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The Nature of the Union: The Evolution of Understandings about Government and Society Under the Early Continental Congresses, 1774-1776

Tyler J. Kubik

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THE NATURE OF THE UNION: THE EVOLUTION OF UNDERSTANDINGS ABOUT
GOVERNMENT AND SOCIETY UNDER THE EARLY CONTINENTAL CONGRESSES,
1774-1776

by

TYLER J. KUBIK

Under the direction of H. Robert Baker, Ph.D.

ABSTRACT

Understandings of the Founding Era have been under continuous debate since the American Revolution itself. Whether one examines the Articles of Confederation or the Continental Congresses, the successes, failures, and significance of each have been argued over since the beginning. By looking at American understandings of crucial ideas about government and society during the American Revolution, including the foundation of American rights, we can better come to terms with an understanding of American identity. These understandings evolved during the American Revolution, and their evolution can be examined through the resolutions, debates, correspondence, and diaries of members of Congress from the the First Continental Congress in 1774 to the adoption of the Declaration of Independence in July of 1776. The Declaration represented the synthesis of natural law thought with British constitutionalism that was forged out of the necessity of compromise during the lead up to war in 1774, the outbreak of hostilities in 1775, and the subsequent escalation into war shortly thereafter, exhibiting the importance of wartime exigencies in the evolution of American thought.

INDEX WORDS: American Revolution, Declaration of Independence, Continental Congress, Natural rights, British constitutionalism, Republicanism

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Master of Arts

In the College of Arts and Sciences

Georgia State University

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TYLER J. KUBIK

Committee chair: Robert Baker

Committee: Robert Baker

David Sehat

Electronic Version Approved:

Office of Graduate Services

College of Arts and Sciences

Georgia State University

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1 INTRODUCTION

No revolution has ever sprung forth, fully blown and fully armed like Athena, from the brow of existing society; no revolution has ever emerged from a vacuum. No revolution has ever been born out of ideas alone, but only from a long chain of abuses and a long history of preparation, ideological and institutional.

—Murray N. Rothbard, *Conceived in Liberty*

Understandings of the Founding Era have been under continuous debate since the American Revolution itself. Whether one examines the Articles of Confederation or the Continental Congresses, the successes, failures, and significance of each have been argued over since the beginning. These debates are not trivial, either. By looking at American understandings of crucial ideas about government and society during the American Revolution, including the foundation of American rights, we can better come to terms with an understanding of American identity. As Gordon Wood has said, many Americans' identities are attached to their understanding of the founding era and founding generation¹—itself a rather unique phenomenon—so any study that attempts to come to grips with the American founding has the potential to alter Americans' understanding of their own identities.

This thesis will examine the evolving American understanding of government, sovereignty, and its relation to society during the American Revolution by studying the acts and debates of members of Congress—from the First Continental Congress in

¹ Gordon S. Wood, "What Made the Founders Different," Lecture, Mercer University, Macon, GA, November 17, 2011.

1774 to the adoption of the Declaration of Independence in July of 1776. The Continental Congress was Americans' first attempt at a national government and gave birth to national politics and can tell us much about how Americans understood their sovereignty. However, this period is notable because of the exigencies of the war that framed it. In short, it was not ordinary politics but extraordinary circumstances that shaped American Republican thought.

In order to accomplish this task, it is important to consider the legal and constitutional meanings of the resolutions and acts of both Congress and the states, in order to answer important questions about how Congress and its actions would be practically understood: How were the state delegates' authorizations worded; what powers did the delegates give them? How did the Congress word its acts, and what significance did this have for sovereignty; i.e., in the Continental Congress, their "acts" were resolutions, but is this law, as we think of Federal legislation today? How did members of Congress perceive Congress' powers? Was it truly a *government*? We do not consider the United Nations a government, nor even the European Union; should the American confederation in the Continental Congress be understood differently? To what extent did Congressional resolves depend on the direct action of states? How did Congress react to state non-compliance with their resolutions and requisitions? What penalty or consequence was there for states that acted contrary to Congressional resolution; i.e., were these binding, or carried the threat of force behind them—or were they more like treaties, dependent upon the will of the parties to the treaty? Questions like these are important because if we misunderstand the nature and scope of authority under the Continental Congresses, it will skew how we view their relation to the events

of the Revolution. For instance, if we (erroneously) viewed the Congress as a proto-centralized state whose acts were equivalent to law, and thus construed the scope of Congressional authority broadly, one would be tempted to read into the Congressional debates the wrong ideas and thinkers. Additionally, this would affect how one viewed the trajectory from the Continental Congresses to the Articles of Confederation, and ultimately to the Constitution.

After considering the Congressional resolutions themselves, the next important consideration is what ideas were members of Congress relying on when debating what steps to take during the immediate lead up to war and as they managed the war effort.² Secondly, how did the American understanding of these ideas change over time in relation to the war effort? Do we see more radical ideas supplanting practical concerns, or perhaps do we see the same prominent ideas on display, just with different emphases or new understandings attached? In order to do this, it requires going beneath the resolutions of the Continental Congresses and examining the debates that led to the adoption of resolutions. For source material, then, it requires using the journals of members of the Continental Congress, as well as their letters, situating the answers to these questions within the deep historiography of the American Revolution.

As much as the American Revolution has been focused on, and as much as scholars have paid attention to the workings of the Continental Congress and Confederation Congress, studies relating to the American understandings of government and society during the American Revolution have missed an important opportunity to examine in detail changing American understandings of society and government through the Continental Congress.

² And, by implication, thinkers.

The history of the American Revolution presents as dense a field of historiography as any topic in American history, save perhaps the Civil War and Abraham Lincoln. As such, wading through it is no small task, and one that can only present the briefest of overviews. For most of the older historiography, it will be loosely divided into schools of thought, as set out by Jack P. Greene.³ From there, this review will focus on the works that are most relevant to the issue at hand in greater depth.

Man desires freedom above all else, and the American Revolution was, in the main, a struggle for liberty. This was the classic view in the nineteenth century among American historians, such as George Bancroft, who wrote his *History of the United States* over a period of forty years.⁴ Throughout, he praised the advances in liberty and institutions the Revolution brought about and thought the Revolution was an exercise in patriotism. Thus, American history was whiggish and teleologically oriented toward striving for freedom and becoming independent from colonial rule.⁵ This view was shared by British historians W.E.H. Lecky and George Otto Trevelyan.

As the nineteenth century wore on, the scientific method gained ground, culminating in the call for more objective history. Herbert Levi Osgood, in an important turn-of-the-century essay on the American Revolution, asserted that the Revolution had to be understood in a British imperial context, not just a colonial context. Taking this into consideration, it was then rational for British imperial officials to change colonial policy from one of salutary neglect to a more hands on approach. George Louis Beer took this

³ Jack P. Greene, "The Reappraisal of the American Revolution in Recent Historical Literature," in *The Reinterpretation of the American Revolution*, ed. Jack P. Greene (New York; Evanston; London: Harper & Row, 1968): 2-74.

⁴ George Bancroft, *History of the United States*, 10 vols. (Boston: D. Appleton and Company, 1834-1874).

⁵ Greene, "The Reappraisal of the American Revolution," 3-4.

idea and pointed to the Seven Years war and the colonists' disloyalty and provincialism in order to understand the "tighten[ing of] imperial ties." Beer saw this as generally characteristic of colonial attitudes and their destiny for independence. Likewise, Osgood agreed with Bancroft that the colonial past explained the Revolution, focusing on the "social and political tendencies...toward independence" of the colonists, instead of the oppressive measures of the British, sharing this position with Beer.⁶

Above all else, the imperial historians put British colonial and imperial policy into a framework that emphasized its rationality, and thus undermined the tyrannical interpretation that had prevailed in America since the eighteenth century. Furthermore, they emphasized what caused American ideas to diverge from British ideas, which included the removal of the French from a position of power in North America and the conquest of Canada.⁷ The imperial context added a layer of complexity onto Revolutionary history, but the view that a rational movement by the British toward a hands-on approach meant an undermining of the tyrannical interpretation was wrong; the two were not mutually exclusive.

The Progressive conception arose around the politics of progressivism, which meant a focus on democracy, human rights and their origins, and the lower classes. What they found were divisions in American society during the Revolution that whiggish historians like Bancroft had failed to consider, namely divisions of social class. Actors in the revolution were conceptualized in terms of economic actors motivated by self-interest, not in terms of their ideas. The upper classes sought to protect conservative

⁶ Ibid. 3-10.

⁷ Ibid., 4-7; Herbert Levi Osgood, "The American Revolution," *Political Science Quarterly* 13 (March 1898): 41-59; George Louis Beer, *British Colonial Policy, 1754-1765* (New York: The Macmillan Company, 1907).

values of property rights and their class interest, while the lower classes fought for the franchise and equality. Studies in the first decade of the twentieth century by Carl L. Becker and Charles H. Lincoln reflected these themes, finding “that the Revolutionary controversy in both colonies was strongly conditioned by pre existing conflicts within them.” Arthur M. Schlesinger made similar arguments for colonial merchants, pointing out the similarity of their actions through 1776, varying their rhetoric in concert as British policy affected their economic interests. Schlesinger also argued that the Revolution was less about “abstract governmental rights” and more about their practical shifting of positions and rhetoric as it suited their interests. Charles A. Beard most famously argued this interpretation in 1913, examining the economic interests of the signatories to the Constitution and concluding the document was primarily motivated to protect their class interests. Even more, the Constitution was thus a repudiation of the Revolutionary ideals, since it represented conservative values designed to prevent the excesses of democracy.⁸ This more practical, self-interested view of the Revolutionaries coincided with the writings of Randolph G. Adams and Becker, who each found that “step by step, from 1764 to 1776...[the colonists] modified their theory to suit their needs,” varying

⁸ Greene, “The Reappraisal of the American Revolution,” 9-12; Carl L. Becker, *History of Political Parties in the Province of New York, 1760-1776* (Madison, Wis.: University of Wisconsin Press, 1909); Charles H. Lincoln, *The Revolutionary Movement in Pennsylvania, 1760-1776* (Philadelphia: University of Pennsylvania Press, 1901); Arthur Meier Schlesinger, *The Colonial Merchants and the American Revolution* (PhD diss., Columbia University, 1917); Arthur M. Schlesinger, “The American Revolution Reconsidered,” *Political Science Quarterly* 34 (March 1919): 61-78; Charles A. Beard, *An Economic Interpretation of the Constitution* (New York: Macmillan, 1913); Murray N. Rothbard, “Modern Historians Confront the American Revolution,” *Literature of Liberty* 1, no. 1 (January/March 1978): 17.

between lofting abstract natural rights rhetoric and economic arguments as it fit their current affairs.⁹

In this sense, since they believed it was the merchant class and their interests driving revolution, it was not a revolution seeking to overturn all societal norms, but to overturn British imperial policy which had recently put their economic interests on unsure footing. They disagreed with the historians who focused on the role of ideas in bringing about the Revolution, whether it was ideas of British Constitutionalism or Lockean Liberalism. Progressives had to explain why so many Revolutionary writers wrote sincerely about these ideas, which they did by labelling it “propaganda.” In this respect, they came to agree with the Imperial school historians who thought it was American propaganda that pushed otherwise reticent colonies towards revolution. Insofar as the Progressives overlooked that Lockean liberal ideology included within it an understanding of economic liberty, Progressives missed the importance of ideas and liberalism to their drive for revolution; and, indeed, the importance of republican ideas.¹⁰

Merrill Jensen extended the progressive interpretation to the Confederation period with *The Articles of Confederation*, arguing against the whiggish interpretation that saw the Confederation period as one bungle after another, instead noticing “significant accomplishment in the disposition of western lands,” a Depression that was not as bad as it seemed, and political advances toward eliminating the trade barriers and debt burdens that had accumulated during the Revolution and the Confederation

⁹ Greene, “The Reappraisal of the American Revolution,” 13; Randolph G. Adams, *The Political Ideas of the American Revolution* (Durham, N.C.: Trinity College Press, 1922); Carl L. Becker, *The Declaration of Independence: A Study on the History of ... Study on the History of Political Ideas* (New York: Harcourt, Brace and Co., 1922).

¹⁰ Rothbard, “Modern Historians,” 16-18.

period.¹¹ It was uncritical acceptance of the Federalist arguments for the Constitution that had permitted the creation and survival of the overwhelmingly negative view of the Articles of Confederation, according to Jensen.

In Jensen's view, the focal points of the movement toward Revolution in the colonies were British policy, internal social upheaval, and control of the Continental Congresses. Jensen argued that historians who denied the reality of political parties in the Congresses were wrong. Membership in any given faction was fluid, Jensen acknowledged, and people changed sides—even frequently.¹² However, Jensen stretched the definition of a party, since a party without any continuity among its membership isn't much of a party at all, but a shell. Eliminating the overarching source of authority over the colonies (Britain) made it a simpler situation for the colonists to decide how to divide powers and locate sovereignty, said Jensen, yet the proper location of sovereignty was still an open question during this period.¹³ One of the major changes taking place during the Revolution was the democratizing of politics, especially the essential eradication of colonial governor appointments from Britain in favor of officials responsive to voters.¹⁴

Since Merrill Jensen first pointed it out, many historians have recognized that taking *The Federalist's* arguments at face value was bound to lead to a biased understanding of the Articles of Confederation because of *The Federalist's* propagandistic nature. Prior to *The Articles of Confederation*, works like *A Constitutional*

¹¹ Greene, "The Reappraisal of the American Revolution," 15; Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781* (Madison: University of Wisconsin Press, 1940).

¹² Jensen, *The Articles of Confederation*, vii, xii.

¹³ *Ibid.*, xiii.

¹⁴ *Ibid.*, xviii.

History of the United States, by Andrew McLaughlin, took an uncritical view of *The Federalist*, finding that “Almost everything points only in one direction—toward the need of a competent central government and the necessity of finding a system of union which could maintain itself.”¹⁵

In the Post-World War II era, historians began challenging the core of the Progressive interpretations, and historical interpretations of the Revolution generally. Oliver M. Dickerson, for instance, saw the navigation acts as the “cement of empire” that tied the colonies to Britain, and against which the colonists had little antagonism before 1764. It was with the substitution of “a policy of trade taxation for the older system of trade protection and encouragement” that the colonists—especially those in the merchant cities—began voicing their hardships grievously.¹⁶ Britain responded with even stricter controls and heavier burdens; the colonists responded with greater evasion, harsher denunciations, and increasing rebellion. This continued until a breaking point was reached, and conflict broke out. Other historians disagreed, including Thomas C. Barrow, Curtis P. Nattels, and Lawrence A. Harper. Barrow argued that it was the salutary neglect that the colonists favored, not the navigation acts themselves, while Nattels and Harper conducted essentially cost-benefit analyses to conclude the acts had costs that outweighed the benefits to the colonists.¹⁷

¹⁵ Ibid., 5; Andrew C. McLaughlin, *A Constitutional History of the United States* (New York: 1937), 137.

¹⁶ Greene, “The Reappraisal of the American Revolution,” 19-20; Oliver M. Dickerson, *The Navigation Acts and the American Revolution* (Philadelphia: University of Pennsylvania Press, 1951).

¹⁷ Greene, “The Reappraisal of the American Revolution,” 20-21; Thomas C. Barrow, *Trade & Empire: The British Customs Service in Colonial America, 1600-1775* (Cambridge, Mass.: Harvard University Press, 1967); Curtis P. Nattels, “British Mercantilism and the Economic Development of the Thirteen Colonies,” *Journal of Economic History* 12 (Spring 1952): 105-114; Lawrence A. Harper, “The Effects of the Navigation Acts on the Thirteen

Other arguments concerned the relationship of the colonies to Britain, the laxity of which Jack Greene argued was amiable to the colonists. Greene also found that the political culture in the colonies before 1763 was elitist, with rival factions of elites who vied for control of political office and change within the leadership of the class, rather than conflict between the upper and lower classes for control of positions of power. At best, he said, social structure may have “aggravated” or intensified opposition to Britain, rather than “to have created the movement or to have been necessary for it to occur”:

Everywhere relations with Britain were relatively harmonious prior to 1763 and politics within the colonies were primarily elitist in nature. Public office....and political leadership were securely in the hands of upper-class groups, and, although there were occasional manifestations of social and economic discontent among the lower classes, that discontent never resulted in widespread demands for basic changes in the customary patterns of upper—class leadership. Political divisions, despite the earlier contentions of Lincoln and Becker, were not along class lines and not between rival ideological groups of radicals and conservatives. Rather, they revolved around the ambitions of rival factions among the elite.¹⁸

Robert E. and B. Katherine Brown confirmed this with their studies *Middle-Class Democracy and the Revolution in Massachusetts, 1691-1780* and *Virginia, 1705-1786: Democracy or Aristocracy?*, where they concluded that the social structure in these colonies was relatively flat and devoid of the extremes of inequality that cause class

Colonies,” in *The Era of the American Revolution: Studies Inscribed to Evarts Boutell Greene*, ed. Richard B. Morris (New York: Columbia University Press, 1939), 1-39.

¹⁸ Greene, “The Reappraisal of the American Revolution,” 28; Jack P. Greene, “The Social Origins of the American Revolution: An Evaluation and Interpretation,” *Political Science Quarterly* 88, no. 1 (March 1973): 3-4, 18.

conflict. Jackson Turner Main, similarly, argued that whatever inequalities there were, the extremes of poverty were not prevalent.¹⁹

For Daniel J. Boorstin, writing in *The Genius of American Politics*, the Revolution was profoundly conservative. It was fought over “the true constitution of the British empire” and entailed virtually no change in the views and leadership of the community to implement the system forged in the Revolution.²⁰ Bernard Bailyn complemented this view by explaining how, then, the American Revolution *was* revolutionary; it was conservative in the respect that the colonists didn’t seek the radical overthrow of the British government or of society generally, but pursued a “radical idealization and rationalization of the previous century and a half of American experience,” which would harmonize the colonial experience with the Enlightenment ideals.²¹

Critiques of Charles Beard and his economic interpretation of the Constitution spread like wildfire in the 1950s, with critiques by Richard Hofstadter, Douglass Adair, Edmund S. Morgan, and Forrest McDonald. Morgan and others rightly charged Beard with distorting the historical evidence and reading his progressive politics into the historical record, severing the ties between liberty and property that permeated American revolutionary-era political thought. Beard tried to draw a twentieth-century distinction between human rights and property rights and then fit the evidence into this

¹⁹ Greene, “The Reappraisal of the American Revolution,” 29; Robert E. Brown and B. Katherine Brown, *Middle-Class Democracy and the Revolution in Massachusetts, 1691-1780* (Ithaca, N.Y.: Cornell University Press, 1955); Robert E. Brown and B. Katherine Brown, *Virginia, 1705-1786: Democracy or Aristocracy?* (East Lansing, Mich.: Michigan State University Press, 1964); Jackson Turner Main, *The Social Structure of Revolutionary America* (Princeton: Princeton University Press, 1965).

²⁰ Greene, “The Reappraisal of the American Revolution,” 50; Daniel J. Boorstin, *The Genius of American Politics* (Chicago: University of Chicago Press, 1953).

²¹ Greene, “The Reappraisal of the American Revolution,” 55-56; Bernard Bailyn, “Political Experience and Enlightenment Ideas in Eighteenth-Century America,” *American Historical Review* 67 (January 1962): 339-351; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge Mass.: Belknap Press of Harvard University. Press, 1967).

framework of economic conflict, which was an anachronistic failure. McDonald built on this by carrying out the Beardian research agenda, finding no “consolidated economic group” at the Philadelphia convention, nor a consolidated geographic interest: the convention was one of pluralistic interests that defied a simple categorization by economic self-interest that Beard had proposed. For McDonald, then, any economic interpretation of the Constitution had to be situated in a framework of overlapping “state, sectional, group, and individual interests” that competed over the provisions of the Constitution, with divisions among the states constituting the basic units of analysis.²²

A number of other works in the coming decades focused on the politics of the Congresses as well. In *Sectionalism in American Politics, 1774-1787*, Joseph L. Davis argued that the distinguishing feature of the politics of the Congresses was its division into sectional factions. Contrarily, in *Party Politics in the Continental Congresses*, H. James Henderson argued that the Congress was divided into primitive parties and tended to vote according to these factional interests. Jack Rakove disagreed with both, arguing that Congress was not divided into sectional or party factions, but was rather reactionary, or acting according to the changing context. Similarly, Merrill Jensen argued that on each specific issue there were opposing sectional interests with grouping that were so inconsistent—small states vs. large states, extensive slavery vs. minor slavery, trading vs. agrarian. etc.—that “sectional lines were so broken as to become

²² Greene, “The Reappraisal of the American Revolution,” 59; Richard Hofstadter, “Beard and the Constitution: the History of an Idea,” *American Quarterly* 2 (Fall 1950): 195-212; Douglas Adair, “The Tenth Federalist Revisited” *William and Mary Quarterly*, 3rd. ser., 8 (January 1951): 48-67; Edmund S. Morgan, “American Revolution: Revisions in Need of Revising,” *William and Mary Quarterly*, 14 (Jan. 1957): 3-15; Edmund S. Morgan, *The Birth of the Republic: 1763-89* (Chicago: University of Chicago Press, 1956); Forrest McDonald, *We The People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, 1958).

meaningless.” Earlier, Edmund Burnett’s *The Continental Congress* presented the first systematic reconstruction of the debates and proceedings of the Continental Congresses that was based on his extensive collection of letters from members of the Congress that he published into eight volumes called *Letters from Members of the Continental Congress*. It was significant because of the primacy of its reconstructive, rather than interpretive, element.²³

Early Years of the Republic, by Herbert Aptheker, a Marxist historian, took a look at the American Republic in the years from the Articles of Confederation to the first administration of Washington in order to examine the character of the social and political changes during the period, with a special regard to the confederation itself. His thesis was that the Articles of Confederation was the first attempt, or first step, to centralizing politics in the states, with the Constitution in 1787 representing the culmination of the American nationalist impulse, not a conservative counterrevolution against the radical tendencies of the American revolutionaries. As he said it, “The Constitution of the United States, as originally drafted, was a bourgeois-democratic document for the governing of a slaveholder-capitalist republic.”²⁴ Hence, he didn’t view the earlier Continental Congresses as instances of the consolidation of power, but they fit within the overall trend, since there had been no deliberative body common to all the colonies except for Britain.

²³ Joseph L. Davis, *Sectionalism in American Politics, 1774-1787* (Madison: The University of Wisconsin Press, 1977); H. James Henderson, *Party Politics in the Continental Congress* (New York: McGraw-Hill Book Company, 1974); Jack Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Alfred A. Knopf, 1979); Jensen, *Articles*, 56; Edmund Cody Burnett, *The Continental Congress* (New York: The Macmillan Company, 1941).

²⁴ Herbert Aptheker, *Early Years of the Republic: From the End of the Revolution to the First Administration of Washington (1783-1793)* (New York: International Publishers, 1976), 55.

Aptheker tracked the political changes leading to the adoption of the Articles of Confederation in 1781, finding that among the bourgeoisie, the propensity to expand trade and commerce to national levels corresponded with a desire to expand government to national levels. He said that the Articles of Confederation gathered support during the war due to the exigencies of war, growing inflation, and “the needs of diplomacy and commerce.”²⁵ Other changes included removing full authority from Congress to managing Indian affairs, removing authority over the Western territories, and adding into the supermajority provision the choice of commander-in-chief and the apportionment of tax revenue among the states. Its most notable feature, however, was still its expansion of centralized power in a confederate government. One of the significant aspects of this study is it suggests that the American political order has had a rich and varied tradition, and particularly that something of value can be gained by the contemporary political observer looking at the Continental Congresses and the Articles of Confederation—it is not simply a “failed experiment” that invariably led to the Federalist triumph in 1787 and 1789.

