for the protection of property. Those who had none were thought to have very little stake in society. The Virginia bill of rights displays this supposition in stating that "all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage."

That the toleration of these inequalities was inconsistent with the avowed principles of the Revolution did not escape men at the time, and there was much argument about it, but another generation passed before Americans brought their practice into closer adjustment with their principles in this matter. It should be emphasized, however, that the Revolutionary period did see a general reduction in property requirements and an increase in western representation. In some states, notably Pennsylvania, there was a thorough electoral reform that secured all taxpayers the right to vote and provided for keeping representation in harmony with population by periodic reapportionments. In other states there were similar though incomplete reforms, and in still others there had never been either regional inequalities in representation or disbarment of

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any large numbers from the suffrage. In no state was representation reduced, and only in Massachusetts was the property qualification increased, and there only slightly.

In failing to establish proportional representation and universal suffrage the Revolutionists showed they were not prepared to follow the principle of equality to its logical political conclusion. We need not, however, conclude that their enunciation of the principle was hypocrisy. Though we still adhere to it and though we have carried it much farther than our ancestors, we are still finding new applications. During the Revolutionary period the men who formulated it could scarcely begin to know where it might take them.

Their original intention had been merely to affirm their equality with Englishmen. When they called upon Locke's philosophy of government to support the affirmation, they did not perceive that they were opening the door to developments that Locke himself would probably have disavowed. Locke had described the state of nature as a state of perfect equality, in which no man enjoyed any kind of right or authority or dignity beyond another. In so doing he had no intention of unseating English dukes and earls from their exalted position in the settled state of English society. Locke's state of nature was purely hypothetical, and he did not suggest that the equality prevailing in it ought to continue in organized society. Nor did the revolution he was defending bring about any upset in the social structure of England.

Most Americans, as we have seen, thought of their revolution in much the same way: they too were beyond the hypothetical state of nature and need not return to it. But in America there was not as wide a gap as in England between the hypothetical state of nature and the actual state of society.

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Here were no titled nobility and no degraded peasantry. Most people owned land and enjoyed economic independence. They were more nearly equal than the people of any European country, and with the wilderness beckoning on the other side of the mountains they could easily picture the state of nature as a real thing. Under these circumstances Locke's description of the perfect equality of natural men gradually became an ideal to be preserved in American society. Though there was no radical rebuilding of social institutions at this time, it is nevertheless possible to see the ideal beginning to take shape and operating, if only fitfully, against the grosser social inequalities of the day.

There was a beginning made, for example, in the reform that led Americans to civil war by 1860. Early in the agitation against Great Britain individuals had remarked on the inconsistency of a people holding slaves and at the same time complaining that Parliamentary taxation would reduce them to slavery. As the struggle progressed, more and more Americans came to see the need for casting out this beam. In July, 1774, Rhode Island led the way with a law providing that all slaves imported thereafter should be freed. That the move was prompted by the new equalitarian ideas is evident from the preamble, which states that "those who are desirous of enjoying all the advantages of liberty themselves should be willing to extend personal liberty to others." Under this same impulse the Continental Congress in 1774 agreed to discontinue the slave trade and to boycott those who engaged in it. Connecticut, Delaware, Virginia, Maryland, South Carolina, and North Carolina passed laws in the 1770's and 1780's either forbidding or discouraging the importation of slaves. Jefferson would have included a statement against slavery in the Decla-

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ration of Independence had not other members of Congress ruled it out.

In most of the northern states the abolition of the slave trade was followed shortly by the abolition of slavery itself. The case of Massachusetts was most striking. Here the constitution adopted in 1780 declared in its first article, "All men are born free and equal." Under this clause a Massachusetts slave brought suit in court for his freedom, and the court awarded it to him. As a result all slaves in Massachusetts were thenceforth free. Even the southern states, though they continued to hold slaves, admitted the injustice of doing so and looked for a way of abolishing the evil without bringing about their own economic ruin. They did not find a way, but so many southerners were conscience stricken by their own conduct that in 1782 the Virginia legislature passed a law permitting manumission. This had hitherto been forbidden, but now, in the next eight years, ten thousand Virginia slaves received their freedom by the voluntary action of owners who took the principle of equality literally.