One of the most influential books on the Founding period was Jack Rakove’s *The Beginnings of National Politics*. In it, he argued that the Continental Congress was primarily driven by the practical exigencies of, at first, looming war, and then managing the war effort and maintaining unity among the colonies. As he stated, his study “emphasizes the extent to which the halting and at times haphazard progress of

²⁵ Interestingly, Aptheker notes that the first draft of the Articles came to be gradually reduced in the scope of national authority. One notable example is that the first draft written by John Dickinson originally reserved to each state “as much of its present Laws, Rights, and Customs as it may think fit, and...the sole and exclusive Regulation and Government of its internal police”, which was changed to the flat retention by each state of “its sovereignty, freedom, and independence”; *Ibid.*, 7-8.

confederation allowed new problems to be raised, old ones once thought solved to be reopened, and others to go unexplored.”²⁶ While the Congress was, in its principles, of the Revolution, the actions of the Congress were not ideologically driven;²⁷ nor can we look to economic interests, regional politics (Joseph Davis), or partisan struggles (Merrill Jensen) for our understanding of the actions of the Congresses. The Revolution thrust a succession of challenges onto the colonies and the Congresses that dictated what was necessary for Congress to do.²⁸

Rakove pointed out that the authority of Congress derived from the colonies’ committees of correspondence, quasi-governmental bodies that were organized by Revolutionaries for the purpose of coordinating opposition to Britain. The Congress was a deliberative body—meaning no group or colony dominated policy-making—charged with administering the common affairs of the colonies and promoting unity. It was not nearly as factional as other scholars have argued. Rakove disagreed with Merrill Jensen who believed that the Articles of Confederation was the result of an identifiable body of sentiments; instead, the Articles were created in a process that was not dominated by factional interests pursuing their particular ends, but by men who understood the needs of the colonies and melded Congress to fit that role. It follows a “nationalist” interpretation of the Articles of Confederation in that the Articles, he maintained, were

²⁶ Rakove, *The Beginnings of National Politics*, 136.

²⁷ By this, I just mean that it was not dogmatic and if one compares the resolutions agreed to in Congress to some articulable set of principles of the Revolution, it would not stray from these principles. Indeed, we should not expect it to be any other way because of the role publicly available declarations like the Declaration of Rights and Grievances played in influencing public sentiment. Rakove notes that “union,” at this time, only meant unified sentiments, not new political institutions; it was “a problem of politics, not of government,” for the concern was not administration of the colonies, but effectively mobilizing opposition; *Ibid.*, 13-14, 16.

²⁸ *Ibid.*, xiv-xvi.

intended to subordinate the states to the federal Congress.²⁹ The argument of scholars like Merrill Jensen and H. James Henderson held that the Lees of Virginia and the Adamses of Massachusetts were a cohesive radical faction that pushed the country toward war, while Rakove saw a notable lack of factions (there were only loose affiliations) and a very reactionary Congress. Therefore, his study was primarily a study in the politics of the Congresses, rather than their ideas. This practical political aspect of the Continental Congresses appears right, but Rakove seemed to downplay the way in which ideology and history shaped the terms of the debate that did happen, even though he was scrupulous in reconstructing the context and circumstances in which the Congresses acted. While it is important to recognize the significance that the Continental Congresses were temporary bodies that were limited by the goals of unity and managing the war, the structure and scope of the Congress was strictly limited on paper to fit within the confines of Revolutionary ideology. For the First Continental Congress specifically, it bore no resemblance to a government.³⁰

In Jerrilyn Marston's book, *King and Congress*, Marston argued that the Continental Congress was most efficient acting in its executive capacity, and that the authority of King George of Britain was effectively transferred to the Congress by 1776. Its apparent success in this role was not primarily a feature of its design—though Congress was designated executive functions—but a result of its usurpation of executive authority amid popular support to do so. *King and Congress* is very amenable to the interpretation offered by Rakove in that they both rejected a radical Congress and stressed its deliberative nature leading to deliberate, incremental steps. However,

²⁹ *Ibid.*, xvi.

³⁰ This belies any attempt to point to them as analogous forerunners to the federal government under the Constitution.

Marston submitted that the replication of the crown was both the source of its partial success *and* the source of its authority, which need not have been true—and probably was not. Rakove pointed to counterexamples that showed there were issues under debate at the time about the proper scope of executive power in Congress that bear on the issue of Crown replication, e.g. Indian relations, and other areas in which the Congress differed in executive authority from the Crown.³¹

More recently, *Collective Action Under the Articles of Confederation*, by Keith L. Dougherty, focused on the troop and money-raising ability of Congress, arguing that while public goods theory suggests that the states would rarely (if ever) pay their requisitions, the states in fact contributed a remarkable amount of men and resources to the war effort and during the subsequent peace. This happened not because of civic virtue, but because of self-interest—whenever the state stood to gain locally, it could be expected to pay its requisitions.³² Dougherty claimed that from the beginning, the Congress was “an administrative body at the center of a state alliance rather than a national government managing national affairs.” He considered the two goals of the Confederation to be preserving state sovereignty and furthering common state interests, evident in the self-interested actions taken by the states.³³

Revolutionary America 1763-1815, by Francis D. Cogliano, is a political history of the American Revolution broadly conceived, beginning with the end of salutary neglect in 1763 and ending with the close of the War of 1812 with Britain. Cogliano framed his

³¹ Jack Rakove, Review of *King and Congress: The Transfer of Political Legitimacy, 1774-1776* by Jerrilyn Greene Marston, and *Inventing the People: The Rise of Popular Sovereignty in England and America* by Edmund S. Morgan, *Law and History Review* 9, no. 1 (Spring 1991): 188.

³² Dougherty, *Collective Action*, 13-14.

³³ *Ibid.*, 18.

understanding of the period differently than many of the other scholars, arguing “that the fundamental question between 1763 and 1815 in the American colonies....concerned relations with Europe.” While this proposition was clearly true, this re-focus on British relations gave a greater importance to trans-Atlantic relations than circumstances contained within America or Britain. Coinciding with Jack Rakove’s reactionary view of Congress, Cogliano maintained that the colonies as a whole were reactionary in respect to trans-Atlantic changes.³⁴

In *Peace Pact: The Lost World of the American Founding*, by David C.

Hendrickson, Hendrickson stressed that the unity of the colonies was not such that they were a single nation or a single people:

the sense of common nationality was more a consequence of mutual entanglement and exiguous necessity than of a sense of common peoplehood. At the beginning, in 1776, Americans constituted not a body politic but an association of bodies politic, readily recognizable to eighteenth-century taxonomists of political forms as a “league of firm friendship,” a “*république fédérative*,” or a “system of states.”³⁵

This question of whether the American colonies had coalesced into one people, one ideology, or one political mind was prevalent throughout the work of many twentieth century historians of the American Revolution, not to mention Supreme Court Justices such as Justice Joseph Story. In *Seedtime of the Republic*, for instance, Clinton Rossiter argued that the colonies had merged into a single political tradition that valued

³⁴ Francis D. Cogliano, *Revolutionary America 1763-1815: A Political History* (London; New York: Routledge, 2000), 2-3.

³⁵ David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, Kansas: University Press of Kansas, 2003), ix.

“ethical, ordered liberty” as a result of the colonial experience. Similarly, in *Seeds of Liberty: The Genesis of the American Mind*, Max Savelle argued that the colonists had merged into a single, distinct, identifiable American culture, with loyalty and patriotism for America itself, even if during the Seven Years War “this American loyalty was submerged under an orgy of British patriotic sentiment.” Merrill Jensen disagreed, finding that the sentiments of John Adams toward Massachusetts echoed the sentiments of most Americans toward their colonies: to each colonist, his “country” was his colony, and their nationalist sentiment was bound up in this, rather than any bond between the colonies.³⁶ However, as the evidence will show, the American colonies were clearly not one people legally, and in fact the First Congress continually listed each of the states individually in their resolutions—they did not pretend to be direct representatives of the American people in the aggregate.

One of the most drawn out debates about the American Revolution concerned what ideas and thinkers influenced the colonists during the American Revolution. Scholars argued over the influence of ideology on the American colonists; some argued Liberal ideas were most prevalent, others said Republican ideas were dominant, while a third group argued against ideological motivation, instead pointing to class interests as the motivating factor.

Progressive historians, beginning with Charles A. Beard, saw American leaders trying to protect their class interests, as well as economically motivated to struggle against British trade restrictions and taxes. In this sense, since they believed it was the

³⁶ Greene, “The Reappraisal of the American Revolution,” 24; Clinton Rossiter, *Seedtime of the Republic: The Origin of the American Tradition of Political Liberty* (New York: Harcourt, Brace and Company, 1953); Max Savelle, *Seeds of Liberty: The Genesis of the American Mind* (New York: Alfred A. Knopf, 1948); Jensen, *Articles*, 56.

merchant class and their interests driving revolution, it was not a revolution seeking to overturn all societal norms, but to overturn British imperial policy which had recently put their economic interests on unsure footing. They disagreed with the historians who focused on the role of ideas in bringing about the Revolution, whether it was ideas of British Constitutionalism or Lockean Liberalism. The only role for ideas, in this interpretation, was “propaganda.”³⁷ In this respect, they came to agree with the Imperial school historians who thought it was American propaganda that pushed otherwise reticent colonies towards revolution. Insofar as the Progressives overlooked that Lockean liberal ideology included within it an understanding of economic liberty, Progressives missed the importance of ideas and liberalism to their drive for revolution; and, indeed, the importance of republican ideas.

Following World War II, many historians wanted to distinguish the American from the French Revolution, as well as the ideological or economic doctrines and interests that were represented in the latter. As such, writers like Daniel Boorstin and Clinton Rossiter saw the Revolution as a more practical and conservative attempt to solve the problems created by British colonial policy. They saw a series of deliberate steps by colonists to respond to the escalations of the British that were generally supported by the broader American public. Many of these same writers also fell into Louis Hartz’s liberal historiographic tradition, focusing on how eighteenth century American writers brought Locke’s liberal political philosophy down to earth in a way that was relevant and readable to eighteenth century Americans.³⁸ This paradigm stressed an emerging liberal consensus in colonial America that was not amenable to British restrictions that

³⁷ Rothbard, “Modern Historians,” 16-17.

³⁸ *Ibid.*, 18-20.

encroached on the natural rights of Americans. Locke's views, whether filtered through other thinkers or not, Louis Hartz said, were so powerful to American colonists because their society mirrored a Lockean society: "individualistic, ambitious, protocapitalist."³⁹ This tradition also stressed the moderation and reasonableness of the American revolution, usually the result of the Lockean structure of society or their resonance with his principles, as compared with the French Revolution with terroristic excesses. Unfortunately, it minimized the seething social conflicts established by the Beardians by considering "every conceivable demonstration of conflict short of Jacobin or Bolshevik revolution" as not "meaningful."⁴⁰

Bernard Bailyn achieved a breakthrough from the Hartzian scholarship, although he explicitly recognized Locke's influence on the colonists. Bailyn found that the colonists were influenced by writings and pamphlets written by republicans from the early eighteenth century through to the Revolution, particularly *Cato's Letters*, written by John Trenchard and Thomas Gordon, finding Locke's influence to be one among many for eighteenth century pamphleteers. He also pointed out that the colonists' grand rhetoric was meant not merely to propagandize. It was a meaningful expression of the colonists' understanding of the situation, contrary to Beard who claimed their rhetoric was all smoke and mirrors since what drove the colonists were class interests. Bailyn argued that it was "an ideological, constitutional, political struggle," not a social struggle;

³⁹ Daniel T. Rodgers, "Republicanism: the Career of a Concept," *The Journal of American History* 79, no. 1 (June 1992): 13.

⁴⁰ Rodgers, "Republicanism," 13-14.

it was one connected to intellectual development that permitted Americans to look at their recent experience through a radical lens.⁴¹

The republican paradigm, pioneered by Gordon Wood, Bernard Bailyn, and JGA Pocock, represented a more pluralistic account of the intellectual history of the American Revolution that stressed a competing republican ideology that held sway among American colonists at the same time that many were influenced by liberal views.⁴² Some, such as Robert Kelley, would even argue “that republicanism was the distinctive political consciousness of the entire Revolutionary generation.”⁴³ Edmund S. Morgan and Gordon Wood wrote about the revolutionary anxieties many Americans faced because of their view of the cyclical, rather than progressive, sense of history. There was an anxiety because of how easily they thought republics could be corrupted and how shortly they lasted.⁴⁴ Republicanism, particularly to Wood, represented a bridge between traditional and modern society. One of its central tenets, a concern for the public good, was traditional, while at the same time it provided an impetus for the revolutionary ideology by encompassing democratic impulses. American society profoundly changed from a monarchical, hierarchical civilization of subjects to a liberal, democratic, commercial society of citizens. The Revolution “made the interests and

⁴¹ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1967), vi.

⁴² Rodgers, “Republicanism,” 12.

⁴³ Robert Kelley, “Ideology and Political Culture from Jefferson to Nixon,” *American Historical Review* 82 (June 1977): 536; Rodgers, 15.

⁴⁴ Robert E. Shalhope, “Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography,” *The William and Mary Quarterly* 29, no. 1 (January 1972): 72.

prosperity of ordinary people—their pursuits of happiness—the goal of society and government.”⁴⁵

Republicans also held that virtue meant disinterestedness and public-spiritedness, coalescing around an understanding of civic virtue as concern for the public good. In turn, this meant anxiety for public figures like George Washington who were obsessed with the appearance of disinterestedness. Pocock would challenge the idea that Trenchard and Gordon were Lockean writers, instead locating them in the English country tradition, behind which James Harrington could be found and, before him, Niccolo Machiavelli.⁴⁶ English country literature provided the colonists a critique of power and model of republicanism.⁴⁷ The influence of Algernon Sidney’s *Discourses Concerning Government*, for instance, grew as Americans became discontented with Britain. Sidney, along with other republican writers like Frances Hutcheson, thought the people were sovereign and thus State sovereignty must be restricted so as to guard the liberties of the people. Americans came to recognize, then, that Britain’s demands on the colonies seemed to fly in the face of a limited sovereignty.⁴⁸ Many Republicans looked to the ancient republics as a model of what to emulate and what to avoid: they should foster public virtue and private thrift while avoiding lapsing into the excesses of luxury.⁴⁹

This Republican ideology, and its failure to predict the impossibility of adhering to the public good “amidst a clamor of partial interests” facilitated the adoption of a

⁴⁵ Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992), 8-9.

⁴⁶ Rodgers, “Republicanism,” 17.

⁴⁷ Joyce Appleby, “Liberalism and the American Revolution,” *The New England Quarterly* 49, no. 1 (March 1976), 4.

⁴⁸ Robert E. Shalhope, “Toward a Republican Synthesis,” 51-54.

⁴⁹ Shalhope, “Toward a Republican Synthesis,” 52.

Constitution that, instead of “obviating conflict,” was designed with “the hope of managing and containing it.”⁵⁰ It was out of the Constitution, then, that liberalism came to dominate the landscape of American ideology, with its focus on restraining governmental power and pitting partial interests against one another such that (one hoped) no one interest could come to dominate the others. The essence of the difference between the liberal and republican traditions was that the liberal tradition focused on “the state of nature, doctrine of consent, and [the] theory of natural rights,” while the republican tradition instead focused on “the ideas of mixed government, separation of powers, and a balanced constitution.”⁵¹ This contrast is difficult for many to parse today, especially since contemporary writers consider republicanism and liberalism, in the form described above, as part of the same tradition. Where the separation of the two traditions occurs most obviously is in the focus on character and public virtue in republicanism, which is relatively absent in liberalism.

Joyce Appleby was a vocal critic of these republican historians who focused on the clashing ideologies erupting during the Revolution to the diminishment of the burgeoning market economy and the changing structure of society into a commercial one. It was these factors, according to Appleby, that made colonists predisposed to vigorously defending their freedoms against perceived threats of tyranny. America was becoming a very independent society around the middle of the century and to be dependent or unfree in such a situation was jarring compared to dependence or unfreedom in an interdependent society. This, to Appleby, provided more satisfying answers to why colonists reacted so strongly to tightening imperial restrictions and why

⁵⁰ Rodgers, “Republicanism,” 19.

⁵¹ Shalhope, “Toward a Republican Synthesis,” 59; quoting Stanley N. Katz, “Origins of Constitutional Thought,” *Perspectives in American History* 3 (1969): 474.

liberalism rose to prominence in the American mind.⁵² What distinguished liberalism and made liberalism, rather than republicanism, central to the Revolution were these ideas about commerce and economic liberty for which the republican tradition cannot account—productivity, spontaneous order, private self-interest leading to public benefit, and so forth.

Appleby is on the right track when she argues that ideology is not enough to explain the American Revolution; what needs to be explained are why people came to their beliefs: “what compelled belief, what triggered reactions, what stirred passions, and what persuaded the colonists of the truth of their interpretation of events.”⁵³ While it is undoubtedly true that Revolutionary ideology is crucial to understanding the origins of the American Revolution and the thought of the Revolutionaries, the effect of events on individuals that influences them toward a particular ideology is just as significant; indeed, events may also cause the ideas themselves to evolve or make way for new ideas to gain prominence. While Bailyn and others have done much work to explain what events leading up to the American Revolution influenced Americans to adopt their unique ideas and evolve the ideological landscape, less has been done on the alterations occurring during the American Revolution due to the events of the war. Members of Congress were on the front lines of debate and had substantial influence in this quasi-national role; hence, a study of members of Congress during the early years of the Continental Congress presents a logical entry point into the practical influence of ideology and its change over time.

⁵² Appleby, “Liberalism,” 7.

⁵³ Appleby, “Liberalism,” 5.

The first question of the thesis is this: Can we actually track the changes in the dominant American ideology through an examination of the journals and debates of the Continental Congress through the Articles of Confederation? If so, then what changes in ideology can we examine directly or infer from these sources? Thirdly, how does the Revolutionary context shape these changing understandings about government and governance?

In answer to the first question, yes, one can roughly track these changes in ideology, and the concern in this paper is to do so by parsing through the debates occurring during sessions of Congress that led to the adoption of specific resolutions. Secondly, although these changes can be tracked, to speak of a dominant ideology or American consensus would not do justice to the pluralistic ideological landscape of late eighteenth century American ideology. The period from 1774 to 1783 is best understood as a series of ideological peaks and troughs for both American liberalism and republicanism, fluctuating over time. This is because while we can point to the era of the Continental Congresses as one in which Revolutionaries were intent on the more utopian goals of obviating conflict altogether and choosing disinterested politicians whose chief concern was promoting the public good (republican), we can just as well point out that the period was one in which government was relatively small, unobtrusive, and decentralized in a more or less laissez-faire liberal fashion. It is also difficult to imagine much of the lofty, and more influential, revolutionary rhetoric of liberty and tyranny as reflecting something other than a liberal understanding; it was not that King George was tyrannical because he wasn't disinterested enough to submerge his self-interest and promote the public good, it was that the King was infringing on specific

economic liberties that were directly antithetical to liberal ideology. As such, we can definitively point to strong liberal concerns during the lead up to Revolution, as well as in the Declaration of Independence (among other times).

Undoubtedly, one can also find concerns that would appeal to Republican sentiments as well during the lead up to Revolution: concerns about corruption, understandings of the role of history and the British constitution, the balance and checking of the various interests or estates, etc. Furthermore, it is important to understand that for many Revolutionaries, these stances were *complementary*; while they did, or would have, retreated into one domain or the other if push came to shove, any understanding of liberalism and classical republicanism that denies this complementarity for eighteenth century Americans is anachronistic.

It was a confluence of events, more than any single event, that influenced evolving American thought; as Thomas Jefferson wrote, it was “a long train of abuses” that impelled Congress to declare independence, and he was right. That said, it was the beginning of hostilities at Lexington and Concord that caused a seismic shift in Congress’ hopes and beliefs on reconciliation. Prior to the sitting of the First Congress, what the colonies called the “Intolerable Acts,” especially those that closed the port of Boston and reorganized the Massachusetts government, were the main cause for calling a Congress in the first place, and what Congress was dead-set on having repealed.

Next, it was the false reports of bloodshed, the Powder Alarm, at the beginning of the First Congress, followed closely thereafter by the Suffolk Resolves, that shaped the direction of the First Congress, making sure their opposition would be staunch enough

not to concede to Britain. Once Congress had approved the Suffolk Resolves, it essentially committed itself to radical, rather than purely conciliatory, measures.

Congress' desire to, above all, stay unified meant an internal struggle to appeal to both the radical and conciliatory factions in Congress without acting too severely in either direction. This meant that when it came time for Congress to write a Declaration of Rights and Grievances, they included both natural law and the British constitution as their sources for their rights. It was also necessary from a reconciliatory standpoint because if they only argued for their rights on a foundation of natural law, it would have hurt their cause by being too radical and too far outside the British constitutional paradigm to be palatable to Britain. It was absolutely necessary to include British constitutionalism or risk total dismissal of their declarations and petitions.

As the Second Congress rolled around, theory gave way to practical concerns for members of Congress on a day-to-day basis. Repeated failures of their first and second Petitions to the King made reconciliation appear hopeless, and independence the only viable option that could protect American rights. Repeated under-handed or cruel measures by Britain and their army made Congress see their relationship with Britain less as fraternal, a relationship worth saving, and instead saw Britain trying to be their master, using force and deceit to suppress the colonies, a relationship worth scrapping. Additionally, continued struggles by Congress to supply its army and militias with the necessary goods, because of shortages in supply they attributed to insufficient commitment to a wartime economy, meant Congress thought independence would obviate these issues.

All this led to May 1776, where Congress resolved that the states should set up their own independent governments. In doing this, Congress cemented the move toward independence, though this was only after all hopes had been dashed, war had been carried on for two year, and public opinion was as in favor of independence as they could ever expect. In this context came the Declaration of Independence, where members of Congress were only willing to oppose independence on grounds of prudence rather than principle; and in the Declaration was a synthesis of the thought of natural law and British constitutionalism that had evolved out of this necessity to compromise.

2 THE FIRST CONTINENTAL CONGRESS, 1774

With France thoroughly defeated at the close of the Seven Years' War, Britain began taxing the colonists to pay for a war that was fought primarily to defend North America from the French. More importantly than the new taxes, however, was that British minister George Grenville planned to enforce the tax collection strictly. The navigation acts had been on the books for a number of years, but with the new Sugar Act of 1764, enforcement of the tax began agitating colonial merchants, who were accustomed to the British policy of salutary neglect. They voiced a number of reasons for their protest, including an argument against taxation without representation, but ultimately they opposed the strict collection of any tax, and preferred to be *asked* to pay their share of the governmental burden, not have it *demande*d of them or taken by force.

A Stamp Tax was subsequently passed by Parliament in March of 1765 that required the affixing of official stamps to nearly anything made out of paper, along with

other items, such as dice, which they had to purchase from colonial officials who would relay the money back to Britain. This provoked the loudest protest among the colonists, along with correspondingly increased complaints that this tax was in violation of the time-honored principles of English liberty, derived from the English Constitution, that prohibited the taxation of Englishmen without representation.⁵⁴ The British rejected this due to their view that America had virtual representation in Parliament, since members of Parliament were said to represent every corner of Britain and its colonies, not the location from which they were elected.

Patrick Henry and others urged resistance to the Stamp Act in the Virginia House of Burgesses, and soon a Stamp Act Congress met in New York on October 7, 1765, with representatives from nine of the thirteen colonies. They drew up a Declaration of Rights and Grievances to be presented to the King and Parliament in protest, reasserting the principle of no taxation without representation. The Declaration rejected virtual representation because of the remoteness of the colonies from the seat of power, and also rejected the admiralty court trials that had been called for under the Stamp Act in favor of the trial by jury.⁵⁵

The writs of assistance, another purported transgression by Great Britain, originated in the early 1760s. These were general warrants that permitted British officials to search the homes of colonists without a specific warrant, in order to find smuggled goods. This was a profound transgression on the rights of Englishmen, which asserted maintained the sanctity of a man's home against government officials and all other unwanted trespassers unless there was individualized suspicion that was used to

⁵⁴ Burnett, *Continental Congress*, 7-8; Dougherty, *Collective Action*, 21-22.

⁵⁵ Burnett, *Continental Congress*, 10; Dougherty, *Collective Action*, 21-22.

obtain a warrant that would permit officials to search for evidence of a crime. While this affair had only a short duration, it signified the harbinger of deteriorating relations between Britain and the colonies to those looking back on the era,⁵⁶ and such general warrants would later be prohibited by the 1787 Constitution, exhibiting their lasting significance to that era of Americans.

The Townshend duties were also a cause of great mischief and misery in the colonies. The Townshend duties, beginning with the Revenue Act of 1767, were a series of acts that taxed colonial imports for the purposes of raising revenue. They reflected a change in the revenue-raising strategy of Britain, moving from the direct taxes to which the colonists objected, to the indirect import taxes. Their hopes were dashed as colonists objected on the more basic principle that they were getting taxed, without being represented in Parliament, for the purposes of raising revenue. The colonists felt that Britain could only requisition sums of money from the colonists, not demand it of them. They were all repealed in the Spring of 1770 except for the duty on tea, following the great calamity of the Boston Massacre. Unfortunately, leaving the direct tax on tea in place was problematic since this meant that Britain had rejected the basis of colonial grievances, despite the repeal of most of the taxes.⁵⁷

Committees of Correspondence would be launched as early as 1772 in Massachusetts, with Virginia following the next year, for the purposes of establishing channels of communication and coordinate a cohesive resistance, but they would have little influence or cohesion until 1774. In an essay titled "Observation" in the *Boston Gazette*, September 23, 1773, and reprinted at least thrice in other colonial

⁵⁶ Burnett, *Continental Congress*, 4-5.

⁵⁷ Rakove, *The Beginnings of National Politics*, 4.

newspapers, the idea of a Congress was explored in detail, thus renewing interest among the colonies—and renewing the suspicions of Governor Thomas Hutchinson.⁵⁸ Colonial Resistance was renewed with opposition to the Tea Act of 1773, which attempted to revive the struggling British East India company by granting it a special license to export tea directly to North America while avoiding the Townshend tax on tea. This culminated in the Boston Tea Party on December 16, 1773 and a clear vision of the radical opposition during the new year to meet in Congress that summer. Britain would respond with the “Intolerable Acts” to punish the citizens of Massachusetts for the Tea Party, including the Boston Port Act, closing the port of Boston on June 1, 1774. The Boston Town meeting then resolved upon a nonconsumption agreement against British goods, which was problematic for colonial merchants who generally wanted to resume trade relations. Their opposition failed, as they were vastly outnumbered in sentiments by the general population.⁵⁹ As 1774 rolled around, Parliament’s authority to make laws for America was the primary issue dividing Americans from the British—surpassing the issue of Parliament’s ability to enact revenue-raising taxes on American colonists—as the delegates to the First Continental Congress headed off to Philadelphia at the end of the summer.⁶⁰

The First Continental Congress met in Philadelphia during the months of September and October 1774. This Congress was markedly different than later Congresses, whose debates were dominated by efforts to manage the war, whether through raising troops, moving them, paying for them, promoting them, or procuring

⁵⁸ “Observation,” *Boston Gazette*, September 27, 1773; *Ibid.*, 12-13.

⁵⁹ Jensen, *Articles*, 47-50, 52; Rakove, *The Beginnings of National Politics*, 13-15.

⁶⁰ John Phillip Reid, *Constitutional History of the American Revolution*. Vol 4: The Authority of Law (Madison, Wisconsin: The University of Wisconsin Press, 1993), 3.

supplies for them. The efforts of the First Congress were very outward-facing, that is, concerned with the international repercussions of their actions; primarily they were concerned with how their actions appeared to the British government and British people, but they also wanted to be viewed as having a just cause for opposing British measures.

At this point, most members of Congress and the bulk of the American people wanted to avoid war and avoid escalating the conflict, which could lead to war. Yet, they also wanted to maintain peace while securing their liberties, which was a delicate balance in which neither side wanted to give ground. As best as it could have hoped, without capitulating to Britain's demands to pay for the tea and to accept Britain's right to bind the colonies in all cases, Congress stood its ground and produced a radical, but restrained series of resolutions that did not concede much to Britain, but also did not question British authority in the ways radicals might have wanted.

2.1 Delegate Authorizations

On September 5, 1774, delegates assembled at Carpenter's Hall in Philadelphia, unanimously electing Peyton Randolph of Virginia as its president for its first act, with Charles Thomson chosen as Secretary.⁶¹ The President would sign documents, serve as Congress's *de facto* spokesman, and "serve as its social and diplomatic representative."⁶² The Congress then provided the credentials of every delegate, which

⁶¹ *Journals of Congress, containing the Proceedings from Sept. 5, 1774 to Jan. 1, 1776* (Philadelphia: R. Aitken, Bookseller, Front Street, 1777), 2.

⁶² The President of the Continental Congress was chosen to preside over its first assembly in September 1774, gradually growing in extent of duties. John Hancock played a role in expanding the duties of the President, with each addition meaning an additional expense incurred by the President. Only those of considerable means like Hancock could afford these duties. Hancock took on the correspondence of the Congress, which soon overwhelmed him. He was forced to hire an assistant, whose pay for a time was paid for not by Congress but

included the scope of their authority to act on behalf of their respective colonies. It is important to examine these authorizations because it indicates the intentions of colonial representatives and how they understood the future and continuing role of Congress in the emerging crisis. From Congress to Congress, it thus provides important reference points as to the sentiments of American colonists throughout the conflict and how they changed.

New Hampshire's two delegates were chosen at Exeter by eighty-five Deputies appointed by several towns in New Hampshire "to devise, consult, and adopt" measures, as well as "to restore that Peace, Harmony, and mutual Confidence, which once happily subsisted between the Parent Country and her Colonies." The theme of consulting and deliberating in the delegates' authorizations was the most common feature of all colonial authorizations, being present in nearly every one. Likewise, the express purpose of restoring peace and harmony with Britain featured prominently in four of the delegates' credentials (New Hampshire, Massachusetts, Pennsylvania, and Maryland). New Hampshire's authorization also instructed its delegates to "devise, consult, and adopt such Measures, as may...secure and perpetuate their Rights Liberties, and Privileges," which was common to four other colonial instructions

Hancock himself. An additional secretary followed not long after. Eventually, on November 19, 1777, provision was made for the president—then Henry Laurens—of 1000 dollars to pay expenses incurred by the President of the Congress. Even so, the financial burdens were still immense, even for a man of wealth like Laurens. It was only with the impending arrival of a minister from the Court of Versailles in 1778 that it was recommended that Congress provide a "House and Table" for the President to entertain ministers; even then, nothing came of the recommendation. Once John Jay succeeded Laurens, however, Congress began taking steps to relieve the unusually heavy financial burden from the shoulders of the President; Edmund C. Burnett, "Perquisites of the President of the Continental Congress" *The American Historical Review* 35, No. 1 (Oct., 1929), 69-72.

(Pennsylvania, Maryland, North Carolina, and Rhode Island).⁶³ The language “adopt measures” in the New Hampshire instructions was significant since it was the only one to do so other than Pennsylvania. According to their instructions, the delegates could “adopt such Measures” for three purposes:

[T]o extricate the Colonies from their present Difficulties; to secure and perpetuate their Rights, Liberties, and Privileges, and to restore that Peace, Harmony, and mutual Confidence, which once happily subsisted between the Parent Country and her Colonies.⁶⁴

Similarly, Massachusetts authorized its delegates to “*determine* upon wise and proper measures [emphasis added]” (as did Pennsylvania), and North Carolina authorized them to “take” measures, but it is not clear whether this was the technical equivalent of “adopting” measures, with its implication that Congress might have some law-making authority.⁶⁵

Rhode Island’s two delegates were chosen on August 10, 1774, by their General Assembly in order that they begin:

consulting upon proper Measures to obtain a repeal of the several Acts of the British Parliament for levying Taxes upon his Majesty’s Subjects in *America*, without their consent, and particularly an Act lately passed for

⁶³ *Journals of Congress*, 1:2-3.

⁶⁴ Pennsylvania’s use of adopt is slightly different than New Hampshire’s because New Hampshire authorizes delegates to adopt measures, while Pennsylvania authorizes them to adopt a “Plan for the Purposes of obtaining redress of *American* Grievances, ascertaining American Rights....and for establishing that Union and Harmony between Great-Britain and the Colonies”; the former appears to be stronger, authorizing the adoption of measures, which is equivalent to binding legislation, while authorizing them to adopt a plan may or may not be binding.

⁶⁵ *Ibid.*, 1:3. The possibility remains that even if the delegations gave their representatives authority to adopt or determine upon measures, such a delegation doesn’t make it clear whether “measures” are binding on the colonies, or just the agreed upon course of action that is dependent upon the will of the parties and is not enforceable.

blocking up the Port of *Boston*, and upon proper Measures to establish the Rights and Liberties of the Colonies upon a just and solid Foundation.⁶⁶

Here was the emergence of another theme that was common to many of the instructions (Rhode Island, Pennsylvania, Delaware, Maryland, Virginia, South Carolina), namely that they sought the repeal of Acts of Parliament or redress of the grievances stemming from these acts. More significant was that Rhode Island made the issue of consent a centerpiece in their condemnation of Parliamentary taxation. Unfortunately, the instructions do not intimate what was the solid foundation for American rights.

Maryland's five delegates were chosen between June 22 and June 25, 1774 in Annapolis, any two or more of whom were capable of serving as deputies in the Congress. Their charge was "to effect one general Plan of Conduct, operating on the Commercial Connection of the Colonies with the Mother Country, for the relief of *Boston*, and preservation of *American Liberty*."⁶⁷ Their instructions were ambiguous as to how wide was their grant of authority, but we can see the instructions reflected the familiar purpose of redressing American grievances against Britain and intrusions on American liberty. More importantly, Maryland expressly indicated that the purpose of Congress was to foster unity among the colonies, which was a major concern among members of Congress.

In the South Carolina Commons House of Assembly, on August 2, 1774, five deputies were appointed to Congress in order that they consider the recently passed Parliamentary acts that reorganized the constitution of Massachusetts and closed the

⁶⁶ *Ibid.*, 1:3-4.

⁶⁷ *Ibid.*, 1:8. Three of the five delegates would be present in Philadelphia on September 5, 1774.

port of Boston, as well as the taxes Great Britain imposed on the colonies to raise revenue. They invested their delegates

with full power and authority to concert, agree to, and affectually [sic] prosecute such legal Measures, as in the Opinion of the said Deputies, and of the Deputies so to be assembled, shall be most likely to obtain a Repeal of the said Acts, and a Redress of those Grievances.

South Carolina's instructions were the most lengthy of all the instructions, and arguably represented the strongest delegation of authority by a colony. It forcefully articulated that the delegates had "full power and authority" to adopt measures, but also to "affectually [sic] prosecute...legal measures," meaning South Carolina would treat Congressional measures as binding law—perhaps it even signified it would be permissible for Congress to enforce its measures itself.

The deputies from North Carolina arrived late at Congress and produced their credentials on September 14.⁶⁸ The delegates from North Carolina were chosen at Newbern on August 25, 1774 at a general meeting of deputies in the colony, with the resolution that they:

deliberate upon the present State of *British America*, and to take such Measures as they may deem prudent to effect the Purpose of describing with Certainty the Rights of *Americans*, repairing the Breach made in those Rights, and for guarding them for the Future from any such Violations done under the Sanction of public Authority....and they are hereby invested with such Powers, as may make any Acts done by them

⁶⁸ Ibid., 1:11-12; Frank W. Ryan, Jr., "The Role of South Carolina in the First Continental Congress" *The South Carolina Historical Magazine* 60, no. 3 (Jul., 1959), 150.

or Consent given in behalf of this Province, obligatory in Honour upon every Inhabitant hereof.⁶⁹

North Carolina, too, delegated muscular authority to their colonial representatives, investing them with “Powers” to agree to acts that would be obligatory on every North Carolinian.⁷⁰

What can we conclude by looking at the instructions of authority and by the variety of means in which deputies were appointed in their home colonies (and counties)? Over a century ago, Claude H. van Tyne concluded that “If the instructions to Congress meant anything, the delegates came together unauthorized by the people to act as a national government.”⁷¹ The evidence bears out this interpretation. In general, the authorizations were dominated by purposes—practical problems for which the colonies hoped Congress could provide solutions. This context explains the otherwise diverse language of the instructions. The greatest commonality among them was the authority to consult, consider, devise, or deliberate upon measures the colonies should carry out in *unison*, to achieve the greatest effect. Even when instructions authorized colonial delegates to “adopt,” “take,” or “determine upon” measures, the grant of representative authority is murky because we cannot tell whether they would consider Congressional measures binding and thus enforceable on the colonies. In addition, a number of the delegates were not representatives of the whole provinces, but specific

⁶⁹ *Journals of Congress*, 1:12. The three delegates chosen were William Hooper, Joseph Hewes, and Richard Caswell—Hooper and Hewes were the two who appeared on September 14.

⁷⁰ It is possible, here, that when they describe it as “obligatory in Honour,” it meant that it was not enforceable on them, but only that those who violated the acts would be dishonored for doing so.

⁷¹ Claude H. van Tyne, “Sovereignty in the American Revolution: An Historical Study,” *The American Historical Review* 12, no. 3 (April 1907), 532.

counties. Some, like James Duane, were unsure whether they represented their counties or the whole province of New York.⁷²

2.2 Resolutions: Forging a Compromise

For the most part, the authorizations did not provide any guidance as to what was the proper foundation of American rights, or on what grounds Britain's late acts concerning Boston and Massachusetts, as well as its taxation of the colonies, were illegal or unconstitutional. The strongest thing we can glean from the authorizations is that when the colonists consistently opposed instances of British taxation, it was on the grounds of consent. Consent to taxation was grounded in the ancient constitution, but to invoke it against parliament (the body which the ancient constitution granted authority to tax) suggested that the colonists were thinking in terms of social contract theory. If those with a stake in Parliamentary legislation i.e. property-holders, were not permitted real representation through which their interests could be contended, the colonists were not bound to obey the laws it dictated, or so many Americans thought, like members of Congress Samuel Ward and John Adams.⁷³ Even loyalist member of Congress Joseph Galloway took a very radical position on the issue of consent. He argued that the people of America could be bound by law enacted prior to coming to America, but only bound by future law with their consent—what Galloway considered the essence of the British constitution. It was just that Galloway saw the American colonies as essentially consenting through silence over the course of one hundred and fifty years, through to

⁷² James Duane, Notes of Proceedings, September 6, 1774, in Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:1:9.

⁷³ James Duane, Notes of Debates, October 12, 1774, in Smith, *Letters of Delegates to Congress*, 1:180; Samuel Ward, Notes for a Speech in Congress, October 12, 1774, in Smith, *Letters of Delegates to Congress*, 1:184-188.

the middle of the eighteenth century.⁷⁴ Ward, on the other hand, rejected the idea that the colonies had consented through acquiescence because he saw plenty of complaints throughout the period; plus, Ward said, just because Americans have submitted to the injuries and oppressions of Parliament, out of prudence, force, or fear of force, did not justify those acts of Parliament: “The great Grotius justly says *Quod ab initio injustum est nullo potest fieri modo aut usu justum aut rectum*. That is whatever is originally wrong in its own Nature cannot be santified[sic] or made right by Repetition & Use.”⁷⁵

This understanding harkened back to liberal social contract theory, which was disliked by some constitutionalists who saw no historical basis for a social contract, nor anything about man’s nature that meant government necessarily must be founded on the basis of consent. At the same time, the understanding that one of the cornerstones of the British constitution was the belief that consent made Parliamentary legislation binding was deeply rooted in American and British constitutional thought. Consent was not the be-all and end-all for all of Britain’s right to regulate trade; it could be grounded in “Compact, Acquiescence, Necessity, Protection.” Both Galloway and Duane argued that necessity was an important condition for Britain’s right to regulate trade, thinking that there had to be a supreme will that could legislate, and thus regulate trade. Galloway also believed that everyone thought Britain could regulate trade as a matter of reciprocity. If Britain protected the sea routes, Americans were liable to pay them taxes to support this. Practical concerns often dominated their discussions as well, since a number of members argued that to deny Britain’s undisputed right to regulate trade

⁷⁴ John Adams, Notes of Debates, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:46-48.

⁷⁵ Samuel Ward, Notes for a Speech in Congress, October 12, 1774, in Smith, *Letters of Delegates to Congress*, 1:184-188.

would make it look like they were aiming at independence, which was universally undesirable.⁷⁶

This overlapping of the two traditions made their synthesis palatable to Congress, which did not want to commit itself to a single philosophical position. This practical position allowed colonists to keep open avenues of reconciliation or redress that might otherwise have been closed for the sake of ideological consistency. In doing this, Congress unwittingly interlocked the two traditions together and made this fusion appear to be the “official” position that unified Americans, even though individuals within and without Congress had reservations about either the common law or natural law as the strongest foundation.

If Americans had a common set of assumptions, as many have argued, tying seemingly disparate strands of thought together, those assumptions were set out prior to the Revolution, forged during the Revolution, and solidified as the Revolution closed and the U.S. Constitution was crafted. By being the *de facto* spokesman for unified America, both the British and Americans had to take seriously the ties expressed by Congress between the common law and natural law. While Congress’s scope was far broader than the single issue of how to ground American rights, and thus comprises many debates and resolutions that don’t say much about the topic, it is important to incorporate much of this as part of the narrative because these other debates were themselves part of the context in which members of Congress has to navigate when forming and sharing their ideas.

⁷⁶ John Adams’ Diary, October 13, 1774, in Smith, *Letters of Delegates to Congress*, 1:189; James Duane, Notes for a Speech in Congress, October 13, 1774, in Smith, *Letters of Delegates to Congress*, 1:189-191; John Adams, Notes of Debates, September 28, 1774, in Smith, *Letters of Delegates to Congress*, 1:109-112.

Members of Congress also came together with a number of practical assumptions. None came to Congress hoping for war. All came expecting to promote conciliation, rather than independence. All felt Britain had exceeded its constitutional rights of legislation, though members differed in the particulars, i.e., how far and how many recent acts exceeded Parliamentary authority. All knew what was at stake if their actions were perceived as aggressive, insolent, or aiming at independence. Where members of Congress disagreed was the ultimate source of their rights. Their differences would continue throughout the Revolution, but it was not these private differences that had lasting influence, but their public compromises that shaped succeeding generations and their understandings of the war. Bringing in ideas from natural law into a nation's core dialogue and having a foundational influence was the creative and novel result, with great implications.

In some cases, differences were substantial. Richard Henry Lee came to Congress with the goal of getting Britain to repeal nearly everything and redressing American grievances, which he thought Congress could do by crafting a resolution against Britain. Now was the time to make "vigorous exertions," he thought; the Navigation Acts, however, should not be disputed, since it would strike at the heart of the British empire, which depended on the benefits accruing from these acts. It would have easily united the British against America.⁷⁷ Patrick Henry, on the other hand, called the Navigation Acts "a Capital Violation," and presumably wanted the colonists to strike at them too.⁷⁸ Early in the proceedings, Henry rose to declare that America was

⁷⁷ John Adams's Diary, September 3, 1774, in Smith, *Letters of Delegates to Congress*, 1:7-9.

⁷⁸ John Adams, Notes of Debates, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:46-48.

dissolved into one mass by the tyranny of the British, but he would be rebutted by John Jay who denied any pretensions that the Congress was there to “frame an American Constitution.” Instead, Congress was there to fix the problems created by Parliament. One of the Rutledge’s (Edward or John) also said that representatives to Congress “have no legal Authority....no coercive or legislative authority,” denying that members of Congress were a government, had the power to frame a government, or could act with the authority of a government.⁷⁹ Henry’s opinion was undoubtedly a minority one, as it asserted the *de facto* independence of the American colonies, which Congressional resolutions would continuously deny until 1776. It was an appearance to the world that members of Congress were desirous to avoid.

Certain events brought about substantial shifts both in Congressional resolutions and private sentiments of Congressman that helped forge a compromise and shape the direction of the war. The currents causing this shift were not strong enough to have a lasting and irreversible significance until mid-1776, at which point Congress issued the Declaration of Independence, a showcase in the fusion of British constitutionalism and natural law thinking. This fusion was forged out of the necessity of compromise in a fragile political situation, in which Congress bridled thoughts of invoking the radical solution of independence until the prospect of reconciliation became inconceivable. The major events that precipitated this sea change were, first, General Gage’s seizure of munitions at Quarry Hill on September 1st, 1774 (known as the Powder Alarm), where there were false reports of fighting and bloodshed, in which members of Congress

⁷⁹ John Adams, Notes of Debates, September 6, 1774, in Smith, *Letters of Delegates to Congress*, 1:27-29. Henry rose a second time to say that the colonies were in a “State of Nature” on October 3rd, clinging to his radical liberal view; Silas Deane’s Diary, October 3, 1774, in Smith, *Letters of Delegates to Congress*, 1:138-139.

wanted revenge and were willing to turn Congress “into a Council of War” if the news was true,⁸⁰ followed shortly thereafter by the Suffolk Resolves which were approved of by Congress on September 17th. After this, the next important event was the Battle of Lexington and Concord in April, 1775, after which Congress felt a long, bloody conflict was inevitable.

The Powder Alarm was significant because it shocked the Congress, and gave their business increasing solemnity and urgency, which made Congress more favorably disposed to defensive preparation and radical measures. Even when the reports proved to be exaggerated, as Gage’s men had only taken charge of gunpowder at Cambridge without bloodshed, the genie could not be put back in the bottle. Congress still took this as an aggressive assertion of power by Gage that exemplified an escalation of the situation in Boston.⁸¹

There were two important compromises in the Continental Congress’s Declaration of Rights and Grievances: first, in the decision to couch American rights in terms of British constitutionalism and natural rights; second, in the compromise between moderate and radical factions in Congress, though the rhetoric and provisions were skewed toward the radical faction. But none in the radical faction could be wholly pleased; every time a Patrick Henry or a Richard Henry Lee submitted a proposal, his

⁸⁰ John Adams’s Diary, September 6, 1774, in Smith, *Letters of Delegates to Congress*, 1:27; Robert Treat Paine’s Diary, September 6, 1774, in Smith, *Letters of Delegates to Congress*, 1:32; Silas Deane to Elizabeth Deane, September 7, 1774, in Smith, *Letters of Delegates to Congress*, 1:34-35; Samuel Ward to Samuel Ward, Jr., September 24, 1774, in Smith, *Letters of Delegates to Congress*, 1:98-99.

⁸¹ John Adams’s Diary, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:45; Robert Treat Paine’s Diary, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:44-45; Samuel Ward’s Diary, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:54.

plans were watered down substantially.⁸² For instance, in the Petition to the King, Henry and Lee each submitted draft petitions, only to have John Dickinson, a late addition to the Committee on Rights and Grievances, write a new draft that would serve as the template for the final petition.⁸³ In the Address To The People of Great Britain, Lee drafted an eight-page draft which had little bearing on the final draft, written by John Jay, aside from a single sentence of Lee's draft that was copied verbatim and included in the final address.⁸⁴ In addition, a draft of the Letter to Thomas Gage, written by Samuel Adams in a tone of asperity, was recommitted by Congress, likely because Congress wanted a less inflammatory letter. The final letter that was approved was rhetorically more in line with John Adams's draft letter to Gage, with much more subdued tone.⁸⁵ On the whole, Richard Henry Lee's influence on major resolutions of the First Continental Congress, along with other radicals like Patrick Henry, remained secondary to more moderate representatives, such as John Dickinson (despite his late appearance) and even James Duane, even though the resolutions themselves would be closer to the views of the radicals.

There were undoubtedly factions who can broadly be described as for or against invoking natural law as the grounding of American rights, with argument on this topic throughout the First Congress. John Rutledge, Joseph Galloway, James Duane, and

⁸² Rakove, *The Beginnings of National Politics*, 61.

⁸³ Smith, ed., *Letters of Delegates to Congress*, 1:222-232; Edwin Wolf, "The Authorship of the 1774 Address to the King Restudied," *The William and Mary Quarterly* 22, no. 2 (April 1965): 189-196. For some time, there was question as to who wrote the petition to the king, with some suspecting Richard Henry Lee, but comparisons of the final letter with the three drafts by Henry, Lee, and Dickinson confirmed Dickinson's draft served as the template for the final letter.