These first assaults on slavery were matched by a similar attack on the most obvious form of special privilege. In 1776 there was an established church receiving exclusive economic support from the government in every colony except Pennsylvania and Rhode Island. In New England the Congregational church enjoyed this privilege; in the other colonies the Anglican church. During the Revolution, partly because of pressure from other denominations, partly because of the new disposition toward equality, the Anglican church was disestablished; but in New England where the vast majority of the population was Congregationalist, that church continued to enjoy

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not accomplished without disagreements among the Revolutionists themselves. Some wanted to go much farther, others not this far. The disagreements have so impressed recent historians that the Revolution is sometimes interpreted as an internal struggle in which the contest between different classes and parties looms as large as the conflict between England and America. Carl Becker, for example, in examining the origins of the Revolution in New York stated that it was not only a dispute about home rule but also about who should rule at home, and his aphorism has become the theme of many subsequent histories.

It cannot be denied that both disputes existed, but to magnify the internal contest to the same proportions as the revolt against England is to distort it beyond recognition. Both before and after the struggle Americans of every state were divided socially, sectionally, and politically; but these divisions did not with any consistency coincide with the division between patriot and loyalist, nor did they run so deep as to arouse the same intensity of feeling. The Revolution cut across the old lines and plucked loyalists and patriots alike from every class and section. And though an ardent patriotism was often used by one group or another to advance its own political fortunes, no group was able to monopolize the commodity. During the war (as before and after it), in spite of the many opportunities for violence, internal disputes generally found peaceable if noisy settlement within the ordinary framework of politics.

xx | The most radical change produced in Americans by the Revolution was in fact not a division at all but the union of three million cantankerous colonists into a new nation

VIII

THE INDEPENDENT NATION 1776-81

Nationalism has been the great begetter of revolutions. In Europe, in Asia, in Africa, we have seen it stir one people after another: they grow proud of their traditions, of their language, of their identity, and they strike for independence. In our case it was the other way round: we struck for independence and were thereby stirred into nationality; our nation was the child, not the father, of our revolution.

We did, of course, have some of the makings of a nation before 1776. We spoke, for the most part, the same language; we enjoyed common historical traditions; we occupied a continuous territory; we were almost all Protestants. We had even developed a certain self-consciousness, a pride in things American. Nevertheless, it was not this pride that drove the colonists to resist British taxation. All the colonial demands might have been satisfied within the limits of empire, had there been any disposition in London to satisfy them. Only as they saw every other means fail did Americans turn to independence.

Once they turned, however, the view proved fair beyond belief, and the means inexorably became an end, a goal that

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loose from the mother country and set up government for themselves, they were ready to build upon a common core of political beliefs. They believed that government must protect property and not take it in taxes without consent, that government is the product of those who are governed by it and subject to alteration by them at any time. They knew that men are evil by nature and that governments are consequently prone to corruption. Together they watched the British government succumb to evil, and together they decided to do something about it.

By 1776 the consciousness that they belonged together had grown so strong that the phrase "United Colonies" had a singular as well as a plural meaning. When the Declaration of Independence substituted "States" for "Colonies," the singular meaning was still present, and it did not even occur to the colonists that they might establish thirteen separate governments and go their different ways. They must win independence together or not at all, and they must have some sort of central government to give expression to their existence as a nation.

Politicians argued for nearly a century over the question whether the national government was older or younger than the state governments. Historians still argue over it. But in 1776 Americans believed that the Declaration of Independence created the United States as well as the several states; and the Continental Congress which made the Declaration seemed as much a provisional government for the nation as the provincial congresses were for the states. The Declaration itself indicates as much when it says that "as Free and Independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do." Though given a plural

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gress altogether as soon as the war should be won. National feeling was too strong to allow serious consideration of such a proposal, but Burke was able to win adoption of a strong states' rights clause which found its way into the finished constitution as Article 2: "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

Esteem for the state governments and a corresponding distrust of the central government was rising all over the country. While the latter was losing its credit in the avalanche of paper, the states were able to begin the climb into comparative solvency by levying taxes. Most of them had constitutions by 1777, and as Congress groped its way down the uncharted path of national government, the state governments were entrenching themselves behind a growing body of legislation. They were in fact so jealous of their new strength that when Congress finally finished tinkering with the constitution on November 17, 1777, and presented it to them, they were not at all eager to ratify it.

It is true that the Articles of Confederation, as the document was called, assigned what appeared to be a formidable list of powers to the Congress, which remained the only department in the central government. Congress was to have exclusive authority over relations with foreign countries, including the determination of war and peace, over admiralty cases, over disputes between different states, over coining money and establishing weights and measures, over trade with the Indians outside the boundaries of particular states, and over postal communications. In addition, it was authorized to borrow money and to requisition the states for men and money. Decisions were to be made by a simple majority, with each state having

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one vote, except in specified important matters for which the consent of at least nine states was necessary.