⁸⁴ Richard Henry Lee, Draft Address to the People of Great Britain and Ireland, October 11-18?, 1774, in Smith, *Letters of Delegates to Congress*, 1:174-179.

⁸⁵ Samuel Adams, Draft Letter to Thomas Gage, October 7-8, 1774, in Smith, *Letters of Delegates to Congress*, 1:158-160.

Silas Deane each spoke against natural law, or omitted it as a source of American rights. Rutledge argued that the British constitution provided firmer ground for their rights than natural law. Galloway said that rights derived from living in political society, not from the state of nature. On September 8th, Duane called the natural law a “feeble support” for American rights, compared to the British constitution and colonial charters.⁸⁶ On other occasions, Duane listed three sources for American rights (the English common law and ancient statutes, colonial charters, and provincial laws), ignoring natural law altogether.⁸⁷

On the other hand, John Jay, Patrick Henry Richard Henry Lee, and John Adams each spoke on behalf of including natural law as one, if not the most basic or solid, of the foundations of American rights. Henry described a “fourfold foundation,” with natural law included among the British constitution, colonial charters, and “immemorial Usage.” Lee called the natural law “the broadest Bottom,” for American rights. Jay argued that the colonies *must* refer to both natural law and the British constitution for their rights. Adams pointed out that the colonies needed to be able to rely on the laws of nature if they were driven to it by England; as such, Adams recalled that he “was very strenuous for retaining and insisting upon it.”⁸⁸

On September 5, Congress debated the method of voting, with the largest colonies promoting a distribution of votes based on population or “interests,” but it was

⁸⁶ John Adams, Notes of Debates, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:46-48.

⁸⁷ James Duane, Propositions Before the Committee on Rights, September 7-22, 1774, in Smith, *Letters of Delegates to Congress*, 1:38-43.

⁸⁸ John Adams, Notes of Debates, September 8, 1774, in Smith, *Letters of Delegates to Congress*, 1:46-48; Charles Francis Adams, ed. *The Works of John Adams, Second President of the United States: with A Life of the Author, Notes and Illustrations, by His Grandson, Charles Francis Adams*, Volume II (Boston: Charles C. Little and James Brown, 1850), 374.

resolved the next day that each colony should have one vote because of the difficulty of ascertaining the necessary information to apportion votes in some other fashion.⁸⁹ In addition, each colony had the option of postponing a vote (on some issue debated that day) to another day, which was a strong provision for states in a minority on any issue. Delegates at the Convention also resolved to keep their proceedings secret until the Congress approved making their proceedings public. Additionally, they resolved to appoint two committees, one to declare the rights of the colonies, their grievances, and the means of redress, and the other to examine the trade restriction statutes affecting the colonies.⁹⁰

Then, on September 7, after church service and receiving prayer, Congress divided up the delegates into committees, voting that the Committee on Rights should consist of two delegates from each colony, while the Committee on Trade and Manufactures should consist of a single delegate from each colony.⁹¹ Throughout its deliberations, the committee on rights argued whether natural rights, colonial charters, or the British constitution should serve as the fundamental basis of their colonial rights, ultimately opting for a compromise that drew on each tradition. The committee on trade and manufacturing was tasked with establishing a list of British trade restrictions and manufacturing restrictions that were unjust and harmed the colonists, ultimately leading

⁸⁹ *Journals of Congress*, 1:10; James Duane, Notes of Proceedings, September 6, 1774, in *Letters of Members of the Continental Congress*, ed. Edmund C. Burnett (Gloucester, Mass.: Peter Smith, 1963 [Washington, D.C.: Carnegie Institute, 1921]), 1:12; Ryan, Jr., "The Role of South Carolina" 150; Patrick Henry, in particular, stood and argued that apportionment of votes should be based on interests, i.e., "in proportion to its opulence and number of inhabitants its Exports and Imports"; Duane, Notes of Proceedings, September 6, 1774, in *Letters of Members of the Continental Congress*, 1:12; John Adams, diary, September 5, 1774, in *Letters of Members of the Continental Congress*, 1:6; Jensen, *Articles*, 58..

⁹⁰ *Journals of Congress*, 1:10; James Duane, Address Before the Committee to State the Rights of the Colonies, September 8, 1774, in *Letters of Members of the Continental Congress*, 1:23.

⁹¹ *Journals of Congress*, 1:11.

to a resolution by the Congress to boycott British goods and form the Continental Association.

On September 17, Congress approved the Suffolk Resolves, committing itself to a radical posture towards Britain—radical in their “forthright commitment to a program of resistance.” Containing harsh rhetoric against tyrannous Britain, the resolves came out of Massachusetts opposition to the Government Act, which by British fiat reorganized the Massachusetts government. It should be noted that the Suffolk Resolves were able to receive unanimous support in the Congress because the measures it adopted were much less radical than its rhetorical flourishes. They did not, for instance, design to provoke battle with General Gage’s men. The Resolves instead approved of massive civil disobedience by disregarding anything done by the newly organized provincial government and preventing it from carrying out its functions. The approval of the Resolves by Congress was substantial because it was Congress’s first public act, meant to show Congress’s solidarity with Massachusetts and broadcast to the world that Congress also would not go beyond a defensive posture aimed at repeal of the offending acts.⁹² Once it made its first public act, Congress could not go back and take a more conservative line toward Britain.

Congress would unanimously resolve on September 22 to boycott British goods for the time being, until further consideration.⁹³ On September 27, after a day of debate, the Congress resolved unanimously to ban importation from Great Britain and Ireland starting December 1st.⁹⁴ Following up this resolution to stop importing British goods was

⁹² Rakove, *The Beginnings of National Politics*, 45-47.

⁹³ *Journals of Congress*, 1:20.

⁹⁴ *Ibid.*, 1:21.

a non-exportation agreement resolved on September 30 banning exportation of all goods to Great Britain, Ireland, and the West Indies.⁹⁵

The next day, the Congress resolved unanimously to prepare a petition of grievances to the Crown “entreating his Majesty’s gracious Interposition for the Removal of such Grievances; thereby to restore between *Great-Britain* and the Colonies that Harmony so necessary to the Happiness of the *British* Empire, and so ardently desired by all *America*,” which would be prepared by Richard Henry Lee, John Adams, Thomas Johnson, Patrick Henry, and John Rutledge. These men were instructed to assure the king that the colonists had every intention of paying their due expenses to support the government and the administration of justice, as well as rely on their own militias in time of war. These provisions were in clear reference to the taxes that had been placed on America following the French and Indian War, as well as the fact that the British army helped the colonists fight their campaign against the French. They wanted to assure the King that he didn’t need to support the colonists so heavily in future wars, and make it a point that the colonists would pay *requisitions* gladly; they didn’t need to be *taxed* to pay, nor did they need the British army to occupy the colonies in order to do so. On October 5, they added further instructions to the committee to assure the King that if the offending acts were repealed—the “Intolerable Acts”—they promised to restore commerce with Great Britain.⁹⁶

On Friday, October 7, the Congress resolved that they prepare a letter to General Gage to express their horror that:

⁹⁵ *Ibid.*, 1:21.

⁹⁶ *Ibid.*, 1:22-23.

while the Congress are deliberating on the most peaceable Means for restoring *American* Liberty, and that Harmony and Intercourse...his Excellency [General Gage], as they are informed, is raising Fortifications round the Town of *Boston*, thereby exciting well grounded Jealousies in the Minds of his Majesty's faithful Subjects therein, that he means to cut off all Communication between them and their Brethren in the Country, and reduce them to a State of Submission to his Will.⁹⁷

The letter was their attempt to reach out to Gage and thereby prevent "the Horrors of a civil War," and was no doubt connected to the earlier Powder Alarm, the Suffolk Resolves, and other news of Boston and Massachusetts flooding in daily. They further resolved the next day that they approved of Massachusetts' opposition to the Intolerable Acts, saying "and if the same shall be attempted to be carried into execution by Force, in such case, all *America* ought to support them in their Opposition." Here, one should notice that their resolution was not that they *will* go to war, or direct *America* into war, should Gage lay siege to Boston, but that all of *America ought* to go to war and support Massachusetts in such a situation.

Using similar language to their approval of the conduct of Massachusetts, on October 10, the Congress unanimously resolved that "in case the Provincial Meeting of that Colony [Massachusetts] should judge it absolutely necessary [to remove the citizens of Boston into the country], it is the Opinion of the Congress, that all *America* ought to contribute towards recompensing [sic] them for the Injury they may thereby sustain."⁹⁸ Not only this, but they resolved unanimously:

⁹⁷ Ibid., 1:24.

⁹⁸ Ibid., 1:25.

That every Person and Persons whomsoever, who shall take, accept, or act under any Commission or Authority, in any-wise derived from the Act passed in the last Session of Parliament, changing the Form of Government, and violating the Charter of the Province of *Massachusetts Bay*, ought to be held in Detestation and Abhorrence by all good Men, and considered as the wicked Tools of that Despotism, which is preparing to destroy those Rights, which God, Nature and Compact, have given to *America*.⁹⁹

When referring to those who violated the Massachusetts charter as “tools of despotism” who ought to be held in detestation and abhorrence, they did not even say that they ought to be subjected to legal sanction, let alone that the Congress itself had the power to legally sanction those who are prepared to violate Americans’ fundamental rights. As an extralegal body, it was important for Congress to continually maintain this reality and not impinge the authority of the colonies, nor act so broadly that they were assumed to be denying Parliament or the King’s legitimate authority. Importantly, natural rights was making its way into the resolutions of Congress, as this was an early example of the synthesis of natural rights and constitutionalism taking shape.

Shortly thereafter, on October 11th, a letter to Thomas Gage, drafted by a Committee consisting of Edmund Pendleton, Samuel Adams, and Thomas Lynch, was signed by President Peyton Randolph on behalf of the Congress. The letter denounced the apparent plan of Gage to subjugate the residents of Boston, a plan that would undermine the prospects of reconciliation that Americans desired. They then resolved that the residents of the Massachusetts colony should do their best to maintain the

⁹⁹ Ibid., 1:25.

peace with Gage, only engaging the British if it was absolutely necessary to their own safety and defense.

The Continental Congress, on October 14th, adopted a Declaration of Rights and Grievances that had been drafted by the committee on rights and grievances. This document set out their rights and relationship to Britain, set forth their grievances, and submitted the ways in which their grievances could be redressed, which was the form the Declaration of Independence would later take in 1776.¹⁰⁰ The familiar grievances included: that judges were made dependent on the king for their salaries; the king kept standing armies in the colonies during peacetime; colonists were transported to England for crimes committed in the colonies; the king dissolved their assemblies and ignored their humble petitions; and more. This Declaration stated that each colony severally elected and appointed its own members (“deputies”) “in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted.” Thus, “The good People of the Several Colonies,” which were then individually listed, assembled “in a full and free representation of these Colonies” in order to prevent further subversion of their rightful sphere of autonomy. The colonists believed it was part of the ancient tradition of English liberties to declare their rights, hence they set forward eleven resolutions on the basis of natural law, “the principles of the English constitution, and the several charters or compacts” of the colonies.¹⁰¹ What follows are some notable resolutions:

¹⁰⁰ Ibid., 27; Ryan, Jr., “Role of South Carolina,” 150; Francis D. Cogliano and Kirsten E. Phimister. *Revolutionary America, 1763-1815: A Sourcebook* (New York; London: Routledge, 2011), 65.

¹⁰¹ *Journals of Congress*, 1:28; Cogliano, *Revolutionary America*, 66-67.

Resolved, N.C.D.1. That they are entitled to life, liberty and property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent.

...

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures. . . .subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed. But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bonfide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.

...

Resolved, 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore,

the exercise of legislative power in several colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous and destructive to the freedom of American legislation.¹⁰²

With resolution one, there was the liberal life, liberty, and property formulation derived from John Locke's *Two Treatises of Government*,¹⁰³ affirming the sovereignty of the people, rather than the distant sovereignty of the King or Parliament. This formulation would be changed by Thomas Jefferson to read Life, Liberty, and the Pursuit of Happiness in the Declaration of Independence. It asserted that they were free men, not subject to the whims of arbitrary government. Likewise, it made reference to the tradition of English constitutionalism, under which the legitimacy of Parliament derived from the consent of the citizens given through real representation.

Resolution four was a vivid recitation of what the colonies were rebelling against but also what they were not. They were not revolting against taxation *per se*, but taxation for the purposes of raising revenue without their consent through representation. This was one of two resolutions that were not unanimously approved, as it did not satisfy conservatives who thought the Navigation Acts were justified and thought Britain had expansive authority over the colonies to regulate trade. The task of

¹⁰² *Journals of Congress*, 1:28-30; Cogliano, *Revolutionary America*, 67-68.

¹⁰³ John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764), 197-198:

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions... [and] when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

In the colonies, Americans came to know Locke's ideas filtered through John Trenchard and Thomas Gordon's *Cato's Letters*; Rothbard, "Modern Historians," 20; Bailyn, "Political Experience": 344; Jensen, *Articles*, xxii.

moderates like Joseph Galloway, who wanted to be as conciliatory as possible toward Britain, was made difficult because they had difficulty arguing that a total power of Britain over the colonies was unlikely to be exercised and would not be dangerous to the colonies, practically speaking, since the Intolerable Acts were still in force and, to Americans, were an example of total, tyrannous power being exercised on a colony.¹⁰⁴

In addition, the Galloway Plan of Union, proposed September 28th by the moderate Galloway to head off discussions of trade sanctions against Britain, itself represented a radical departure from the *status quo*, recommending the formation of an extra-colonial body that would regulate the trade of the colonies instead of Britain. The creation of an American Parliament itself could suggest the colonies were on a path toward independence because it would be a substitute for Parliamentary regulation of trade, even though it would have more ties to Britain than did colonial legislatures.

Additionally, even moderates like Galloway promoting such a proposal gave credence to the issue of colonial consent in matters of taxation, even though the proposal did not directly rebuke Parliament. Nonetheless, in the Declaration, Congress did not deny Parliament the right to regulate trade, but granted it as a matter of practical interest and consent, rather than as a matter of right, as James Duane wanted.¹⁰⁵ While this resolution adopted some of the language of conservative James Duane, it narrowly tailored British authority to regulate trade only to justify external regulations that were for the good of the whole empire, including the colonies themselves, and even then it said that the colonists consented to this out of necessity, not because Parliament had the right to do so. The Declaration, along with other major outputs of the Committee on

¹⁰⁴ Rakove, *The Beginnings of National Politics*, 54.

¹⁰⁵ *Ibid.*, 53-60.

Rights and Grievances, also skirted the issue of paying the British back for the tea they destroyed, another blow against the possibility that the Americans would take the first step toward conciliatory measures.

Resolution ten illustrated the emerging consensus favoring the separation of powers in order to prevent combinations between the branches against the public, a major, distinct focus of classical republican thinkers, which would later be institutionalized in the Constitution. While this was clearly an important grievance against Britain, which they saw as the cause of Parliamentary corruption, it was one of the many colonial grievances, and should not be given undue weight that would undermine a pluralistic understanding of American thought during the Revolution.

This declaration represented the product of a month's debate in the Committee on Rights and Grievances between the radical elements, like Richard Henry Lee, who proposed grounding British opposition in natural law, and the more conservative elements, like Joseph Galloway, who sought "firmer" grounds in the English Constitution, law, and colonial charters. In it, we see an affirmation of *all three* as sources of the colonists' rights and liberties, placating all constituencies, while avoiding both an extreme loyalist position, that recognized Parliamentary authority in all matters, and an extreme radical position, that recognized no Parliamentary authority whatever.¹⁰⁶ Before the Declaration of Independence, the Declaration of Rights and Grievances of

¹⁰⁶ Ibid., 54-55, 57-59; James Duane, Notes of Debates, October 13(?), 1774, in *Letters of Members of the Continental Congress*, 1:73. The Declaration notably did not provide for repaying the tea destroyed during the Boston Tea Party, an obvious conciliatory measure that was urged by the moderate delegates like Duane. During debates, Christopher Gadsen had vehemently denied British authority over trade stating that, "Power of regulating trade is power of ruining us; as bad as acknowledging them a supreme legislative in all cases whatsoever; a right of regulating trade is a right of legislation, and a right of legislation in one case is a right in all; this I deny"; John Adams, Diary, September 14, 1774, in *Letters of Members of the Continental Congress*, 1:30.

1774 represented the best example of the fusion of natural law and British constitutionalism as a means to ground American rights and secure redress from Britain. In addition to the preamble, resolution five unanimously resolved that the colonists were “entitled to the common law of England,” more evidence of Congress drawing substantially from both traditions.

Following these resolutions, they declared a substantial number of Parliamentary Acts to be unconstitutional or otherwise against the law. At the conclusion of their declaration they resolved to do three things: to boycott British goods, to prepare an address to British inhabitants in Great-Britain and British America, and to prepare an address pledging their loyalty to the King.¹⁰⁷

The Galloway Plan of Union, introduced to Congress on September 28, 1774 by the arch Tory Joseph Galloway, was an attempt to mitigate looming conflict and preserve the relations of the colonies with Great Britain, featuring “a colonial president-general appointed by the Crown, a colonial grand council of representatives elected by the various colonial assemblies, and a veto power by both the colonial grand council and the British Parliament over imperial regulations which affected the American colonies.” The plan failed because it essentially placed the blame for the crisis on colonial overreaction, rather than British overreach, in its grant of a Parliamentary veto.¹⁰⁸ Although not extremely popular, opposed by Lee and Henry in particular, it was supported by James Duane, John Jay, and Edward Rutledge. Henry said that this would

¹⁰⁷ *Journals of Congress*, 1:30-31; Cogliano, *Revolutionary America*, 69.

¹⁰⁸ Ryan, Jr., “Role of South Carolina,” 152; Jensen, *Articles*, 68-72; Rakove, *The Beginnings of National Politics*, 54-55, 61. Next to Galloway, John Jay and James Duane were the most vocal and effective proponents of moderation and accommodation toward Great Britain; state-wise, Pennsylvania, Maryland, and New York were the core source of moderate, conciliatory politics; Rakove, *The Beginnings of National Politics*, 53-54.

only extend the influence of corruption further onto American soil. “Bribery is a Part of her [Britain’s] System of Government,” he said, and the creation of an American legislature would give Britain the chance to bribe the American legislature as well. Furthermore, it still would not grant consent because the legislature would be composed of representatives of representatives. Lee said that he was not empowered to decide the question of an American legislature because it had the potential to alter colonial constitutions. Jay argued that a colonial parliament would not necessarily violate any rights or liberties, or impinge on the colonial constitutions. Duane thought this was a good plan for permanent fraternal relations with Britain. Rutledge said “it [was] almost a perfect Plan,” that could provide a basis for “permanent Relief” of the colonies.¹⁰⁹ Galloway’s plan was introduced during debate on non-importation on September 28th, as an attempt to step around the question of Parliamentary authority, as well as bypass the need for economic measures against Britain, but was recommitted for further debate after a 6-5 vote (with one colony divided). This plan to create a lasting basis of British and colonial relations was unsuccessful, and eventually erased from the record of the Continental Congress by order of the Congress on October 22, after most of the work of Congress was done and Galloway’s Plan was incongruous with what Congress has already accomplished.¹¹⁰ It is notable that such a plan was designed to *create* an overarching government over the colonies with a colonial grand council, meaning the First Congress was not a legislative body as such.

Galloway’s proposal had interrupted debate on economic issues, such as whether the colonies should pay for tea, whether they should enact non-importation and

¹⁰⁹ John Adams, Notes of Debates, September 28, 1774, in Smith, *Letters of Delegates to Congress*, 1:109-112.

¹¹⁰ *Letters of Members of the Continental Congress*, 111-112, 128.

non-exportation agreements, and if so, what should they ban and when should the ban begin. There was great diversity of opinion on this subject that defies easy categorization, although most members of Congress favored non-importation and/or non-exportation to some degree. Some, like Robert Treat Paine, thought banning flaxseed to Ireland was crucial because of its indirect effect on England through Ireland, while others did not want Ireland or other locations outside of mainland Britain to be harmed, particularly those within the British empire.¹¹¹ Others, like Samuel Chase and Edmund Pendleton were against a non-importation agreement against dutied articles because an importer would have no way of knowing whether a duty was paid or not.¹¹² A number of members, including Isaac Low, Pendleton, George Ross, and Duane thought the colonies should pay for the tea as a conciliatory gesture, which would be necessary to repeal the Intolerable Acts, while Henry, Lee, Gadsden, Thomas Lynch, Rutledge, John Adams, Samuel Ward, Robert Goldsborough, and Rutledge Jr. opposed this measure.¹¹³

After considering the plans proposed by each committee, on October 12 the committee delivered the plan for the Continental Association. From October 15th to October 20th, the Congress debated the plan of association for boycotting British goods, which was finally agreed to after “being debated by Paragraphs and sundry Amendments made” on October 20th. The Continental Association listed the colonies severally, and addressed the King, blaming the current debacle on the “ruinous System

¹¹¹ Robert Treat Paine, Notes for a Speech in Congress, October 5, 1774 in Smith, *Letters of Delegates to Congress*, 1:146-149.

¹¹² John Adams, Notes of Debates, October 6, 1774 in Smith, *Letters of Delegates to Congress*, 1:151-152.

¹¹³ Silas Deane's Diary, October 1, 1774 in Paul H. Smith, ed., *Letters of Delegates to Congress*. Vol I: August 1774-August 1775 (Washington: Library of Congress, 1976-1979), 1:151-152.

of Colony Administration adopted by the *British* Ministry about the Year 1763.” It listed the grievances the colonists had against Britain which had become familiar by this time, including the Intolerable Acts. Their solution, the association maintained, was to enact a non-importation, non-consumption, and non-exportation policy against British goods, refusing to deal with the British commercially.¹¹⁴

Many states took up the call. New Hampshire circulated a document among the people of their colony which they would sign, thereby subscribing in covenant to “Suspension of all commercial Intercourse with the Island of Great-Britain.” The New Hampshire Non-Importation agreement cited the abominable closure of Boston Harbor. Pledgers agreed to cease commerce until Britain repealed its taxes on the colonies without representation, instead opting for autarky. It was a voluntary adoption of boycotting by individuals and groups within the colony itself, rather than the state as a whole, with lists of individual subscribers signing the document itself. To the extent that the colonies adopted a boycott of British goods, it was not because of Congressional command, but colonial command, local command, or voluntary endorsement.¹¹⁵

The fifth article of the agreement made it appear more ambiguous as to whether it was a command. It said “Such as are Merchants, and use the British and Irish Trade, *will give Orders* [emphasis added], as soon as possible, to their Factors, Agents, and

¹¹⁴ Ryan, Jr., “Role of South Carolina,” 151; *Journals of Congress*, 1:31-32.

¹¹⁵ *Journals of Congress*, 1:32-33; Cogliano, *Revolutionary America*, 69-70; Albert Stillman Batchellor, *State of New Hampshire, Town Charters Including Grants of Territory with the Present Limits of New Hampshire*. Vol 24 (Concord: Edward N. Pearson, Public Printer, 1894), 648-649. The ban on importation extended to the purchase of slaves, and even resolved to “wholly discontinue the Slave Trade” after December 1, 1775, at which point they “will neither be concerned in it ourselves, nor will we hire our Vessels, nor sell our Commodities or Manufactures to those who are concerned in it.” The third section, dealing with non-consumption, said that they would “solemnly agree and associate” to stop consuming British goods, neither commanding anyone to do so, nor listing any punishments for disobeying; *Journals of Congress*, 1:33.

Correspondents, in *Great-Britain and Ireland*, not to ship any Goods to them.”

Nonetheless, the article did not prescribe a punishment for failing to abide by this rule, instead admonishing that “if any Merchant....shall directly or indirectly ship any Goods, Wares, or Merchandize....in Order to break the said Non-Importation Agreement....it ought to be made public,” and from then on they would have no more commercial relations with those individuals.¹¹⁶ Apparently, the stiffest sanction the Congress could offer to someone breaking the boycott was public shaming and a subsequent recommendation to blackball him, powers no different than any ordinary citizen might possess independent of a lawmaking body. Even then, Congress’s resolutions stated that they *ought* to make it public, not that they *would* do so. The Sixth article similarly asked that owners of ships give orders to their captains not to receive any prohibited British goods, recommending that those captains who received British goods be dismissed from service. The Eighth Article discussed how the representatives to Congress, in their private and public capacities, would do their best to promote frugality, efficiency, industry, agriculture, arts, and manufactures in America, without ordering anyone else to do so.

The Ninth Article said that any merchant who engaged in what we would today call price gouging as a result of the increased scarcity of goods ought to no longer be engaged with commercially.¹¹⁷ The Tenth article appears more problematic, although only slightly so. It says that for any merchant who imports British goods after December 1, 1774, the goods ought:

¹¹⁶ *Journals of Congress*, 1:34.

¹¹⁷ *Ibid.*, 1:34-35.

to be either re-shipped or delivered up to the Committee of the County, or Town wherein they shall be imported, to be stored at the Risque of the Importer, until the Non-importation Agreement shall cease, or be sold under the Direction of the Committee aforesaid; and in the last mentioned Case, the Owner or Owners of such goods shall be reimbursed.¹¹⁸

On first glance, it sounds as though Congress ordered banned products to be shipped back, stored, or, for the last provision, to have eminent domain, essentially, applied to the banned British goods, whereupon the goods would be seized, sold, and the returns distributed to the owners. However, it used the same “ought” language as the other provisions, which arguably indicated that the provision was a suggestion or guideline for colonial action, since as an extralegal body it could not order the colonies. In the Eleventh article, one of the most pivotal, the Congress agreed that qualified voters in every part of the colonies should choose a Committee as a watchdog to observe that these rules were being followed; and, when someone broke the rules, the Committee should “cause the Truth of the Case to be published in the Gazette; to the End, that all such Foes to the Rights of *British America* may be publicly known, and universally contemned [sic] as the Enemies of *American Liberty*; and thenceforth we respectively will break off all Dealings with him or her.” Thus, in combination with the Twelfth article, it gave a specific purpose to the Committees of Correspondence that had emerged throughout the colonies, whose extra-legal inspections of goods would constitute the enforcement arm of the Continental Association. The enforcement mechanism, however, was officially ostracism, not coercion. The guiding hand of the Continental

¹¹⁸ Ibid., 1:35.

Congress also legitimized and concretely identified the ties of association that would bind the resistance together with an explicit plan for boycott.¹¹⁹

The Thirteenth article is an interesting one from the standpoint of the powers of the Congress, for it declared “That all Manufactures of this Country be sold at reasonable Prices, so that no undue Advantage be taken of a future Scarcity of Goods.” The language makes it clear that this was not a suggestion, but a specific, agreed-upon course of action. Here, they agreed to look down upon price gouging, or substantially raising prices to “unfair” or exploitative levels in the wake of events that make goods unusually scarce. Such profiteering, they thought, was against the spirit of unity and brotherhood the association was designed to promulgate. They did not offer any proscriptions for how price gougers should be treated or thought of, however, as they did in articles Ten and Eleven. Nor did they offer any guidelines for when a price was reasonable and when it became unreasonable.¹²⁰

Coming to the end of the Continental Association Agreement, we see a clause that explained that the agreement “solemnly bind[s] ourselves and our Constituents” until the offending acts of Parliament are repealed. To give effect to the Association, they “recommend it to the provincial Conventions and to the Committees in the respective Colonies, to establish such farther [sic] Regulations as they may think proper.”¹²¹ The former language is strong, explicitly stating that the association is binding on the Colonial Representatives and their Constituents, while the latter suggests that the Association is impotent without direct action by the colonies themselves. Furthermore, given that a significant number of the articles involved recommendations

¹¹⁹ Ibid.; Rakove, *The Beginnings of National Politics*, 51.

¹²⁰ *Journals of Congress*, 1:35-36.

¹²¹ Ibid., 1:36.

or ought statements, it is difficult to sort out exactly what it would mean for a recommendation to be binding. On the background of the limited grants of authority to the delegates, combined with the advisory nature of most of the clauses in the Continental Association (and Congress generally), the best interpretation of the Continental Association is that it was binding if, and only if, the states made it binding through legislative acts. Congress did not concern itself with prosecuting violators of the Association, leaving maintenance of the boycott up to the colonies.

The Continental Association was an extremely significant mode of unity and opposition in the lead up to war, but Congress's lack of power to actually carry out the Association showed how conservative the Congress was, compared to the truly radical position of independence, where Congress could have been a federal legislature and a fount of government power. Instead, Congress could do little more than make recommendations and take provocative stances with regard to Parliament and its authority. This was an important and truly radical stance in the realm of ideas and persuasive influence, but not radical compared to an independent national government, which had not yet happened. Indeed, Patrick Henry, early on the the debates had said that all government was dissolved, with all of America in a state of nature, and that it was therefore Congress's job to craft a Constitution, but no one agreed. Independence was not yet to be.

On October 21, an address to the People of Great Britain was amended and approved by the Congress, which began by listing each of the colonies one-by-one, and proceeded at length to explain the difficulties of the current situation to their fellow English subjects across the sea. Congress leveled an accusation that the British have

“either ceased to be virtuous, or been extremely negligent in the Appointment of her Rules.” It also made impassioned defenses for the principles of consent of the governed, private property, Trial by Jury, the right to defend oneself against accusations, the presumption of innocence, and self-government. An address to the people of the several colonies was then debated, amended, and approved, which expressed “a dispassionate view of all Circumstances” and grievances which led the Congress to agree to its resolutions.¹²² They then resolved to prepare an address to the people of the British colonies of St. John’s Quebec, Nova Scotia, Georgia, and Florida. Nonetheless, the colonies maintained their stance that they were not aiming at independence, but reconciliation.

The last, and most interesting, resolve of the day said “That the seizing, or attempting to seize any Person in *America*, in order to transport such Person beyond the Sea, for Trial of Offences committed within the Body of a County in *America*, being against Law, will justify, and ought to meet with Resistance and Reprisal.” Here, they affirmed the right of “Americans” to resist being hauled off to trial in Britain and to retaliate against officials who try to seize Americans and transmit them overseas for trial. What retaliation this purported to justify is indiscernible, but may have included the right to initiate proceedings against an official, or perhaps the colonial favorite tarring and feathering.¹²³

The Congress resolved to have the journals of its proceedings corrected and transmitted for publication on October 22, as well as to have delegates from all the colonies meet again in May, 1775 in Philadelphia. They also amended and approved a

¹²² *Ibid.*, 1:38, 46.

¹²³ *Ibid.*, 1:56.

Letter to the British Colonies that contained all the measures they approved and recommend the British colonies to adopt.

On October 25, a letter to the King that had been drafted by a committee of five appointed by Congress October 1st was resolved to be included in a Letter to the Colonial Agents of the crown to be presented by these agents to the king in person. The Letter to the agents was approved the next day, along with a Letter To the Inhabitants of the Province of Quebec. Citing Cesare Beccaria and Montesquieu, they implored Quebec to resist the imposition on the colonies of “the extreme of Weakness and Misery” by Parliament and be united with the colonists in their cause. Indeed, they asked the Province of Quebec to join them in a “perpetual” “social Compact” by electing Deputies and sending them to the Congress that would be meeting in Philadelphia in May, 1775. This represents one of the few suggestions that Congress may have been a national union, united in a perpetual social compact. After this, they concluded their sessions and the Congress dissolved itself.¹²⁴

The Petition of Congress to the King stated colonial grievances, such as the existence of a standing army in the colonies, the increasing expense and number of royal officials, and the burdensome restrictions on trade levied by Britain, among numerous others. They assured the king their actions were not the result of an American “restless Levity of Temper,” but calm and rational opposition to the undue restriction of their English liberties. They also assured the king that the colonial militias would be sufficient to defend the colonies in the future and that the colonial legislatures are always happy to oblige paying sums justly requested of them for the maintenance of the kingdom. Finally, they asked the king to redress their grievances in order to maintain a

¹²⁴ Ibid., 1:57-66; Ryan, Jr., “Role of South Carolina,” 152.

happy relationship between Great Britain and the colonies. It was much more conciliatory than their other edicts (as one would expect), but was located among a stack of other papers when transmitted to the king, and would not be considered with any length.¹²⁵

To conclude, the First Continental Congress was, by and large, an association for the coordination of a unified opposition to British policy, rather than a lasting basis for perpetual union among the colonies. In short, it was not a government, which would have put the colonies in an extremely aggressive stance, probably even one of rebellion. Clearly, Congress did not act as a substitute for Parliament or the King, at least at this point. Furthermore, despite the strong stance the Congress took toward Britain, it was still at its core defensive in nature, presenting a chance for Britain to reconcile with the colonies, even if it wasn't under the terms Britain would have wanted. It was not a body seeking war or independence. Describing the Congress, John Adams said:

Their opinions are fixed against Hostilities and Ruptures....They dread the Thoughts of an Action because, it would make a Wound which could never be healed. It would fix and establish a Rancour, which would descend to the latest Generations. It would render all Hopes of a Reconciliation with Great Britain desperate. It would light up the Flames of War, perhaps through the whole Continent, which might rage for twenty year, and End, in the Subduction of America, as likely as her Liberation.¹²⁶

¹²⁵ *Journals of Congress*, 1:68-72.

¹²⁶ John Adams to William Tudor, October 7, 1774, in Smith, *Letters of Delegates to Congress*, in Smith, *Letters of Delegates to Congress*, 1:156-157.

Through October 1774, the Congress still thought every action taken by Congress and the colonies had to be carefully measured so as not to threaten war—no one desired a fight for independence, said many in Congress.¹²⁷ Despite all the talk of the tyranny of Great Britain, colonial leaders at Congress were still decidedly against going to war. Thomas Lynch, John Dickinson, and many others left Congress with the feeling that only by force or further intrusions by Britain would the colonists embroil themselves in a civil war.¹²⁸ What changed between the two Congress's was an escalation on each side of rhetoric and action that made independence more likely with each passing day.

3 THE SECOND CONGRESS, 1775-1776

As British rule over the New World became more unyielding by 1776 (everywhere except Quebec and Florida), the colonists increasingly asserted the need for independence and an autonomous management of their affairs. Speaking at the Second Virginia Convention in Richmond on March 20, 1775, Patrick Henry delivered an impassioned speech urging Virginia to raise militias that could come to the defense of Virginia if it became necessary to fight the British. Popularly known as the “Give Me Liberty or Give Me Death” speech, his speech was carefully reconstructed by William Wirt, a biographer who interviewed those present for the speech in the early nineteenth century. Appealing to experience as the only reasonable guide to future expectation, Henry hoped to dispel the lingering hopes of some at the convention who thought the use of force would be unnecessary and expected reconciliation with Britain by pointing to the tyrannical experience of the last decade for which Britain was to blame. It was

¹²⁷ George Washington to Robert Mackenzie, October 9, 1774, in Smith, *Letters of Delegates to Congress*, 1:166-167.

¹²⁸ Thomas Lynch to Ralph Izard, October 26, 1774, in Smith, *Letters of Delegates to Congress*, 1:247-248; John Dickinson to Arthur Lee, October 27, 1774, in Smith, *Letters of Delegates to Congress*, 1:250.

obvious to Henry that while the colony's petition was met warmly in Britain, in fact the British were preparing for war; all one had to do was look at "those warlike preparations which cover our waters and darken our land. Are fleets and armies necessary to a work of love and reconciliation?"¹²⁹

The situation in Boston grew dire as well. By December, many in Boston were forced to apply for public aid and charity, who had otherwise held out until then; the economy of Boston was at a standstill, with commerce throughout Massachusetts nearly halted.¹³⁰ This, no doubt, stood in the back of the minds of every member of Congress as they headed to Philadelphia in May.

Open hostilities broke out at Lexington and Concord between the Massachusetts militia and British soldiers in early April, 1775. General Thomas Gage, Governor of Massachusetts and highest British commander in the Americas, issued a patronizing proclamation on June 12, 1775 that was supposed to promote peace between the two sides by proposing amnesty "to all who in so trying a Crisis, shall manifest their Allegiance to the King, and Affection to the Parent State" and cease fighting. The proclamation was not well-received by Patriots in the colonies, however, as they resented being called "Incendiaries and Traitors" while the King's government was described as a model of "Patience and Lenity," among other assaults upon the honor and justification of the actions taken by Patriots. As a result, British troops assaulted

¹²⁹ Cogliano, *Revolutionary America*, 73-74; William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia: Desilver Thomas, 1836), 138-142.

¹³⁰ John Adams to Edward Biddle?, December 12, 1774, in Smith, *Letters of Delegates to Congress*, 1:265-266; Samuel Ward to Richard Henry Lee, December 14, 1774, in Smith, *Letters of Delegates to Congress*, 1:271-273.

colonial militia at Charlestown, MA at the Battle of Bunker Hill on June 17th, winning the battle despite costing the British over a thousand casualties.¹³¹

Even ten days after Lexington and Concord, John Dickinson knew it was the beginning of war; they were the hostilities everyone had been dreading.¹³² There were now no avenues of reconciliation for the colonists, thought Dickinson:

But what Topicks[sic] of Reconciliation are now left for Men, Who think as I do, to address our Countrymen? To recommended Reverence for the Monarch or Affection for the Mother Country? Will the Distinctions between the Prince and his Ministers, between the People & their Representatives wipe out the Stains of Blood?

According to Lee, because of the outbreak at Lexington and Concord, “The Province of N. York is at last alarmed,” turning the fiercely independent and loyalist Britain toward the American cause. The defeat of General Gage’s troops aroused patriotism and resentment against the “wanton and cruel Attack on unarmed people, after they [the British] had brutally killed Old Men, Women, & Children,” in Lee’s words. From then on, martial spirit abounded in the colonies¹³³ That winter, clandestine military movements

¹³¹ Hon. Thomas Gage, Esq., *A Proclamation* (New York: n.p., 1775). Library of Congress Printed Ephemera Collection, Portfolio 38, Folio 17, in Cogliano, *Revolutionary America*, 78-81; Cogliano, *Political History*, 56. Notably, General Gage explicitly named Samuel Adams and John Hancock as conspirators “whose Offences are of too flagitious a Nature to admit of any other Consideration about that of condign Punishment”; that is, the two were exempted from the possibility of a pardon.

¹³² John Dickinson to Arthur Lee, April 25, 1775, in Smith, *Letters of Delegates to Congress*, 1:331-333.

¹³³ Richard Henry Lee to William Lee, May 10, 1775, in Smith, *Letters of Delegates to Congress*, 1:337-338; Silas Deane to Samuel Webb, May 14, 1775, in Smith, *Letters of Delegates to Congress*, 1:348.

were springing up in Connecticut, and around the colonies, in attempts to discipline the militia and prepare them in case they were needed to defend the colonies.¹³⁴

Despite these problems, the resolutions of the Continental Congress were very popular throughout the colonies. The Pennsylvania House of Representatives approved all resolves and proceedings of the Congress in December. The fourth resolution dealing with the foundation of English liberty and the limits of Parliament to regulate the trade were especially popular. Massachusetts' provisional congress approved and adopted it "in Strong Terms" and the people of Rhode Island approved of the Congressional resolves, with even slave trade merchants agreeing to abide by the Continental Association, despite the great harm that would come to them from it. Both New York and Philadelphia had high esteem for the resolves.¹³⁵ Nonetheless, some colonies acted in ways that tended to disunify the colonies, including sending their own petitions to Britain, as New York did. In addition, John Penn and many Quakers were actively against uniting with the colonies against Britain.¹³⁶

The Second Continental Congress began taking action, creating the Continental Army in June of that year and issuing the Declaration of the Causes and Necessity of Taking Up Arms on July 6, 1775, authored mainly by Thomas Jefferson and John Dickinson. The document was a polar reversal of the claims made by General Gage in

¹³⁴ John Adams to Joseph Palmer, May 2, 1775, in Smith, *Letters of Delegates to Congress*, 1:333.

¹³⁵ John Dickinson to Thomas Cushing, December 11, 1774, in Smith, *Letters of Delegates to Congress*, 1:264; John Adams to Edward Biddle(?), December 12, 1774, in Smith, *Letters of Delegates to Congress*, 1:265-266; Samuel Ward to John Dickinson, December 14th, 1774, in Smith, *Letters of Delegates to Congress*, 1:268-270; William Hooper to James Duane, November 22, 1774, in Smith, *Letters of Delegates to Congress*, 1:262-263.

¹³⁶ Samuel Chase to James Duane, February 5, 1775, in Smith, *Letters of Delegates to Congress*, 304-306; Richard Henry Lee to Arthur Lee, February 24, 1775, in Smith, *Letters of Delegates to Congress*, 1:313-314; Edward Biddle to Jonathan Potts, February 25, 1775, in Smith, *Letters of Delegates to Congress*, 1:315-316; Joseph Galloway to William Franklin, February 28, 1775, in Smith, *Letters of Delegates to Congress*, 1:318-319.

his proclamation. In the Declaration, the colonists described the “inordinate passion for power” of the British legislature; their possession of “an intemperate rage for unlimited domination”; and their contravention of the British Constitution. They said that the British taxed them without their consent; exercised admiralty jurisdiction unjustifiably in the colonies; quartered soldiers in colonists’ homes during peacetime; depriving them of their right to trial by jury; suspended the legislature of a colony; and prohibited the commerce from flowing to Boston, among other acts of “despotism.” Indeed, the Declaration even stated that to list these injuries was superfluous, given that the Parliament proclaimed in the Declaratory Act that it had the right to “bind us [the colonies] IN ALL CASES WHATSOEVER,” which was a claim for unlimited power. Nonetheless, the express purpose of the 1775 Declaration was to end the war and reconcile with Great Britain.¹³⁷

Two days later, on July 8th, Congress prepared the Olive Branch Petition to appeal directly to the King, adopting a humble tone and beseeching him to reestablish peace and harmony between the colonies and His Majesty’s government.¹³⁸ King George, however, had lost patience with the colonies. On August 23, 1775, the King declared the colonies in a state of rebellion, “declaring that....all Our Officers, Civil and Military, are obliged to exert their utmost endeavors to suppress such Rebellion, and to bring the Traitors to Justice.”¹³⁹

¹³⁷ Worthington C. Ford et al., eds., *Journals of Continental Congress, 1774-1779*, 34 vols (Washington DC: Government Printing Office, 1904-37), 2:140-157; Cogliano, *Revolutionary America*, 81-85.

¹³⁸ Ford et al., *Journals of Continental Congress, 1774-1779*, 2:158-161; Cogliano, *Revolutionary America*, 85-87.

¹³⁹ “By the King, A Proclamation, For suppressing Rebellion and Sedition” (London: Charles Eyre and William Straban, 1775) in Cogliano, *Revolutionary America*, 88-89.

The King and Parliament were increasingly becoming inflexible to colonial demands in 1775, and the colonies were becoming increasingly militant, stockpiling weapons and gunpowder, as well as solidifying their ideological opposition to taxation without representation in defense of their rights. Congress began directing the war effort carefully and deliberately, but in the end, the incessant hostilities made reconciliation with Britain seem like a distant utopia,¹⁴⁰ making independence the only viable course of action.

On May 10, 1775, the Second Continental Congress met in Philadelphia, this time at the State House. It would first adjourn late in the summer of 1775, but continued meeting off and on through 1781, when the Articles of Confederation was fully ratified and the new Confederation Congress sat. The Second Congress was markedly different than the previous Congress, whose debates were more abstract and whose delegates were more hesitant to produce hostility.

This Congress was still very concerned with the international repercussions of their actions, as most members of Congress wanted to avoid escalating the conflict into a full-scale war. Members of Congress still thought there could be reconciliation heading into the Fall of 1775—sometimes hopefully, sometimes reluctantly—but by the Spring of 1776, independence became a serious discussion within and without Congress, and only the staunchest moderates, like John Dickinson, could trick themselves into thinking reconciliation was still a possibility. In May of 1775, nearly all members of Congress still

¹⁴⁰ Cogliano, *Political History*, 54-55.

believed in it; even John Adams, who would turn into one of its strongest proponents in 1776, was advocating against independence at this time.¹⁴¹

This would all change over the span of a year. First, Congress entered the Second Congress with a greater sense of the gravity and immediacy of their positions as members of Congress because open hostilities had begun at Lexington and Concord nearly a month earlier. Second, members of Congress greatly resented what they believed were barbaric or underhanded tactics in the prosecution of the war effort by Britain that made reconciliation more and more out of reach every day. Additionally, Britain continued to match the staunchness of the Americans, refusing to grant their petitions and insisting that force was necessary to quell the colonial rebellion.

In most cases, the most significant Congressional resolutions did not serve to escalate the conflict itself, but rather piggybacked on American popular sentiment—Congress was not so much the driver of the conflict as along for the ride, albeit in a particularly auspicious political vantage point with the power to serve as a cement for continued advances and as a unified spokesperson for the American colonies. The Declaration of the Causes and Necessity of Taking Up Arms in 1775 was passed nearly two months after Lexington and Concord, justifying American actions *ex post facto*, rather than *ex ante*. Congress passed their May 10, 1776 resolution telling the colonies to erect new state governments only after numerous colonies had solicited their advice and adopted Constitutions, including South Carolina and New Hampshire.¹⁴² The

¹⁴¹ Silas Deane's Diary, May 16, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:351-352.

¹⁴² Yale Law School, "Constitution of South Carolina - March 26, 1776," *The Avalon Project*, accessed June 21, 2016, http://avalon.law.yale.edu/18th_century/sc01.asp; Yale Law School, "Constitution of New Hampshire - 1776," *The Avalon Project*, accessed June 21, 2016, http://avalon.law.yale.edu/18th_century/nh09.asp.

Declaration of Independence was passed only after hopes of reconciliation had been totally extinguished, and the war had been underway for two full years. Given Congress' role as a unifier, none of this should be surprising. Congress did not want to divide Americans with controversial or unpopular measures. They undoubtedly took radical stances, but not ones that the American public could not see coming.

During this period, Congress would affirm the synthesis of natural law and constitutionalism on a number of occasions, culminating in the Declaration of Independence on July 4, 1776. While the discussion of American rights during this period was greatly outweighed by pressing war issues, whenever members of Congress discussed the issue or made resolutions in Congress dealing with the issue, they did not contradict their earlier espousal of both natural rights and the British constitution as the sources of their rights—and the events themselves played an important role in driving the change in Congressional sentiment by providing the crucial experience that proved reconciliation was not possible.

In 1775, members of Congress began discussing issues relating to classical republicanism with greater frequency as the issue of good government became a more pressing issue, and Congress looked to their understanding of a science of government for answers. Though Congress was of course not yet a government, they still had a war effort to organize and manage, which was traditionally undertaken by governments; hence its applicability. In addition, in 1776 the issue of confederation was put on the table, making this a real political possibility—one that would come to fruition in 1781.

3.1 *Delegate Instructions*

The substance of delegate instructions became even more important for the Second Congress because their authorizations were wider than those to members of the first Congress and they eliminated clauses that limited delegates' ability to vote for radical measures, such as independence. This was an important practical barrier that was removed after hostilities commenced and it escalated into a war with diminishing hopes for reconciliation. Utilizing the same procedure adopted by the First Continental Congress, Peyton Randolph was again chosen unanimously to be President of the Continental Congress, with Charles Thomson elected Secretary. Likewise, each colony's delegates had their credentials announced at the assembly, beginning with New Hampshire.¹⁴³ Recurring themes in the instructions to delegates to the Second Continental Congress included a substantial shift towards fully authorizing their delegates with the power to consent or agree to measures. Even though this authority was limited by its purposes—redress of American grievances, protecting American liberties, or reconciling with Britain—it now represented a majority of colonial instructions: South Carolina, Maryland, Delaware, Massachusetts, New York, New Hampshire, and North Carolina. As war escalated, many of the states which had issued significant restrictions in 1774, such as Pennsylvania's which only permitted them to seek reconciliatory measures, were revoked in favor of instructions that permitted delegates to vote for independence.