Though these powers when set forth in black and white looked imposing, they hardly merited any alarm over states' rights or popular liberty; for they were actually no more than Congress had been exercising on a *de facto* basis since independence, and the states had nevertheless grown steadily stronger and popular liberties more extensive. Furthermore, the Articles carefully safeguarded the states against encroachment from the central government by leaving to them the power of the purse. Congress could requisition them for money, but if they refused, the Articles provided no means to enforce the demand or for that matter to enforce any congressional decision. Their own experience in thwarting colonial governors might have reassured the American people that with the power of the purse the states were also retaining the ultimate power of government. They were also guarded against each other: equal voting by states was intended to protect the small states from the large and the nine-state majority to protect the large from the small.

But in spite of all its safeguards the people who had to judge this constitution could not at first bring themselves to ratify it. They were conditioned by the preceding ten or twelve years to approach all government with caution. In Massachusetts and New Hampshire they went over the Articles clause by clause in town meetings while local sages pointed out defects and dangers. Elsewhere the state legislatures talked it up and down much as Congress had already done and sent in recommendations for amendment, mostly designed to limit further the powers assigned the central government.

In only one important respect were these powers considered

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titude of proposed amendments afterward. But Maryland held out. It is to the credit of the Virginians in this crisis that many of them recognized the validity of the principle Maryland was contending for, even while they called attention to the ulterior motives at work. And it is doubly fortunate that they discovered reasons closer to their own state's interests to justify limiting her size. There was a common assumption at this time that a republic could not cover more than a small territory and remain a republic. It was hoped that a confederation of republics might extend more widely, but a single republic, if spread too large, would prove weak and either fall a prey to monarchical despotism or disintegrate into anarchy. Thomas Jefferson and Richard Henry Lee, both of whom expressed these views, thought that Virginia should voluntarily limit her size. Thus through an attachment to the principles of republican government they reached much the same position that men with other reasons had been contending for.

Because of these views and also because the British armies were now pressing up from the Carolinas, making the need of confederation seem daily more desperate, the Virginians agreed on January 2, 1781, to cede their territory north and west of the Ohio. In doing so, however, they stipulated certain conditions that carried much further the principle of equality upon which Maryland had insisted. Maryland had been worried about her own inferiority to so huge a sister state. Virginia was concerned about the future of the United States and of the people who should live in the territory she was resigning. She gave it up only on condition that it be held as a common fund for the nation—thus providing the United States with a national domain—and on condition also that it be laid out in separate new states not more than 150 and not less than 100 miles square,

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ing the Ohio and setting up shacks and cabins on the land from which Congress hoped to pay its debts. Some of them even claimed a natural right to the land and denied that Congress had the authority to keep them off or to sell it at all.

In order to protect the only domain the United States could claim as a nation, Congress was ready not only to sell at bargain prices to bona fide purchasers like the Ohio Company but also to revise its plans for allowing the settlers to govern themselves. The Ohio Company, which hoped to attract large numbers of law-abiding New Englanders to the region, gladly cooperated in drafting a new ordinance for government of the territory. This "Northwest Ordinance," of July 13, 1787, instead of letting the settlers immediately select and operate their own government, provided for an initial period of tutelage during which the entire territory would be controlled by a governor, secretary, and three judges, all appointed by Congress. As soon as there were five thousand adult males in the territory, they would have the right to elect a general assembly, but the congressionally appointed governor would retain an absolute veto over the assembly's actions. Moreover, only an owner of fifty acres of land could vote, and no law should ever be passed affecting the obligation of private contracts. Provision was made for the formation of not less than three or more than five states in the area, each of which was to enter the union on equal terms with the existing states as soon as its population amounted to 60,000. Throughout the territory, both under the temporary government and after the formation of states, there must be freedom of religion, proportional representation in legislatures, trial by jury, habeas corpus, and the privileges of the common law. Slavery was permanently excluded.

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a government of their own as early as 1777. Here too land speculation complicated the dispute, which did not finally end until New York renounced her claims in 1790 and the state of Vermont was admitted to the union in 1791.