The New Hampshire convention voted to delegate representation at the Congress to John Sullivan and John Langdon, vesting them with "full and ample power, in Behalf of this Province, to consent and agree to all Measures, which said Congress

¹⁴³ *Journals of Congress*, 1:73.

shall deem necessary, to obtain Redress of *American Grievances*.”¹⁴⁴ This power was very similar to the broad powers vested to the delegates at the First Congress, albeit in terser language. The first delegation was given permission to “devise, consult, and adopt” measures while the second delegation had permission to “consent and agree to all Measures,” having an equivalent effect.

In Massachusetts Bay, the Provincial Congress had agreed to support the “American Bill of Rights,” i.e., the Declaration of Rights and Grievances agreed to by the First Congress, on December 10, 1774, and immediately appointed a number of delegates to attend the Second Continental Congress. They advised their delegates that they had “full Power....to concert, agree upon direct and order such Measures, as shall to them appear to be best calculated for the Recovery and Establishment of American Rights and Liberties, and for restoring Harmony between *Great-Britain* and the Colonies.”¹⁴⁵ These instructions were a good deal stronger than the first instructions, explicitly stating that they had full Power, presumably equivalent to the colonial legislature, and could direct and order measures. Despite the Revolutionary turmoil enacted in the colonies, especially within Massachusetts, we still could see that the delegates were charged with restoring relations with Britain, rather than separating.¹⁴⁶ South Carolina’s delegates had similarly strong instructions as well.¹⁴⁷

New York’s delegates were chosen at a convention of the various New York counties “with full Power....to concert and determine upon such measures as shall be judged most effectual for the Preservation and Re-establishment of *American Rights*

¹⁴⁴ *Journals of Congress*, 1:73-74.

¹⁴⁵ *Ibid.*, 1:74.

¹⁴⁶ *Ibid.*, 1:3.

¹⁴⁷ *Ibid.*, 1:78-79.

and Privileges, and for the Restoration of Harmony between *Great-Britain* and the Colonies.”¹⁴⁸ Unlike the previous instructions, where the delegates’ only instructions were “to represent them [the various counties in New York] in Congress” the delegates to the Second Continental Congress were given specific purposes and full power to determine upon measures.¹⁴⁹

In Pennsylvania, representatives were appointed “to concert and agree upon such farther [sic] Measures, as shall appear to them best calculated for the Accommodation of the unhappy Differences between *Great Britain* and the Colonies, on a constitutional Foundation.”¹⁵⁰ Pennsylvania’s instructions were noteworthy because they explicitly advised the representatives to find a *constitutional foundation* for redress, intended to express an opposition to anything extra-constitutional, such as launching a civil war. It also might be treated as a partial rebuke of the combination of the constitutional and natural law traditions in the previous Congress’ resolutions. In this regard, Delaware’s instructions had a nearly identical mandate. Delaware only indicated their purpose was to be repairing relations with Britain and protecting American rights according to the English constitution, standing in contrast to the radical basis of natural rights that some delegates argued for in the First Congress.¹⁵¹ These kind of instructions would limit the authority of members of Congress to vote for independence, and other closely-related measures, and were thus revoked at various points from 1775 to 1776, crucial for permitting members to vote for independence.

¹⁴⁸ Ibid., 1:75.

¹⁴⁹ Ibid., 1:5-6.

¹⁵⁰ Ibid., 1:76-77.

¹⁵¹ Ibid., 1:7-8.

In Maryland, “At a Meeting of the Deputies appointed by the several Counties of the Province of Marlyand,” appointed deputies with “full and ample Power to consent and agree to all Measures, which such Congress shall deem necessary and effectual, to obtain a Redress of *American* Grievances; and this Province bind themselves to execute to the utmost of their Power, all Resolutions which the said Congress may adopt.”¹⁵² Maryland’s instructions represented the clearest and strongest delegation of authority to the acts of the Second Continental Congress, giving its delegates both full authority to agree to any measures that would help redress their grievances and declaring these acts *binding* on itself. It also represented the strongest increase in authority to its delegates and thus to the Continental Congress. The instructions of the previous year only gave its deputies authority to “effect one general Plan of Conduct” that would relieve Boston and preserve the colonists’ liberties, which was at best an ambiguous grant of authority, as it is difficult to uncover how broadly the word “effect” could be construed.¹⁵³ North Carolina’s instructions were similar to Maryland’s, proclaiming that Congressional acts would be obligatory on every inhabitant of North Carolina.

Lyman Hall arrived to the convention on May 13, 1775 as a delegate of the parish of St. John’s, Georgia with instructions to “represent and act for this parish” in the Congress without much instruction, although the credentials mentioned concerns about maintaining the Continental Association and procuring trade with the other colonies so that it could effectively boycott the trade of merchants who refused to join the

¹⁵² *Ibid.*, 1:77.

¹⁵³ *Ibid.*, 1:8.

association, especially in Savannah.¹⁵⁴ Hall's instructions expressed the Parish's adherence to the resolutions of the last Continental Congress, as well as the differences that occasioned the parish to come representing itself rather than be aligned with the whole colony of Georgia, which had not been as diligent in adhering to the resolutions of the Continental Association, causing them to "detach" from the rest of the colony.¹⁵⁵

Later instructions would appear during the year, most of which involved simple repetitions of the instructions from the beginning of the Second Congress (this was true of instructions from Maryland, Connecticut, Virginia, South Carolina, and Massachusetts), with seeming increase in authority for New Jersey and a weaker one for New Hampshire.¹⁵⁶¹⁵⁷ Delegates from Georgia appeared for the first time after Congress adjourned for a month from August 1st to September 12th, stating their purpose of defending the rights and liberties of America and restoring harmony with Great Britain. It authorized delegates with "full and whole power" to "do, transact, join, and concur" in Congressional resolutions, as well as promised that the colony would "abide by, enforce, and carry into execution [Congress's designs], or endeavor at the risque and expence [sic] of Life and Property to do so."¹⁵⁸ This was an increased authority from the delegates from St. John's parish. Virginia's delegates, appointed in convention, were given authority to represent the colony in "General Congress," without

¹⁵⁴ St. John's parish had considered breaking off all connection with Savannah for not acceding to the Continental Association, but decided against it since the parish was not self-sufficient. They resolved instead not to purchase slaves from Savannah and not to trade with Savannah merchants who refused to join the Continental Association and submit their good to inspect by the committee; *Ibid.*, 1:97-100.

¹⁵⁵ *Ibid.*, 1: 97-98.

¹⁵⁶ *Ibid.*, 1:299-300; *Ibid.*, 2:25, 55-6, 69, 73, 147.

¹⁵⁷ *Ibid.*, 1:73-4.

¹⁵⁸ *Ibid.*, 1:195-6.

further instruction.¹⁵⁹ Maryland's delegates were authorized with "full and ample power to consent and agree to all measures" of the Congress in order to "obtain a redress of *American* grievances," the same authority as their prior instructions.¹⁶⁰ New Hampshire likewise gave its delegates the same authority.¹⁶¹

What can be concluded by looking at the delegations of authority for the Second Continental Congress? First, and most importantly, there was an increasing gravity of the hostilities with Britain, which came with a parallel strengthening of the authority delegated to colonial representatives by their convention, assemblies, and other political bodies. Like the first Congress, the authorizations specified the limited purposes for which the delegates were authorized to act. North Carolina and Maryland, alone among the colonies, stated that the actions of Congress would be binding on their colonies. The gradual abolition of the explicit restrictions present in instructions—namely the ones that permitted members to consent only to measures that were reconciliatory—were probably the most important feature in the instructions that had long-term significance. Without this abolition, the debate on independence could have been delayed, or strung out over a longer period of time, which could have stunted the impact a Declaration would have had on the unity of the colonies.

3.2 Resolutions: Dashing Hopes of Reconciliation

By and large, the Second Congress acted primarily in an advisory capacity in its relationship to the colonies (and then states), rather than a superintendent capacity. Not until after independence was declared would Congress acquire any exclusive powers

¹⁵⁹ *Ibid.*, 1:196-8.

¹⁶⁰ *Ibid.*, 1:198.

¹⁶¹ *Ibid.*, 1:202.

that would distinguish it from the advisory body it acted as throughout the early Revolution.

Congressional resolutions took two broad forms. First, there were many instances where Congress explicitly recommended, advised, or requested the colonies to act. Second, there were many instances where Congress directly acted and ordered actions to be taken by the Continental army and the treasury. As for the first, while the advisory resolutions were numerous and gave the appearance of ordering the colonies around in minute detail, the language of the resolutions—recommending, advising, or requesting—recognized the reality that colonies were not obligated to obey. They did not pretend to have the authority to order colonial committees, assemblies, or governors, nor did they have the power in any case.

Second, a substantial number of resolutions featured Congress acting in a direct capacity, primarily to order the treasury to authorize the payment of debts they owed to soldiers or contractors, and to direct the Continental army.¹⁶² This showcased their direct, authoritative capacity over members of the army or the administration. While these general rules were occasionally violated (increasingly over time), even when Congress made resolutions that seemed to place Congress in a supreme role over the colonies, or direct the colonies in detail, they would step back and disavow that they were crossing this line or explicitly word their resolutions as recommendations. Nevertheless, it was true that Congress was imploring the colonies to take a vigorous and active role in prosecuting the war effort, including suggesting that the colonies sacrifice liberties for wartime security.¹⁶³ While construing these recommendations

¹⁶² See, for instance, *Ibid.*, 1:192-193.

¹⁶³ See *Ibid.*, 2:91; *Ibid.*, 1:213.

broadly by perceiving them as orders would be a mistake, when superimposed on the background of the limited colonial instructions, Congress clearly was still organized for limited, temporary purposes and did not have either the authority or the power to bind the colonies. To the extent that Congressional resolutions were binding, the colonies bound themselves—and their resolutions were generally concentrated in the area of war and foreign relations, rather than internal governance.

Third, the colonies specifically asked for the guidance of Congress on a number of issues, including ones of supreme importance, like the erection of new state governments capably equipped to prosecute the war effort effectually during this period of hostilities with Britain.¹⁶⁴ That Congress concerned themselves with colonial governance, then, should not be surprising, nor should it be indicative of governmental authority—especially since, in each case, they worded it as a recommendation. As the war progressed, and the prospect for reconciliation vanished, Congress actually felt obligated to recommend to *all* the colonies that they erect new governments that would not be influenced by Britain and were fit to the circumstances of the individual colonies, rather than to the needs of the British empire.¹⁶⁵ This was an extremely radical recommendation; moderates in Congress likened this recommendation to a declaration of independence from Britain, since the erection of independent governments seemed to indicate a clear intention to separate, rather than reconcile. However, as radical as the measure was, the war had substantially deepened in the two years since the First Congress met. Congress had launched an invasion of Canada that, by the accounts given by members of Congress in their correspondence, had all but failed by May 1776,

¹⁶⁴ *Ibid.*, 1:231.

¹⁶⁵ *Ibid.*, 2:166.

when they issued the resolution. In addition, the grievances against Britain had continued to grow, as Britain's harsh conduct in the war angered many colonists and made them more staunchly patriotic, or even converted them from loyalists to patriots. Therefore, although one of the enduring themes of congressional resolutions through the first half of 1776 was that they repeatedly denied that the colonies were aiming at independence, once they recommended to the colonies that they form their own state governments in May of 1776, the tide had turned toward independence, and many in Congress became less fearful of discussing independence.

Through the first third of 1776, members of Congress made sure not to act in ways that would suggest the King did not possess sovereignty. They recognized he had some superintending authority, but Congress denied it was an unlimited sovereign authority. They continually affirmed that they were still his subjects, even though the colonists were simultaneously asserting that ultimate sovereignty resided in the people. Congress was also cagey about its own authority. To have created a national government without the permission of the Crown or Parliament might have been interpreted as a *de facto* declaration of independence. By its actions, Congress was not trying to give this impression. Delegates must have recognized that what they were doing was extralegal and extra constitutional, and their actions reflect caution against stepping out too far. Members of Congress, like Edmund Pendleton, continually dispelled notions that the dispute was about America's independence, rather than Parliament's claim to regulate the trade of the colonies without their consent, talking about restoring "a Constitutional Connection" with Britain, which included consenting to regulation of trade enacted for the common good, as well as the Navigation Acts up to

1763. Pendleton thought that as long as Britain monopolized America's trade, this was enough compensation to Britain to contribute toward the expense of defending the empire.¹⁶⁶ Many in Britain had created a campaign of misinformation about the colonists' grand designs for independence, which the colonists had to continually rebut so they didn't look bad. This situation in Britain was very concerning to Congress, especially when they received reports from Americans living in Britain, such as Patience Wright, that suggested there were many in Britain who believed that Americans had forfeited their charter because of their unity in relieving Boston, and instead deserved a charter like the Quebec Act of 1774. The Quebec Act was seen by many Americans as a sign of things to come; a new form of colonial administration which would eviscerate the colonial assemblies and end independent, internal colonial governance, so this rumor was an unpleasant thought.¹⁶⁷

The most visible effect the war was having on American thought, viewed through a Congressional lens, was that, on a day to day basis, their lofty ideals gave way to concerns about self-preservation. To be sure, ideals would still play important roles throughout the Congress (and arguably provided the strongest legacy of the Continental Congresses), but this was a very small wave in a sea of practical discussion until May 1776, when Congress began discussing the erection of new state governments, independence, confederation, and diplomatic relations with the world. With the Declaration of Independence, Congress made a statement that, among other things, the

¹⁶⁶ Edmund Pendleton, Proposed Resolutions, May 24-26?, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:402-406.

¹⁶⁷ Samuel Ward to Henry Ward, May 26, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:410-411; Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:411n2.

American synthesis of natural law and British constitutionalism was there to stay, and was the unique feature of American thought.

One of the first orders of business of the Second Continental Congress was reading aloud a circular from American diplomats to Britain that detailed the results of the First Continental Congress's efforts to secure redress of American grievances.¹⁶⁸ Their efforts were a failure, as Parliament confirmed its intent to enforce existing laws on the colonists, refused to withdraw troops from Boston, and ordered a sizable number of troops to set off for America.¹⁶⁹ Next they read a letter from the Provincial Congress of Massachusetts Bay, a number of pertinent resolutions enacted by the Congress, and other documents of importance to the Congress. In the letter from the Massachusetts Congress, they argued that because of the bloodlust of the British army, they themselves must raise an army, and had already passed a resolve for 13,600 men. This act was done without the direction of Congress, and they noted that other colonies (New Hampshire, Rhode Island, and Connecticut) were considering similar propositions to raise an army. The letter then called for the Continental Congress to raise an army, as well as to lend legitimacy to the securities just issued by the colony of Massachusetts, with which they hoped to borrow one hundred thousand pounds in coined gold and silver at six per cent interest.¹⁷⁰ This set the stage for Congress to create the Continental Army and establish a treasury to pay for Continental expenses.

¹⁶⁸ *Journals*, 1:79-70. Those American diplomats were William Bollan, Benjamin Franklin, and Arthur Lee. According to the letter, Congress's petition to the King, after the King laid it before Parliament, was indiscriminately placed among a variety of other papers coming from America and not given the due weight and immediacy they felt the petition deserved.

¹⁶⁹ *Ibid.*, 1:79-80.

¹⁷⁰ *Ibid.*, 1:81-83.

Undoubtedly, these events played monumental importance in setting the tone for the Second Congress, as the failure of Britain to take *any* step toward reconciliation with the colonies made their efforts at moderation a total failure. Congress had put the burden of taking a first step on Britain, and both Parliament and the King did nothing of the sort. Congress was now more comfortable taking a strong defensive posture toward Britain at a trans-colonial level, which in the last Congress was almost unthinkable, though the issue had been brought into discussion from time to time by radicals like Richard Henry Lee. With both Britain's refusal to act, and many states taking the defensive initiatives themselves, Congress was compelled to follow suit.

These actions did not yet entirely extinguish Congressmen's desire and belief of reconciliation, however. It would take another year for Congress to be ground down by Britain's stonewalling and prosecution of the war before they could seriously consider independence. For many the hopes were dim, but they still thought it possible that a change in the Ministry, toward members more disposed to reconciliation, would bring about peace soon, as Joseph Hewes did. In a letter to a London Mercantile Firm, Hewes expressed this sentiment, in addition to repeating that the colonists were loyal to the king, earnestly disavowing any motives for independence, let alone revolution. As "loyal subjects" to the king, they would still "sacrifice [their] lives, and willingly launch out every shilling of [their] property" in defense of "crown and dignity."¹⁷¹ Richard Henry Lee also expected Parliamentary resolve to unravel in Britain, with the recent failure of the

¹⁷¹ Joseph Hewes and Robert Smith to a London Mercantile Firm, Edington, July 31, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:685.

ministerial schemes to undermine the colonies, the failure of Canada to help the fight against America, and the unhappiness of the people in Britain with the situation.¹⁷²

Congress was also extremely concerned with making it known to the world that they made every last effort to reconcile, short of giving up their liberties, before they were willing to vie for independence. But this meant that establishing American liberties was their first priority while reconciling with Britain was their second, conditional on the first for most in Congress. Samuel Ward said it was important that America not go for peace except on terms that protected American rights, because “many nations have rose from a State of the most severe civil Wars to the highest Pitch of Glory and Happiness but Slavery never produced one single Good since the Creation.”¹⁷³

Likewise, John Adams wrote that:

Our Consolation must be this, my dear, that Cities may be rebuilt, and a People reduced to Poverty, may acquire fresh Property. But a Constitution of Government once changed from Freedom, can never be restored. Liberty once lost is lost forever. When the People once surrender their share in the Legislature, and their Right of defending the Limitations upon the Government, and of resisting every encroachment upon them, they can never regain it.¹⁷⁴

¹⁷² Richard Henry Lee to George Washington, Philadelphia, September 27, 1775, in Smith, *Letters of Delegates to Congress*, 2:66-67.

¹⁷³ Samuel Ward to Samuel Ward, Jr., Westerly, August 15, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1: 702-703.

¹⁷⁴ John Adams to Abigail Adams, Philadelphia, July 7, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1: 601-2.

They did not want to be seen by the world as rebels or traitors, but freedom-fighters. Members of Congress even held out hopes that the war would end quickly; in May, 1775, Benjamin Franklin wanted to continue with the trade boycott, thinking this would be the source of America's victory, even though fighting had recently broken out.¹⁷⁵ John Adams thought that due to the strength of America's newly-appointed top military officers, by force of arms America would be able to secure a redress of grievances in the near future.¹⁷⁶

While congressional language and actions plainly showed that members took pains to indicate that they were not aiming at independence, the situation would radically shift in May 1776. On May 16, 1775, Congress resolved to consider "the State of *America*," creating a report that was read on May 26th, after which the Congress resolved to be in "a state of Defence" because of the commencement of hostilities against Massachusetts. However, they also expressed their intention to restore harmony with Great Britain at the same time; they did see fit to declare war and independence. Additionally, the Congress resolved that the militia of New York city be armed, trained, and kept in a state of readiness in case the British should invade.¹⁷⁷

Early in 1775, Congress was frantic that the measures taken by the colonists stayed defensive in nature, and did not turn into acts of conquest. On May 17th,

¹⁷⁵ Benjamin Franklin to Humphry Marshall, May 23, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:395; Edmund Pendleton to William Woodford. May 30, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1: 420-421; John Hancock to the New York Provincial Congress, June 1, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:429.

¹⁷⁶ John Adams to Abigail Adams, Philadelphia, June 18, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:503-504.

¹⁷⁷ *Journals*, 1:106.

Congress resolved to cease trade with Quebec, Nova Scotia, Newfoundland, Georgia (excepting St. John's), and Florida. The next day, they read a letter concerning the taking of Fort Ticonderoga, after which they made a resolution advising the Committees of New York and Albany to move the cannon and other stores that were stored there by the British to Lake George, siding with the detachment of men from Massachusetts and Connecticut who, Congress said, found out that Britain had planned to invade the colonies from Quebec and took the fort out of regard for their safety. Significantly, they advised the colonists to take an inventory of the confiscated goods because Congress expected that they would be *returned* once they made peace with Britain and again subjected themselves to British rule.¹⁷⁸ While they made no plans for paying for the tea the Bostonians dumped into Boston Harbor, they did provide for returning other confiscated goods should Britain change its tune. On May 29, a Letter to the Inhabitants of Canada was approved, which admonished Canadians to refuse to take Britain's side in the war against America, for Canadians were also experiencing similar injustices against them inflicted by Britain. They also admonished that Canada should not hold the taking of Ticonderoga and Crown Point as acts of aggression against Canada, but as acts "dictated by the great Law of Self-preservation." This made for a very delicate situation. On June 1, Congress resolved "That no Expedition or Incursion ought to be undertaken or made, by any Colony or Body of Colonists, against or into *Canada*." Congress considered multiple times an "Expedition to Montreal," i.e., an invasion of Canada, in an attempt to forestall British attempts on Ticonderoga and Crown Point, but the resolution was defeated for unknown reasons on June 1, though one could assume

¹⁷⁸ Ibid., 1:102-103.

it was because the only goal of the colonies at that point was defense not conquest.¹⁷⁹ The policy regarding Canada would be reversed in short order within the frame of a month, when Congress advised General Schuyler to use his judgment whether or not to invade Canada, thus keeping a public appearance, for the time being, of not being aggressive, while secretly favoring it. Silas Deane, and many other members of Congress, thought capturing Canada was crucially important in order to “destroy the present administration,” which they thought the surest way to bring redress.¹⁸⁰ Members of Congress continually reaffirmed its importance, which only made it more devastating when they thought the invasion had failed in May, 1776, eliminating one of their last hopes for redress, and making independence practically sound.¹⁸¹

On July 6, 1775, Congress agreed to a Declaration of Causes and Necessity of their taking up Arms, authored mainly by Thomas Jefferson and John Dickinson, one of the most important resolutions to come out of Congress that year. In it, Congress rejected an absolute authority of Parliament over any group of people, let alone the American colonies as British subjects, even calling this “enslaving....by violence.” Nevertheless, Congress continued to admonish that taking up arms was only a defensive measure, and one that they would cease once their burdens were relieved.

They still proclaimed that they had no intention to dissolve their Union with Great

¹⁷⁹ *Journals*, 1:111-112, 189-190; Thomas Johnson, Jr., to John Dickinson, June 1, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:430; Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:430n1.

¹⁸⁰ Lee to Washington, Philadelphia, June 29, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:558; Silas Deane to Philip Schuyler, Cambridge Head Quarters, August 20, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:704-705.

¹⁸¹ John Hancock to Philip Schuyler, September 20, 1775, in Smith, *Letters of Delegates to Congress*, 2:32-33; Richard Smith's Diary, September 20, 1775, in Smith, *Letters of Delegates to Congress*, 2:38-39.

Britain.¹⁸² The document was a polar reversal of the claims made by General Gage in his own proclamation. In the Declaration, the colonists described the “inordinate passion for power” of the British legislature, their possession of “an intemperate rage for unlimited domination,” and their contravention of the British Constitution. They said that the British were taxing them without their consent; exercising admiralty jurisdiction unjustifiably in the colonies; quartering soldiers in colonists’ homes during peacetime; depriving them of their right to trial by jury; suspended the legislature of a colony; and prohibited the commerce from flowing to Boston, among other acts of “despotism.” Indeed, the Declaration even mentions that to list these injuries is superfluous, given that the Parliament proclaimed in the Declaratory Act that it had the right to “bind us [the colonies] IN ALL CASES WHATSOEVER,” which was a claim for unlimited power. Nonetheless, the express purpose of the Declaration was to end the war and reconcile with Great Britain.¹⁸³ John Adams thought the Declaration so forceful that “If Lord North dont [sic] compliment every Mothers Son of us, with a Bill of Attainder, in Exchange for it, I shall think it owing to Fear,” for the Declaration was more radical than anything Henry or Hancock had done to that point.¹⁸⁴

By August Jefferson thought that because of the outbreak of war at Lexington and Concord, the First Congress’s reasonable terms of reconciliation, where they gave up the right to regulate trade and all acts of Parliament before 1763, would not be

¹⁸² *Journals*, 1:142-3, 148.

¹⁸³ Worthington C. Ford et al., eds., *Journals of Continental Congress, 1774-1779*, 34 vols (Washington DC: Government Printing Office, 1904-37), 2:140-157; Cogliano, *Revolutionary America*, 81-85.

¹⁸⁴ John Adams to William Tudor, July 6, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:587.

accepted today; thus, bloodshed had changed the tune of Congress and made them more resolute in their beliefs and the American cause.¹⁸⁵

They subsequently wrote and sent a petition to the king on July 8th. In this Olive Branch Petition, they expressed the same view much more humbly, without questioning the sovereign authority of His Majesty, just as they did in the last Congress. They appealed directly to the King, begging him to intervene, and beseeching him to reestablish peace and harmony between the colonies and His Majesty's government¹⁸⁶ Congress knew that the King had the ability to invoke his prerogative, which had the advantage of superseding Parliamentary authority. Additionally, Congress recognized that most colonial charters, excepting Georgia, came from kingly authority, not Parliament, meaning Parliament had no authority to regulate them. Though it was stricken from the final petition, John Jay's draft located "God and the Constitution" as the source of their liberties and rights, affirming both natural law and constitutionalism. Twice in the petition Jay indicated that the colonies were not aiming at independence, suggesting that to restore mutual harmony, it was absolutely necessary to stop the fighting and suspend the Parliamentary and ministerial measures that precipitated the conflict.¹⁸⁷ As Dickinson wrote, the petition to the king "make[s] no *Claim*, and mention[s] no *Right*," in order for the colonies to prostrate themselves fully before the

¹⁸⁵ Thomas Jefferson to John Randolph, Monticello, August 25, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:707.

¹⁸⁶ Ford et al., *Journals of Continental Congress, 1774-1779*, 2:149, 158-161; Cogliano, *Revolutionary America*, 85-87; *Journals*, 1:145.

¹⁸⁷ John Jay, Draft Petition to the King, June 3-19?, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:440-441.

king in the hopes this would help end the bloodshed.¹⁸⁸ Following this, they sent a letter to the inhabitants of Great Britain, attempting to arouse their indignation more than the last address did, which asserted the colonists' rights and the wrongs they sustained. The letter attempted to discount the rumors that America was aiming at independence, add to the list of injuries they had received, and identify the cause of America with the spirit and history of British liberty.¹⁸⁹ Richard Henry Lee, in his draft address, talked about how the purported right of Parliament to tax America to raise revenue was "contrary to the clearest principles of justice and the English constitution....[without] consent," speaking of "the glorious constitution of England, that work of Ages."¹⁹⁰

King George, however, had lost patience with the colonies. On August 23, 1775, the king declared the colonies in a state of rebellion, "declaring that....all Our Officers, Civil and Military, are obliged to exert their utmost endeavors to suppress such Rebellion, and to bring the Traitors to Justice."¹⁹¹ By Spring of 1776, many members of Congress had lost hope of reconciliation with Britain, feeling that it was now either victory or total subjection. Congress continued to maintain publicly its desire for reconciliation, but the repeated failures of petitions, and the continued accumulation of novel grievances, dashed many hopes. The King had answered negatively to Congress's petitions, reaffirming his support in Parliament and their measures, arguing that force would continue to be necessary as long as the colonists continued to rebel

¹⁸⁸ John Dickinson to Arthur Lee, Fairhill, July 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:688.

¹⁸⁹ *Journals of Congress*, 1:152-5.

¹⁹⁰ Richard Henry Lee, Draft Address to the People of Britain, June 27? 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:548-551.

¹⁹¹ "By the King, A Proclamation, For suppressing Rebellion and Sedition" (London: Charles Eyre and William Straban, 1775) in Cogliano, *Revolutionary America*, 88-89.

rather than submit.¹⁹² The House of Lords' denial of the Earl of Chatham's plan for reconciliation, developed in collaboration with Benjamin Franklin and introduced and defeated in the House on February 1, 1775, also influenced Congress's understanding of the resolve of Parliament against giving ground to the Americans; plus, motions by Edmund Burke and David Hartley on moving toward reconciliation with colonies were defeated.¹⁹³

A number of incidents made Congress feel the need to prove British injustice and thereby justify their actions to the world. One grievance Britain gave to the colonies was the prohibition of fishing the the North Atlantic for the New England colonies through the New England Restraining Act of March 30, 1775.¹⁹⁴ Another grievance was "The Perfidy of General Gage in breaking his Capitulation with Boston and detaining their Effects," as Benjamin Franklin phrased it in a letter to Jonathan Shipley. Gage had promised Bostonians the right to leave with their effects and then confiscated their effects as they tried to leave. A third involved the burning of 400 houses in Charlestown by British troops, at the time of the Battle of Bunker Hill, angered many members of Congress, including Benjamin Franklin, who said "In all our Wars, from our first settlement in America, to the present time, we never received so much damage from the Indian Savages as in this one day from these." His point was that continued barbarity by the

¹⁹² Eliphalet Dyer to Joseph Trumbull, Philadelphia June 8, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:459; Eliphalet Dyer to Joseph Trumbull, Philadelphia, September 15, 1775, in Smith, *Letters of Delegates to Congress*, 2:14-15; Samuel Ward to George Washington, Philadelphia, September 17, 1775, in Smith, *Letters of Delegates to Congress*, 2:26-27.

¹⁹³ Benjamin Franklin, Proposed Resolutions, May ? 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:1: 425-426; similar motions by Edmund Burke and David Hartley on moving toward reconciliation with the colonies were defeated.

¹⁹⁴ North Carolina Delegates to the North Carolina Committees, Philadelphia, June 19, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:511-515.

British would induce the Americans to fight more vigorously, rather than convince them to reconcile, including the barbarity of enlisting the Natives to fight the colonists.¹⁹⁵ By July 7, 1775, then, Franklin had given up hope of reconciliation, saying that this petition to the king would likely be Congress' last.¹⁹⁶

Congress also acted with a direct, authoritative capacity when it would authorize the payment of debts, emit Continental Currency, and direct the Continental army, members of its administration in positions that it had created. Congress's vigorous role in directing the army and administrative governance must not be confused with government, and its resolutions confused with binding edicts, since it wasn't exercising authority unique to a national, governmental body. To the extent that Congressional resolutions were binding, the colonies bound themselves. These concerns gradually took over the concerns of Congress, with each decision becoming less deliberate, and the volume of resolutions growing in number.

The Second Congress began its systematic efforts to raise an army in defense of the colonies early, which they hoped could defend the thirteen colonies from the British, while trying to reconcile with Britain, even if this hope grew fainter with each passing day. This would include a comprehensive military code, specific instructions to generals, payment of soldiers and contractors, ensuring the supply of provisions like beef and pork,¹⁹⁷ outfitting ships,¹⁹⁸ and more. On June 14, 1775, less than two months after

¹⁹⁵ John Adams to James Warren, Philadelphia June 7, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:452; Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:453n1.

¹⁹⁶ Benjamin Franklin to Jonathan Shipley, Philadelphia, July 7, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:604-5.

¹⁹⁷ *Journals*, 1:210.

Lexington and Concord, Congress agreed to a number of resolutions concerning military organization, pay, and instructions. These included the raising of companies of riflemen, the organization of the companies, year-long enlistments, and instructions that each soldier had to have their own weapon and uniform. The next day, Congress resolved to appoint a General of the Continental Army, who would be paid 500 dollars per month, choosing George Washington for the generalship, which he accepted. They likewise resolved to appoint a number of other positions in the Continental Army, including Brigadiers General, Quartermaster General, and Chief Engineer, and then set their pay.¹⁹⁹ In drafting their Commission to General Washington, they addressed the head of the letter, “In Congress. The Delegates of the United Colonies of New Hampshire, Massachusets-Bay [sic], Rhode Island,” and so on, individually. In the commission, they did specify that under the commission, Washington was “vested with full Power and Authority to act as you shall think for the good and welfare of the Service,” but he was also thereby “enjoin[ed] and require[d]” by Congress “to be careful in executing the great Trust reposed in [him], by causing strict Discipline and Order to be observed in the Army, and that the Soldiers be duly exercised, and provided with all convenient Necessaries.”²⁰⁰

On June 30, 1775, they prescribed the rules and regulations of the Continental Army.²⁰¹ Late in November, Congress agreed to a number of rules and regulations of the Continental Navy, which included punishing those who “curse or blaspheme the name of God,” by making them “wear a wooden collar, or some other shameful badge

¹⁹⁸ Ibid., 1:219.

¹⁹⁹ Ibid., 1:118-121.

²⁰⁰ Ibid., 1:121-122.

²⁰¹ Ibid., 1:128-139.

of distinction for so long time as he shall judge proper.”²⁰² Earlier in the month, Congress provided that all soldiers leaving the army had to leave behind their working firearms, for which they would compensate them. They also recommended that the New England legislatures begin impressing carriages, horses, and other means of transportation to aid in the march of the army.²⁰³ On June 22, the Congress resolved to furnish all troops with “Camp Equipage” and blankets and pay for them out of the “Continental Expence,” at which point they resolved to emit Bills of Credit for up to two million dollars to pay for war expenses. They also resolved “That the Twelve Confederated Colonies be pledged for the redemption of the Bills of Credit,” which would be titled Continental Currency.²⁰⁴ The issue of the devaluation of the currency became a major issue throughout the war, as many people saw a risk in accepting continental currency that they didn’t see with accepting milled gold or silver coinage. In May of 1776, the Commissioners of Canada noted in a letter to John Hancock that Canadians had ceased accepting the Continental altogether.²⁰⁵

Congress would act directly when it appointed ambassadors to act on behalf of the colonies assembled in Congress when engaging with other nations. This role would increase after declaring independence in 1776, but it was also necessary for Congress to manage their relations with the Indian tribes even earlier. Congress did not want to enlist the Natives themselves, which would be a sign to Britain that they weren’t

²⁰² *Ibid.*, 1:262-263.

²⁰³ *Ibid.*, 1:233-5, 279.

²⁰⁴ *Ibid.*, 1:125-6.

²⁰⁵ Commissioners of Canada to John Hancock, Montreal, May 17, 1776, in Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789*. Vol. IV: May 17 1776-August 15 1776 (Washington: Library of Congress, 1976-1979), 22-23.

desirous of reconciliation, as James Duane noted.²⁰⁶ On July 12, 1775, they appointed Commissioners of Indian Affairs that would act on behalf of the colonies united in Congress, giving them “Power to take to their Assistance Gentlemen of Influence among the *Indians* in whom they can confide, and to appoint Agents, residing near or among the *Indians*, to watch the Conduct of the Superintendants and their Emissaries.”²⁰⁷ This was Congress’ ambassadorial role, a role to coordinate unified actions among the thirteen colonies. On January 28th, 1776, Congress regulated trade with the Indians.²⁰⁸ Britain would repeatedly provoke or enlist the Natives to attack the colonists, bring about the ire of Congress; as Benjamin Franklin said, the biggest grievance through September, 1775 was the biggest grievance, according to Franklin, was “The Exciting the Savages to fall upon our innocent Outsettlers.”²⁰⁹

Both the incitement of Natives, and the recruitment by Britain of mercenary fighters of various nationalities provoked much hostility and resentment among colonists and Congressmen alike, who were angry Britain would pay mercenaries to fight them instead of British troops. They could at least hope that British troops had reservations about dealing savagely with Americans, whereas mercenaries they thought would care less.²¹⁰

²⁰⁶ James Duane to Robert Livingston, Philadelphia June 7, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:453-454.

²⁰⁷ *Journals of Congress*, 1:161-2.

²⁰⁸ *Ibid.*, 2:41-2.

²⁰⁹ Franklin to Jonathan Shipley, Philadelphia, September 13, 1775, in Smith, *Letters of Delegates to Congress*, 2:6-7.

²¹⁰ Richard Henry Lee to Landon Carter, Philadelphia, June 2, 1776 in Smith, *Letters of Delegates to Congress*, 4:117-118; George Wythe, Draft Address to Foreign Mercenaries, May ?, 1776, in Smith, *Letters of Delegates to Congress*, 4:110-111.

Just as Congress found the gunpowder stores and other supplies of war inadequate to its purposes and acted to correct this deficiency, it also acted in other areas to serve its needs. On July 26th, 1775, Congress resolved to appoint a Postmaster General, who would help ensure the communications of and among the colonies, including a specifically enumerated recommendation to the Postmaster General—elected as Benjamin Franklin—“to establish a weekly Post to *South Carolina*.” The next day, Congress established a hospital for the army.²¹¹ These and other necessary incidents of war Congress made efforts to provide, but as long as Congress was hoping to reconcile, its abilities to do this would remain limited. Congress did not want to overspend in these areas and then run out of resources to actually fight the war, nor did it want to overspend and then find the war ended, with all the resources going to waste. It needed the certainty of a prolonged war, via the pursuit of independence, before it could draw upon an enlarged source of funding.

Soon after, Congress established Treasurers of the United Colonies, choosing Michael Hillegas and George Clymer as the treasurers. Each colony would choose a treasurer for their own colony to handle requisitions, or their quotal share of the expenses of the Congress. The quotal share was determined in Congress, with subsequent shares to be determined by Congress according to population.²¹² Congress made no provision to tax the colonies itself, as each colony was expected to lay and levy taxes itself. On August 1st, 1775, they began doling out sums to the Paymaster General from the Continental treasury to pay for the expenses of the Continental

²¹¹ *Journals*, 1:177-9.

²¹² *Ibid.*, 1:186-7.

Army.²¹³ The power to tax, or to demand money from citizens and enforce the demand, was clearly not within the powers of Congress—a power absolutely central to sovereign governments. Without the power to tax, Congress had to rely on voluntary contributions from the colonies and a willingness to accept Continental Currency as legal tender. After being informed that some citizens of Philadelphia refused to accept Continental Currency in exchange for goods or services,²¹⁴ Congress resolved that anyone who shall be convicted of refusing to accept Continental Currency by a Committee of a colony should be deemed an enemy of America and boycotted from trade.²¹⁵ Some members of Congress thought not only should they be deemed enemies of America, but that they should be treated like one legally. Taking stock of an issue that had been plaguing the American cause as of late, John Adams wrote that the depreciation of the Continental Currency was affecting the ability of the army to procure goods at a stable price. “[Y]ou must not Say, that a milled Dollar is better than a Paper Dollar. It is an offence against the Public, which ought to be punished, and the criminality of it must be ascertained, and punished, to give or take a farthing more for Silver than Paper.” Nevertheless, Adams thought they needed to stop emitting more paper money, and instead borrow money for notes on interest, which would attend its own difficulties, including the likelihood of high interest rates.²¹⁶

As the war progressed, Congress became very concerned with the possibility of spies and other “traitors” doing damage to their cause. On October 14th, 1775, Congress appointed a new director general and chief physician of the hospital in

²¹³ *Ibid.*, 1:192.

²¹⁴ *Ibid.*, 1:256-7

²¹⁵ *Ibid.*, 2:21.

²¹⁶ John Adams to William Gordon, Philadelphia, June 23, 1776 in Smith, *Letters of Delegates to Congress*, 4:294-295.

Massachusetts, replacing Dr. Benjamin Church, who had been appointed by the Congress in July. Church had been “taken into custody for holding a correspondence with the enemy,”²¹⁷ and was ultimately convicted of communicating with the enemy by the Massachusetts Provincial Congress, rather than by agents of the Continental Congress.²¹⁸ Congress resolved, on November 7:

That Dr. Church be close confined in some secure goal [jail] in the colony of Connecticut, without use of pen, ink, and paper, and that no person be allowed to converse with him, except in the presence and hearing of a magistrate of the town, or the sheriff of the county where he is confined, and in the English language, until farther [sic] orders from this or a future Congress.²¹⁹

During the Revolution, Congress did not have a national judicial power to prosecute criminals for ordinary crimes as they do today. Congress did provide for military tribunals and courts-martial to try individuals for war-related crimes,²²⁰ but these courts were necessary and proper incidents of fighting the war. Once they had raised an army to defend the colonies, such tribunals and courts-martial would naturally follow on its heels. Just as with hospitals and a postal service, setting up a special court system would be substantial work and effort, hence they tended to rely on the colonial courts to punish offenders, or summary judgments of military personnel, in order to achieve their ends without having to

²¹⁷ *Journals*, 1:220.

²¹⁸ David James Kiracofe, “Dr. Benjamin Church and the Dilemma of Treason in Revolutionary Massachusetts” *New England Quarterly* 70, no. 3 (September 1997): 457-459.

²¹⁹ *Journals*, 1:238.

²²⁰ Louis Fisher, *Military Tribunals: Historical Patterns and Lessons*, CRS Report No. RL32458. (Washington, DC: Congressional Research Service, 2011).
<http://www.loufisher.org/docs/mt/RL32458.pdf>.

set up a national bureaucracy, which would again give the appearance of aiming at independence, which was still undesirable.

Late in 1775, as Congress began ramping up the navy, Congress started setting up rules surrounding privateering. In November, Congress resolved that all ships engaged in making war against the colonies or transporting goods for the British would be seized and considered forfeited. They also stipulated that any ship acting as a prize vessel could only do so after authorization from Congress or one of the Colonies. They also recommended that the colonial legislatures establish prize courts to deal with captures, and in all cases those who are prosecuted in these prize courts have appeal to Congress.²²¹ These resolutions, as we'll see later, became the subject of some controversy, including a Supreme Court case that was decided in 1795, *Penhallow et al. v. Doane's Administrators*. Given that they had created an army and navy, it was reasonable that they established a process for dealing with prizes and captures,²²² but it is perhaps presumptuous that they gave them a role as an appellate court in state prize and capture cases. The Congress issued letters of marque and reprisal, signed by the president of the Congress, which would be doled out by the councils and assemblies of the colonies.²²³

Early on, with military engagement less frequent, colonies frequently petitioned Congress for direction on how to preserve the safety of their colony, while preventing all-out war with Britain. After considering an application from New York as to what they should do if British troops should arrive, Congress recommended that New York act defensively in order to preserve their safety and security, including "defend[ing]

²²¹ *Journals*, 1:259-60.

²²² *Ibid.*, 2:107-8.

²²³ *Ibid.*, 2:118.

themselves and their Property...[to] repel Force by Force” if the troops commenced hostilities.²²⁴ Having heard from Colonel Arnold that four hundred men were preparing to retake Crown Point and Ticonderoga, Congress requested that the governor of Connecticut, Jonathan Trumbull, send reinforcements to defend the Forts until further directions should be made from Congress. They also ordered the President of the Congress, in his letter to Trumbull, to express that it was the desire of Congress to have the Governor appoint someone commander of the men at the Forts.²²⁵ We can already see early in 1775 the pattern of recommending, rather than ordering direction of the war effort to governors, colonial assemblies, and committees.

Given how quickly hostilities had arisen and begun to appear with greater frequency, Congress had to recognize that a war had begun. On June 2, Congress resolved that all ties to the British Army and Navy be cut off, resolving that no one in America should give any orders to British soldiers; that no one should supply the British military with goods; and that no one should supply any British ship carrying military men or supplies should be aided or supplied with provisions. Through this provision, Congress essentially extended the parameters of their boycott of things British to include the British military. This was a substantial, but necessary step, for the colonies could not continue relations with a military that was actively fighting them.

The provision of crucial supplies to the Continental army and colonial militias took on great importance from 1775 to 1776, continuing throughout the war. On June 10, Congress made a number of recommendations to its member colonies concerning Saltpeter and Brimstone, advising them to transmit all current supplies to the Provincial

²²⁴ *Ibid.*, 2:101-102.

²²⁵ *Ibid.*, 2:111.

Conventions in New York and Pennsylvania, as well as to ready the powder mills throughout the colonies for the manufacture of gun powder “for the use of the Continent.” All Saltpeter and brimstone collected in the pursuance of these objects would “be paid for out of the Continental Fund.”²²⁶ Throughout the succeeding years, Congress would repeatedly provide for the greater production or supply of gunpowder to combat the shortages they continually faced. There was only one gunpowder mill in the colonies as of May 1775, at the Frankford Mill in Pennsylvania.²²⁷ Congress made several inducements to encourage the production and procurement of saltpeter and brimstone, including adjusting the rules of the Continental Association and appointing a secret committee to import 500 tons of gunpowder.²²⁸ Shortages of crucial materials made it appear more and more necessary for Congress to declare independence and end its trade restrictions so it could open up American ports to the world and supply the colonies with the imports it desperately needed to fight a war. Congress also faced shortages of cloth; on March 21, 1776, they recommended to the colonies that they promote the cultivation and procurement of hemp, flax, cotton, and wool.²²⁹ By May 1776, John Adams could be heard complaining of no fewer than twelve items that the colonies were in desperate need of to fight the war: “Salt Petre, Sulphur, Flynts[sic], Lead, Cannon, Mortars, Ball, Shells, Musquetts[sic], and Powder,” as well as bayonets

²²⁶ *Ibid.*, 1:116.

²²⁷ David L. Salay, “The Production of Gunpowder in Pennsylvania During the American Revolution,” *The Pennsylvania Magazine of History and Biography* 99, no. 4 (October 1975): 422 (422-42).

²²⁸ Library of Congress, *Journals of the Continental Congress*, September 18, 1775. [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(jc00282\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc00282))) (accessed February 20, 2016).

²²⁹ *Journals*, 2:103.

and iron/iron ore,²³⁰ were all complained of by members of Congress. This shortage of so many necessities was one of a number of influences that made independence more prudent for Congress, when it hadn't been before, because of the transition from sporadic fighting to continual fighting.

Throughout the war, Congress would use recommendations to direct the troops of colonial militias and ensure the defense of the colonies. On June 19th, Congress requested the Governor of Connecticut and the Colony of Rhode Island to send all military men raised in the colony to combine forces with the troops in Boston.²³¹ On June 23rd, they recommended that New York include in its army "those called Green Mountain Boys," a militia group, to help defend the American colonies. On September 20th, Congress resolved that the President of Congress should direct New York to send forward the troops under General Schuyler's command.²³² Another time, Congress directed New York to construct defenses along the Hudson River and obstruct British navigation of the river.²³³ On July 18th, it was recommended that all colonists between the ages of 16 and 50 form themselves into militia companies to help defend America against British invasion, each of whom would be furnished with a musket. They also followed this with a host of recommendations to the colonies to help ensure their safety and prevent invasion. These resolutions explicitly provided for keeping already-formed militias under the direction of the body that raised them.²³⁴ On July 19th, they then

²³⁰ John Adams to Cotton Tufts, Philadelphia, June 30, 1776 in Smith, *Letters of Delegates to Congress*, 4:339-340; John Hancock to George Washington, Philadelphia, July 6, 1776 in Smith, *Letters of Delegates to Congress*, 4:397.

²³¹ *Journals*, 1:123-126.

²³² *Ibid.*, 1:203.

²³³ *Ibid.*, 1:214-5.

²³⁴ *Ibid.*, 1:170-1. The Congress did not require those whose religions forbade them from bearing to serve in the militia.

requested that the colonies fill out the ranks of the militias being raised in their colonies.²³⁵ Congress consistently implored the colonies to do things, including raise companies and regiments of soldiers, but could do nothing more than make recommendations that they hoped would be followed by the colonies in good faith. Indeed, on October 15, 1775, the Congress “earnestly recommended....all persons, who are possessed of the salt-petre lately removed from Turtle Bay....forthwith to send the same to the president of the Convention on New York, to be manufactured into gunpowder for the use of the Continental army.”²³⁶ If it was of vital importance to the war effort that saltpeter be collected so it could be manufactured into gunpowder for the army, Congress would be commanding these things, and enforcing these provisions on the colonists, instead of earnestly recommending them. This underscored the lack of Congressional authority over the people of the colonies. At this point, Congress almost entirely relied on the local militias to defend the colonies, rather than a standing army like Britain, which also comported with their criticism of Britain for keeping up a standing army that appeared in the Declaration of Independence.