Though the story of Kentucky and Tennessee and Vermont was not a happy one, there is no evidence of an intent to keep the people of these regions in a dependent status. Taken as a whole, the record of the Confederation with regard to the West showed real progress, especially by comparison with the static years of British control. England acquired secure title to the West in the peace of 1763. She acquired it after considerable deliberation, as the result of a decision that this region had a greater future than the sugar islands of the West Indies, which she could have chosen instead. Yet between 1763 and 1774 she failed to provide any civil government for the area. In 1774 she provided one in the Quebec Act by extending the boundaries of Quebec, with its autocratic government and Roman Catholic church, to cover the entire territory north of the Ohio and west of the Alleghenies, a move that infuriated the Americans who wished to settle there. Congress, on the other hand, within little more than three years after it acquired the Northwest not only provided for sale and settlement of the lands but developed a complete program for westward expansion on republican principles, a program that with little alteration carried the United States to its present continental limits.

The achievements of "the critical period" on the economic front were equally creditable. The first years of peace posed an extraordinary problem for Americans. For a century and a half, in spite of the notoriety of certain kinds of smuggling, their economic life had been adjusted to membership in the British Empire. The Navigation Acts, as we have seen, caused

“The Critical Period”

for the nation's welfare could see by 1787 that the state governments had proved unworthy masters. They would not allow Congress to act whether action was needed or not. Congress had been safeguarded into impotency, its deliberations rendered as ineffective as those of a debating society, while the states grew ever stronger. Washington had seen what was happening and warned against it as early as 1780: “I see one head gradually changing into thirteen. . . . I see the powers of Congress declining too fast for the consequence and respect which is due to them as the grand representative body of America.” In the summer of 1787 James Wilson sadly confirmed the fact:

Among the first sentiments expressed in the first Congress one was that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more. We are now one nation of brethren. We must bury all local interests and distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Governments formed than their jealousy and ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands.

As the state governments grew stronger, they grew, in the opinion of many of their leading citizens, more irresponsible not only toward the nation but toward the people. The Revolution had begun because the British government violated the sacredness of private property. Now it seemed that some of the state governments were doing the same by failing to protect the investments of creditors. Rhode Island, where a wildly depreciating paper currency had been made legal tender, was the notorious example. Hordes of happy debtors there were paying off their obligations in worthless paper, leaving their creditors bankrupt. Or so the newspapers said, and from past

The Constitutional Convention

to participate. Washington, who was chosen president of the convention on its first day, lent it a dignity everyone was bound to respect, a dignity further enhanced by the venerable presence of Benjamin Franklin. The other members were mostly younger men in their thirties and forties, old enough to have lived and fought and thought through the crowded years of the Revolution, old enough to have digested the significance of those years, not old enough to think them all vanity and vexation of spirit.

There were a few conspicuous absences. Sam Adams of Massachusetts and Patrick Henry of Virginia were not there, the latter because he "smelled a rat" in the whole proceeding. Both had become politically myopic in their old age and were well left at home. Thomas Jefferson and John Adams, who might have contributed much, were in Europe, but Jefferson's views were ably represented by James Madison, and Adams' by Gouverneur Morris of Pennsylvania, a dazzling speaker and thinker of conservative tastes.

Much has been written about these men and their work, and since we are still intimately affected by what they did, we cannot view them with complete detachment. Indeed, as long as patriotism remained the principal ingredient of American historical writing, the constitutional convention was regarded as an assemblage of the gods. But in 1913 Charles Beard published *An Economic Interpretation of the Constitution of the United States*, and, ever since, historians have striven to look at the convention as a meeting of ordinary human beings. Beard's achievement was extraordinary: he examined the career of every member of the convention and discovered that most of them had invested in public securities of the United States and therefore stood to gain by strengthening public credit. He also

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examined their political ideas as expressed in the convention and found that most of them wished to restrain the people from legislation that would adversely affect the value of public securities. The conclusion was obvious that the makers of the Constitution, consciously or unconsciously, were seeking to protect their own economic interests, a characteristic that historians of the present age have frequently discovered in the actions of men both past and present.

We have discovered signs of economic interest in the events of the decades preceding the convention. The colonists did not wish to see their trade ruined or their property endangered by Parliamentary taxation and fought to protect themselves; land speculators wished to profit by settling the West and helped to secure a national domain. In each case self-interest led to the enunciation of principles which went far beyond the point at issue. In each case the people of the United States were committed to doctrines which helped to mold their future in ways they could not have anticipated. At the constitutional convention much the same thing occurred. The members had a selfish interest in bringing about a public good. But in this case, contrary to the impression given by Beard, it is all but impossible to differentiate private selfishness from public spirit.

Patriotism led responsible Americans to invest in public securities in wartime, and patriotism guided their efforts to revive the languishing nation which their money and blood had purchased. That personal economic interests were also involved is undeniable, but we learn very little about the convention by knowing that its members held public securities and believed in the sacredness of property. The principles they carried with them to Philadelphia would not all have fitted in their pocket-books. How little they can be explained by economic or class

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interests alone may be suggested by a look at the views of one blunt-spoken member from Connecticut.

Beard found Roger Sherman's political philosophy adequately expressed in his statement that the national legislature ought to be elected by the state legislatures rather than by direct vote, that the people "immediately should have as little to do as may be about the government. They want information and are constantly liable to be misled." Taken by itself this statement seems to warrant Beard's conclusion that Sherman "believed in reducing the popular influence in the new government to the minimum." But look at what Sherman said at other times and about other parts of the new government. On June 4, four days after he made the statement above, he spoke against giving the President a veto power over laws, because he "was against enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom." On June 21 he argued for election of the House of Representatives by the state legislatures, but after election by the people had been decided upon, spoke for annual elections as against triennial, because he "thought the Representatives ought to return home and mix with the people." Throughout the convention he sought to preserve for the small states the same disproportionate share of power they enjoyed under the Articles of Confederation, but on July 14 he opposed those who wished to retain a predominance in the national government of the existing states against any new ones, insisting that the people of new states in the West would be "our posterity" and ought not to be discriminated against. Three days later he was against election of the President by the people, but on August 14 he was in favor of substantial pay for congressmen, because other-

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compounded of rationality and irrationality, moved by selfishness and by altruism, by love and by hate and by anger—and by principle. If the convention succeeded, it was not simply because the members possessed a common economic or class interest but because they held common principles, principles learned in twenty years of British tyranny and American seeking, in colonial assemblies, in state legislatures, and in Congress. Their work has often been described as a bundle of compromises, and so it was, but the compromises were almost all on matters of detail. They could afford to give and take where they disagreed, because there were so many important things about which they did agree.

They agreed, to begin with, on the urgency of their task. Most of them were convinced that unless they came up with an acceptable, and at the same time workable, scheme of national government, the union would dissolve. Charles Pinckney of South Carolina, who had just been serving in Congress, believed that body would have collapsed already if the appointment of the convention had not given hope that the union might continue. But he did not need to tell the other members. Whenever arguments became heated, they would remind each other of the dreadful consequences if they failed. "The condition of the United States requires that something should be immediately done," cried Gunning Bedford of Delaware, himself a strong advocate of states' rights. "The fate of the Union will be decided by the Convention," said Elbridge Gerry of Massachusetts. "It is agreed on all hands," said his colleague Caleb Strong, "that Congress are nearly at an end. If no Accommodation takes place, the Union itself must soon be dissolved."

No one liked to think what would happen if the union did

This is indeed the most probable.

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dissolve. Great Britain was still clinging to her posts in the Northwest in anticipation of the event. Spain was tugging insistently at the Southwest. If the union fell, each would move in for the kill. John Dickinson, one of the members from Pennsylvania, who had been present at the Stamp Act Congress in 1765, must have recalled grimly the fears he felt then. In a memorable letter to William Pitt he had pleaded that the colonies not be driven to fight: they would win, he had been sure of that; but the fruit of their victory would be "A multitude of Commonwealths, Crimes and Calamities, Centuries of mutual Jealousies, Hatreds, Wars of Devastation; till at last the exhausted Provinces shall sink into Slavery under the yoke of some fortunate Conqueror." Now the crimes and calamities had begun—what else was Shays' rebellion? And unless the convention could resuscitate the national government, the rest of the prophecy would horribly follow.

Dickinson and the other members agreed not only on the desperateness of the situation but, in broad outlines at least, on what must be done about it. They almost all believed that the central government should be strengthened by enabling it to act without the mediation of state governments, to levy and collect its own taxes, and to make laws and enforce them through its own administrative agencies. There were a few members, notably from the smaller states, who felt that the task of the convention could be fulfilled simply by granting more authority to the existing government, in other words to Congress. But this solution was generally regarded as dangerous. Congress was not, strictly speaking, a representative body: its members were not elected directly by the people. To give it powers of taxation and legislation would therefore be to violate a cardinal principle of the Revolution. Moreover, even if popu-

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national government. Under the Articles of Confederation there had been the even more serious failure of not applying the principle at all. All the functions and powers of government had been concentrated in a single body of men, a mistake that might have resulted in tyranny if Congress had not been kept so weak by the jealousy of the states. As Edmund Randolph of Virginia put it, "If the union of these powers heretofore in Congress has been safe, it has been owing to the general impotency of that body." The problem then was to construct a representative government of divided powers on the model of the state governments but without the flaws which ten years' wear and tear had brought to light.

There was no serious consideration of any radically different design: a few members, notably Alexander Hamilton and John Dickinson, thought highly of constitutional monarchy as a form of government, but they knew that Americans could not be sold that idea. And the other members, the great majority, wanted nothing but a republic: they were committed irrevocably to the principle of equality as expressed in the Declaration of Independence, and that principle, they believed, demanded republican government. Some of them had doubts about the durability of a large republic but were willing to leave the proof to time. Even Elbridge Gerry, who said that "the evils we experience flow from the excess of democracy," and that democracy was "the worst . . . of all political evils," nevertheless believed that the United States should remain a republic.

With so large an area of agreement it was easy for the delegates to determine the main outlines of the government they wished to establish. On the third day of their meetings Edmund Randolph presented a series of resolutions, drafted by

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his colleague James Madison, which after three and a half months of discussion, amendment, and expansion emerged as the United States Constitution. Randolph's resolutions provided for a national executive, a national judiciary, and a bicameral national legislature, the lower house to be popularly elected and representation in both houses to be proportioned either to population or to amount of taxation. With one qualification, which we shall examine, these provisions were accepted. Although William Paterson of New Jersey presented a rival plan, in which the national government was to remain under the undivided control of Congress, it was overwhelmingly rejected. There was never any serious dispute about the main features of the Randolph plan.

It was in the details that particular interests of a selfish or local nature sought expression and at times threatened to wreck the convention. That it was not wrecked was owing in part to the fact that nearly every member was willing to give way to majority opinion in order to insure success and in part to the fact that a majority opinion could be formed on the crucial questions by appealing to the fundamental principle of equality. The members differed widely in their views as to how the principle should operate, but none could deny its supremacy.

The most serious disagreement over its application came between the delegates from the large states and those from the small. In the existing Confederation the principle had been applied to give every state an equal weight in the government. By the rejection of Paterson's plan and the acceptance of Randolph's it was determined that this should not be the case in the new constitution, but the small states still fought for as large a role as they could get in the new government. They argued, for example, that the state governments should choose

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be so fixed as to secure to the Atlantic States a prevalence in the National Councils."

The small states, on the other hand, welcomed the idea of new and equal states in the West which would reduce the predominance of the large eastern states. They opposed Gouverneur Morris' attempt to keep western representation inferior and supported a proposal (which it is only fair to say was also advocated by many of the most able large-state delegates) that a census of the country be taken at regular intervals and made the basis of representation in the lower house (one representative for every 40,000 persons with five slaves to count as three persons). In this way new states would be assured representation on the same scale as the old.

Through their support of this measure, which was successful, the small states helped to further the equality of men, but at the same time they wrung from the large states a concession that still impairs the functioning of that principle. By threatening to bolt the convention they won equal representation for states in the Senate. These two provisions, equality for states in the Senate and for men in the House of Representatives (to be regularly reapportioned as population grew), were the principal features of the so-called "great compromise." It was actually more of a concession than a compromise, for the large states got nothing from it, but it did successfully break the convention's worst impasse.

After the question of representation was settled, the only other serious disagreement came over the question of slavery. No one in the convention liked the word or the thing it designated, but the South had so large an investment in it that the southern delegates felt obliged to secure their constituents from national legislation which might interfere with the labor sup-

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was the ratio of representatives to population nearly as small as that established by the Constitution. The first federal House of Representatives would contain only fifty-five members, a much smaller number to make laws for the whole nation than was required in most states to make state laws. After a census had been taken, the representation was not to "exceed one for every thirty thousand" (the figure had been reduced from forty thousand at the suggestion of Washington), which could not raise the number much and might lower it; as the provision was phrased, it would be perfectly constitutional for Congress to set the ratio at one to one hundred thousand or one to two hundred thousand.

We can scarcely appreciate the alarm that this provision caused without recalling the prejudice existing at the time against the possibility of reconciling republican government with a large extent of territory. Through reading or misreading Montesquieu—no author was more widely cited in debates on the Constitution—many Americans were convinced that an effective national government for the United States must sooner or later depart from republican principles. James Madison had pointed out to the convention that this fear was groundless. In a republic, he argued both in the convention and afterward in the newspapers, the majority, however composed, will always rule. The danger to individual rights will come therefore from a majority. In a small republic the number of different groups and interests will be small enough and the opportunities of communication between them so easy that majorities will easily be formed and will tyrannize over the minority. But in a large republic the number of interests will be correspondingly larger and the opportunities for communica-

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tion fewer. Consequently, the likelihood of a majority being formed against the interests of a minority is less.

Madison was right, and his argument, classically stated in the tenth number of *The Federalist*, a series of essays which he wrote with Alexander Hamilton and John Jay to support the Constitution, is perhaps the keenest analysis of political behavior ever written by an American. But Madison in 1788 was less heeded than Montesquieu. As they looked at the plan for the national House of Representatives, people saw in it the proof of Montesquieu's observations. How could six men, the number assigned to New York, represent the multifold interests of the people of that state? The function of a representative, Madison told them, was to sift the views of the multitude, to filter them through the medium of his own superior wisdom. That was why representative government was superior to pure democracy. But this was not the accepted notion of a representative. The job of a representative, as most Americans saw it, was that of an errand boy; he was to carry the views of his constituents to the legislature, and never mind about filtering them.

How then could fifty-five errand boys present the views of three million people? The answer was obvious: they could not and would not. Instead, they would represent the views of the most powerful and wealthy sections of the three million. Melancton Smith of Dutchess County, New York, one of the ablest opponents of the Constitution, showed that not only the upper house of the legislature but also the lower house would be monopolized by the wealthy and well-born. With the number of representatives so small and the election districts necessarily so large, the offices would carry much honor and be sought after by the kind of men whose birth and wealth would enable them to succeed.

BIBLIOGRAPHICAL NOTE

To treat so large a subject as the Revolution and the Constitution in so few pages as I have done suggests an intellectual arrogance which I take this opportunity to disavow. I pretend to know well only a small portion of the period I have covered; for the rest I have relied heavily on the works of other historians who have spent more lifetimes on the subject than I or any other individual has available. I wish to name here a few of those works I have found most useful, together with some in which the reader will find an antidote for my own conscious and unconscious peculiarities of viewpoint.

The first, and in many ways the greatest, historian of the Revolutionary period was the Jacksonian Democrat, George Bancroft. Sooner or later anyone who wishes to know the Revolution must go to his *History of the United States* (10 vols., 1834-74). Though he was not always scrupulous in his use of quotations, though he wrote the extravagant prose of the nineteenth century, though he saw the hand of God operating in places where we would not detect it, he nevertheless did know the sources better than anyone has since, and he did

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address himself to the central question: How did the United States come into being as a nation dedicated to principles of liberty and equality?

Subsequent historians have not been able to answer this question as successfully as Bancroft did, but they have revised his answer at many points, and they have also asked and answered many related questions that Bancroft neglected. They have, for example, examined more closely the latent forces making for coherence in American life before the Revolutionary period. Michael Kraus's *Intercolonial Aspects of American Culture on the Eve of the Revolution* (1928) shows how colonial Americans were joined together in a variety of mundane ways. The less tangible aspects of this coherence are discussed in Max Savelle's *Seeds of Liberty* (1948) and Clinton Rossiter's *Seedtime of the Republic* (1953), both of which emphasize the growth of ideas of liberty. The first volume of Irving Brant's great life of Madison (*James Madison: The Virginia Revolutionist* [1941]) argues convincingly that Americans attained a high degree of nationality early in the Revolutionary dispute.

Recent scholars have also done more justice to the virtues of the British Empire than Bancroft did. The works of George Louis Beer (*The Old Colonial System* [2 vols., 1912]; *Origins of the British Colonial System* [1908]; *British Colonial Policy, 1754-1765* [1907]) and of Charles McLean Andrews (*The Colonial Period of American History* [4 vols., 1934-38]) are outstanding in this respect. The latter's *Colonial Background of the American Revolution* (1924) is perhaps the wisest book yet written on the subject. A more inclusive study of the British Empire as a whole and of its history from mid-century to the Revolutionary period is Lawrence H. Gipson's monumental work, *The British Empire before the American Revolu-*