Sometimes, Congressional recommendations would involve very specific requests concerning the internal policing of the colony. On October 6, 1775, Congress advised the colonial assemblies or other bodies “That it be recommended....to arrest and secure every person in their respective colonies, whose going at large may in their opinion may in their opinion endanger the safety of the colony, or the liberties of America [emphasis added].”²³⁷ If Congress had had the authority to command the colonies and bind them, then by this provision they would be claiming a nearly unlimited

²³⁵ Ibid., 1:172.

²³⁶ Ibid., 1:221.

²³⁷ Ibid., 1:213.

extent of authority—the ability to arrest someone for their political affiliation, or lack of vigor in one’s affiliation with the right cause. By such a resolution they were making an explicit recommendation to the colonies and thus giving their imprimatur to any colony that did this, rather than make a claim for the kind of expansive authority they were castigating Great Britain for claiming and exercising without the colonists’ consent. Later, on January 2, 1776, Congress, feeling a need to combat the efforts of those people who endeavored to curtail American liberty by joining with the British oppressor to secure rewards or status from the administration, recommended that colonial committees disarm enemies to American liberty or take them into custody, expanding on their October 6th resolution.²³⁸ On March 14, 1776, the Congress again recommended to the assemblies to disarm all those who were “notoriously disaffected to the cause of America, or who have not associated, and shall refuse to associate to defend by arms these United Colonies” and transfer the weapons to the Continental army.²³⁹ On March 20, 1776, they added the provision that all arms unfit for military service were to held by the committees of safety until Congress directed them to be returned.²⁴⁰

When it came to the Continental Association, the major achievement of the First Continental Congress, Congress’s direct control was still minimal. On November 1, 1775, the Congress resolved to ban the export of produce and livestock from the colonies until March 1, 1776. In doing so, however, they allowed for each colony’s committee of inspection and observation to permit the export of goods under the committee’s direction. This meant that the local committees of inspection, for all

²³⁸ *Ibid.*, 2:4-5.

²³⁹ *Ibid.*, 2:91.

²⁴⁰ *Ibid.*, 2:101.

practical purposes, had full control over the importation and exportation of goods, notwithstanding the provisions of the Continental Association. They also proceeded to ban the export of rice, which had been an exception under the Continental Association agreement.²⁴¹ On April 13, 1776, a minimum price control was set for “Bohea tea” at $\frac{3}{4}$ dollar per pound, with other teas to be regulated at prices determined by the colonies, to prevent traders from taking advantage of the “excessive prices” that might be demanded in a time of scarcity.²⁴² This would seem to be an overstep, unless taken as a supplement to the existing Continental Association. If so, this was only a new guideline for the locally based Continental Association members to carry into effect according to their own conscience.

At times, the rules Congress set for the Continental Army would get them into trouble with the colonies, potentially upsetting the unity Congress was trying to foster. On November 4, 1775, they recommended to the colonial legislatures that they pass a law punishing those who harbored deserters from the army, suggesting fines ranging from thirty to fifty dollars, or a whipping (up to thirty nine lashes) if they could not pay. They also agreed to pay five dollars (plus expenses) to anyone who caught a deserter. Additionally, they provided that the commanding officers of the Continental army take precedence over the officers of provincial forces.²⁴³ This last resolution was certainly a practical one, but this was problematic since it abrogated the authority of the colonial militia’s commanding officers over their men. Hence, on December 7, they made sure to clear up any misgivings about the resolution:

²⁴¹ *Ibid.*, 228-229.

²⁴² *Ibid.*, 2:133.

²⁴³ *Ibid.*, 1:234-5.

Whereas doubts may arise respecting the true intent and construction of a certain resolution of Congress, passed the 4th day of November last, empowering the general, in case the necessity of the service should require it, to call forth the minutemen and militia of the New England colonies.

Resolved, That the said resolution shall not extend or be construed to authorise the general to call forth the said minute men or militia, without having applied to and obtain the consent of those officers, in whom the executive powers of government in those colonies may be vested.²⁴⁴

By this clarification, it was clear that Congress did not intend to overstep their bounds by declaring the Continental Army to be superior in the chain of command by fiat. Congress's direction of colonial militiamen was wholly dependent upon the consent of militia officers or the colonial executive.

Congress would also make direct appeals to the people of the colonies using recommendations. On December 4, 1775, they resolved "That it be and it is hereby recommended to the inhabitants of the colony of Virginia, to resist to the utmost the arbitrary government intended to be established therein, by their governor lord Dunmore."²⁴⁵ Lord Dunmore had, of late, instituted martial law in Virginia, declaring American Revolutionaries as traitors to the Crown and encouraging slaves to revolt against their masters and join the British cause.²⁴⁶ Edmund Pendleton called Dunmore's proclamation of May 6th "Waste Paper, or a mere Subject of Ridicule," which had

²⁴⁴ Ibid., 1:285.

²⁴⁵ Ibid., 1:279.

²⁴⁶ Murray N. Rothbard, *Conceived in Liberty* (Auburn, Alabama: Ludwig von Mises Institute, 2011), 1196-7.

insisted that Virginians oppose Patrick Henry and his followers.²⁴⁷ This tactic, of undermining of patriot opposition through what could be called “underhanded” methods, was controversial in the colonies and played a role in pushing them toward independence—it even became a grievance listed in the Declaration of Independence.²⁴⁸

At times the colonies specifically asked for the guidance of Congress on a number of issues. On each occasion, Congress took this request as an opportunity to give sound recommendations, not as a license to enlarge the bounds of its delegated authority. For instance, because Congress took the lead in establishing the Continental Association, the colonies sought the advice of Congress when they found the initial guidance provided by the Congressional resolutions to be lacking. On September 15, 1775, delegates from Georgia asked Congress what their colony should do with two vessels that had arrived bearing goods from Britain, which they had stored while waiting for a response from their solicitation of Congress for advice. Congress resolved that the Georgia Convention should ask the proprietors if they’d rather have the goods sent back or sold at auction, with any surplus being kept by the Georgia Convention.²⁴⁹ On April 30, 1776, Congress responded to a request made by the committee of inspection of Philadelphia, who sought their advice on the continuance of the price controls on goods

²⁴⁷ Edmund Pendleton to William Woodford. May 30, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:420-421.

²⁴⁸ Historians tend to see a contradiction in the Declaration of Independence, stating all men are created equal, while complaining about Britain inciting insurrection among slaves, thus legitimating slavery. However, it is often forgotten that Jefferson’s original draft contained a lengthy indictment of slavery, and that the complaint about insurrection was meant to indict Britain for their hypocrisy; Britain instituted slavery in the colonies for its own benefit, but wanted them to revolt and kill their masters when it no longer benefited them, or so the colonists’ argument went.

²⁴⁹ *Journals*, 1:201-2.

other than tea, which related to the ninth article of the Continental Association. Congress responded that this article was temporary in nature and only concerned the goods then on hand, which had by then been sold or otherwise disposed of. Therefore, under the current circumstances where trading carried a greater risk, such a price control would be an undue burden, and ought to cease.²⁵⁰

The colonies would also seek the advice of Congress when dealing with certain prisoners captured during the war. On October 28th, Congress resolved, after Pennsylvania asked for direction on the matter, to keep those men who came in on the Rebecca and Francis transport in whatever jails the committee desired, with the men receiving a subsistence out of the Continental Treasury. The men had been sent with instructions from General Gage to attract recruits by offering men “grants of forfeited lands,”²⁵¹ and had been captured by Pennsylvania.

Colonies would even ask for direction on setting up new governments. On June 2nd, 1775, a letter to Congress from Massachusetts was read, which detailed their desire for Congressional guidance on the “taking up and exercising the Powers of civil Government,” and agreeing to submit to any plan the Congress should come up with for them. One week later, Congress resolved that the colonists did not owe obedience to the acts of Parliament that altered the Charter of Massachusetts, nor did they owe obedience to the Governor or Lieutenant Governor who would thereby subvert the true charter, building on their criticism from the First Congress. They then boldly declared the office of Governor and Lieutenant Governor of Massachusetts vacant, advising the Provincial Convention of Massachusetts to have the people choose representatives to

²⁵⁰ Ibid., 2:154-5.

²⁵¹ Ibid., 1:224-226

an assembly or council who could administer the government until the King chose a Governor that agreed to abide by the charter of Massachusetts.²⁵² This bold move represented not an incursion on the American colonists, however, but the British, since these were provincial positions. Still, such a proclamation was still an extremely defiant act for a Congress that, if they got involved in the affairs of a colony, usually stuck to recommendations. Nonetheless, through the early part of 1776, Congress did not take any more radical of a stance on acts of Parliament than it did in the First Congress; Congress named the offending acts on multiple occasions, asked for their repeal, and declared them to be against the British constitution during the First Congress too. The only difference was that Congress was much more deliberate and careful in making those determinations in the First Congress, whereas now it was almost reflexive, and could be done without much ado.

Not only did Congress give advice to Massachusetts' internal government at the colony's request, but they did this for other states too. On November 3, 1775, Congress recommended that the provincial Convention of New Hampshire call a convention of the people to establish a government that could secure their safety, peace, and happiness during the hostilities with Great Britain. They did this because part of the instructions of the delegates asked for the direction of Congress "with respect to a method for our administering justice, and regulating our civil police." Later, they would make the same recommendation to South Carolina, which asked for similar advice on how to govern their colony during hostilities with Britain, and then Virginia.²⁵³

²⁵² *Ibid.*, 1:115.

²⁵³ *Ibid.*, 1:224, 231, 279.

3.3 *Independence & Classical Republicanism*

John Adams first argued for American independence in a July 6, 1775 letter to James Warren, pointing out that the idea that Parliament would turn around and reconcile on account of the resolve of the Americans was farfetched. For the first time, Adams argued that the colonies should “immediately....dissolve all Ministerial Tyrannies, and Custom houses, set up Governments of our own, like that of Connecticut in the Colonies, and confederate together like an indissoluble Band, for mutual defence and open our Ports to all Nations immediately.” Jefferson’s Declaration of the Causes and Necessity of Taking Up Arms had radically shifted his view toward independence, which had been passed earlier that day, though he still thought “the Colonies are not yet ripe for it.”²⁵⁴

John Dickinson was one of the most consistent moderates, even as the debate for independence was all but decided in July of 1776. Dickinson was concerned that the colonists should not prepare for war without continued petitioning, or trying to send agents to negotiate, because he thought it would bring the full brunt of the British army on the colonies faster than it would if they did do those things, regardless of whether Congress’ intention was truly to reconcile. Dickinson used as evidence of their firmness speeches given by General Burgoyne, Captain Harvey, Sir William Meredith, Lord North, and Sir William Mayne, all of whom indicated their willingness to spill American blood and expend British life to preserve the very existence of Britain (showing how grave they thought this American rebellion was to the empire) and pass down the British constitution unscathed to posterity. Dickinson also pointed out that “Almost the whole

²⁵⁴ John Adams to James Warren, Philadelphia, July 6, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:589-90.

landed Interest [was] now against [America],” not to mention much of the masses in Britain. It was only “The Dissenters—parts of the Traders & Manufacturers immediately concerned in our Commerce—and the small Band of independent virtuous Spirits in the Kingdom,” that were on the side of America, which counted for very little. He also said that standing firm as the last Congress did was a miscalculation that did not produce immediate redress as some members of Congress thought it would. The only way to secure redress by standing firm would be if the Ministry were changed, which was unpredictable. As such, it was important to petition the king not while vindicating American rights, but by complaining about the recent system of colonial administration, which was a more defensible claim on which to base their petition. Nothing has shaken Dickinson’s view that only continued dependence on Britain would secure America’s happiness in the foreseeable future. The Crown has always had the power to regulate trade of the colonies, including taxing them; it arose out of the nature of the British constitution and our settlement under Britain’s protection. Nevertheless, Dickinson was wholly against the Intolerable Acts: “For my part my Sentiments & Resolutions are decisive—to endure all the Extremities of even an unsuccessful War rather than sacrifice the Constitution of that generous, glorious Colony [Massachusetts].” The whole world must see that America did everything it could to avoid war, Dickinson thought.²⁵⁵ It was essentially the design of Congress, then, to petition the king a second time, committing fully to the war if there was a negative response but holding if it elicited a

²⁵⁵ John Dickinson, Notes for a Speech in Congress, May 23-25?, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:386-390.

positive response and reconciliation was possible.²⁵⁶ It was strategically important to delay Britain while the time she considered the petition, during which the colonies could get better situated for war.²⁵⁷ Archibald Bullock and William Houstoun of Georgia, to put the matter starkly, were in favor of all out war if petition not answered affirmatively.²⁵⁸

Members of Congress still felt the American colonies had much more to gain from a reconciliation with Britain than they did becoming fully independent and outside of the protection of Britain. As James Duane put it, the fighting should always be for self-preservation, not revenge, conquest, or independence—it was still a “*family quarrel*” and reconciliation should always be kept in mind.²⁵⁹ Nonetheless, members of Congress insisted that peace and reconciliation with Britain were desirable only so long as they could therein secure their liberties on a lasting basis. Congress, especially in 1776, began producing more radical measures that led them to independence in reaction to the evaporating prospects of reconciliation with Britain.

All the while, Congress had to maintain unity among the colonies too. Congress’s appointment of George Washington as general of the Continental army had to be understood within that context. It was politically important to keep the union intact and not have the army dominated by New Englanders, which could make Southerners feel

²⁵⁶ Samuel Ward to Henry Ward, Philadelphia, July 6, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:600-601.

²⁵⁷ Thomas Johnson, Jr., to Horatio Gates, Annapolis, August 18, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:703.

²⁵⁸ John Adams’ Diary, September 21, 1775, in Smith, *Letters of Delegates to Congress*, 2:50-51.

²⁵⁹ James Duane, Notes for a Speech in Congress, May 23-25?, 1775, in Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 1:391-395.

less involved or as if they had little influence in affairs, as multiple Congressmen attested.²⁶⁰

Appointments to leadership revealed colonists' inherent belief in classical republican values. This proved especially pertinent when discussing the continental army's commander in chief, who they appointed George Washington. Many members of Congress wanted, besides someone capable of aiding political unity, someone who possessed virtuous qualities that made a good and virtuous leader. As John Adams wrote to Elbridge Gerry, George Washington fit the bill because he was disinterested, a quality universally regarded as indicative of virtue. Washington's thoughts were clearly not with financial gain, as he left a comfortable retirement and prosperous farm to become a general in the Continental Army, making an enormous sacrifice for the country.²⁶¹ Others echoed that sentiment, consistently praising his modesty and virtue,²⁶² but also that he was "sensible [sic], amiable,....& brave."²⁶³ The issue of modesty was very important; any time a Congressman was elected or chosen for an important position, modesty required that they humbly suggested the position required greater skills or abilities than that which they possessed, refusing the position at first blush. They also had to insist that they never sought the position, but were offered it. Samuel Adams, in a letter to his wife, took pains to explain that he was not trying to get

²⁶⁰ John Adams to Abigail Adams, June 17, 1775, 497; Eliphalet Dyer to Jonathan Trumbull, Sr., Philadelphia, June 16, 1775, 495-496; Eliphalet Dyer to Joseph Trumbull, Philadelphia, June 17, 1775, in Smith, *Letters of Delegates*, 1:499.

²⁶¹ Adams to Elbridge Gerry, June 18, 1775, in Smith, *Letters of Delegates to Congress*, 1:503-504.

²⁶² John Adams to Abigail Adams, June 17, 1775, in Smith, *Letters of Delegates to Congress*, 1:497; Eliphalet Dyer to Jonathan Trumbull, Sr., Philadelphia, June 16, 1775, in Smith, *Letters of Delegates to Congress*, 1:495; Eliphalet Dyer to Joseph Trumbull, Philadelphia, June 17, 1775, in Smith, *Letters of Delegates to Congress*, 1:499.

²⁶³ Thomas Cushing to James Bowdoin, Sr., Philadelphia, June 21, 1775, in Smith, *Letters of Delegates to Congress*, 1:530

elected to the legislature of his home state: “My Constituents do as they please, and so they ought. I never intrigud [sic] for their Suffrages, and I never will.” This was followed closely by modesty about his abilities: “I heartily wish I could serve them better.”²⁶⁴ In letters to multiple recipients, Washington himself said that his abilities weren’t adequate to the service they asked. Washington’s indication that he did not seek the position, like Adams’, was a way to prove his disinterestedness. As was always the case, however, having received the appointment, Washington believed it would have brought him dishonor to reject the appointment, so he accepted.²⁶⁵ John Adams, likewise, disavowed any ambitions to be elected to office.²⁶⁶

John Adams, in particular, echoed suchclassical republican understandings of virtue and the public good and was extraordinarily sensitive about these issues. Talking about military pay, Adams said that New Englanders were fine with lower pays because of their favorability toward equality, while others who “had a great opinion of the high importance of a continental general....were determined to place him in an elevated point of light” by granting high salaries, as they desired for General Washington.²⁶⁷ Adams even thought that only a virtuous people could be free: “The only foundation of a free Constitution, is pure Virtue, and if this cannot be inspired into our People, in a greater Measure, than they have it now, They may change their Rulers, and the forms of

²⁶⁴ Samuel Adams to Elizabeth Adams, Philadelphia, July 30, 1775, in Smith, *Letters of Delegates to Congress*, 1:683.

²⁶⁵ George Washington to Martha Washington, Philadelphia, June 18, 1775, in Smith, *Letters of Delegates to Congress*, 1:509-510; George Washington to Burwell Bassett, Philadelphia, June 19, 1775, in Smith, *Letters of Delegates to Congress*, 1:515; George Washington to the Captains of Several Independent Companies in Virginia, Philadelphia, June 20, 1775, in Smith, *Letters of Delegates to Congress*, 1:527

²⁶⁶ John Adams to Samuel Chase, Philadelphia, June 14, 1775, in Smith, *Letters of Delegates to Congress*, 4:209-210.

²⁶⁷ Adams to Gerry, June 18, 1775, in Smith, *Letters of Delegates to Congress*, 1:503-504.

Government, but they will not obtain a lasting Liberty. They will only exchange Tyrants and Tyrannies.” Virtue, to Adams, meant striving against “Envy, Pride, Vanity, Malice, [and] Revenge.”²⁶⁸

These republicans had their own understanding of what it meant to be a statesman. Elbridge Gerry, reflecting on this understanding, said that “The Trust reposed in me by the public was for the purpose of promoting the public Good, & the Salus populi is the object at which alone I mean to aim in conducting the Affairs of the public.” The public good was crucial to republican notions of good government, especially in times of war, where unity and a spirit of promoting a collective good are intertwined.²⁶⁹ John Adams indicated in multiple letters, upon the passing of Dr. Joseph Warren, that it was sweet to die for one’s country, in the service of a worthy public good, as did other members of Congress; in this case, that worthy public good was American liberty.²⁷⁰

The colonists essentially believed in a science of government that would protect rights and promote the public good. In this science, both reason and experience combined to answer the difficult questions concerning law, justice, political philosophy, and society. They could answer, therefore, that “If then a Business or Act is to be done in the Executive Department for which a Reward is to be granted, that Reward is always in a just Government determined previous to the Appointment of the Officer...& made adequate to the Services to be done

²⁶⁸ John Adams to Zabdiel Adams, Philadelphia, June 21, 1776 in Smith, *Letters of Delegates to Congress*, 4:278-279.

²⁶⁹ Samuel Ward to George Washington, Philadelphia, September 17, 1775, in Smith, *Letters of Delegates to Congress*, 2:26-27.

²⁷⁰ John Adams to James Warren, Philadelphia, July 6, 1775, in Smith, *Letters of Delegates to Congress*, 1:588-589.

as well or equal on the part of the Government.” It had proved all too true, from both logic and experience, that to do differently would invite corruption, from the Americans’ experience with the British ministry. Hence, it was dishonorable to accept a position that didn’t comport with this principle, said Gerry.²⁷¹

Disinterestedness was one of the chief virtues for a good statesman in order that they could pursue the public good. The relationship of disinterestedness and modesty to public virtue was universally regarded by members of Congress, and a language they all spoke and understood.²⁷² Lee talked about “interested” men trying to “obstruct the public service” in the creation and administration of the new state governments.²⁷³ According to Samuel Adams, “It behooves our Friends therefore to be very circumspect, and in all their Publick Conduct to convince the World, that they are influenced not by partial or private Motives but altogether with a View of promoting the publick Welfare.”²⁷⁴ Undoubtedly, many Americans took this idea of a public good or the value of supporting the common cause for granted, resulting in substantial unity among the colonists in what was practically a civil war. John Adams applied this understanding of disinterestedness to all of government, including the judiciary. It was of supreme importance that there were independent judges whose commissions and tenure did not depend on the will of the king. “There is nothing

²⁷¹ Elbridge Gerry to John Wendell, Philadelphia, June 21st, 1776 in Smith, *Letters of Delegates to Congress*, 4:281-282.

²⁷² John Hancock to Abraham Livingston, Philadelphia, May 23, 1776, in Smith, *Letters of Delegates to Congress*, 2:63-64.

²⁷³ Richard Henry Lee to Landon Carter, Philadelphia, June 2, 1776, in Smith, *Letters of Delegates to Congress*, 4:117.

²⁷⁴ Samuel Adams to Elbridge Gerry, Philadelphia, September 26, 1775 in Smith, *Letters of Delegates to Congress*, 2:63.

of more importance than this: but yet there is nothing less likely to be done,” Adams said dismayed;²⁷⁵ Adams knew from experience the problems that attended a judicial system of dependent judges, who were led to acting as a third arm of the king rather than impartial arbiters.

Some members of Congress thought that religious figures had no place in politics. John Adams recounted how he wished John Zubly of Georgia would be the first and last clergyman to enter Congress, regretting the “Mixing the sacred Character, with that of the Statesman,” since most clergymen knew too little about world affairs and business.²⁷⁶

On rare occasions, members of Congress would pontificate on more abstract subjects such as the nature of government and power. In only two instances in the letters of members of Congress between May of 1775 and August of 1776 did they delve into these deep issues at length, as an exercise in political philosophy, more or less divorced from the exigencies of war; once it was John Adams and the other was James Duane. “The only moral Foundation of Government is the Consent of the People,” said Adams. Asking whence the right of a majority to govern a minority arises, given that actual, universal consent was impossible to obtain, Adams said that government ought to run society by the mechanics of principles and maxims, as an army governs its soldiers. Citing James Harrington, Adams asserted “that Power always follows Property,” meaning the balance of power must be skewed toward men of property. But, to

²⁷⁵ John Adams to Benjamin Hichborn, Philadelphia, May 29, 1776, in Smith, *Letters of Delegates to Congress*, 4:95-96.

²⁷⁶ John Adams to Abigail Adams, Philadelphia, September 17, 1775, in Smith, *Letters of Delegates to Congress*, 2:23.

prevent corruption, there must not be restrictions on the ability of everyone to acquire land so that “the multitude” can gain their own interest in government and obtain a just the balance of power. Adams thought there must be a property qualification to vote, though not too rigid. Such a qualification would ensure, just as a voting age of twenty one ensures that the public can trust the general knowledge of the voter, that an individual has a generally sufficient stake in society so as not to be subject to another’s will. This was classical republicanism at its core, and an expression quite out of the ordinary for a Congress dedicated to practical concerns.²⁷⁷

James Duane, on the other hand, launched into his analysis for slightly more practical reasons. Duane was intimately concerned about the prospect of men of independent means and property losing control of the reigns of government during the tumult of the war. They not only had to fear losing control of civil government to the British ministry, but also to those who had more revolutionary ambitions.

Licentiousness is the natural Effect of a civil discord and it can only be guarded against by placing the Command of the Troops in the hands of Men of property and Rank who, by that means, will preserve the same Authority over the Minds of the people which they enjoyed in the Hour of Tranquility.²⁷⁸

This was a central feature of the republicanism identified by Bernard Bailyn in the Revolutionary pamphlets leading up to the war—a paranoia that “the fear of conspiracy against constituted authority was built into the very structure of politics.” This fear of “a

²⁷⁷ John Adams to John Sullivan, Philadelphia, May 26, 1776, in Smith, *Letters of Delegates to Congress*, 4:72-75.

²⁷⁸ James Duane to Robert Livingston, Philadelphia June 7, 1775, in Paul H. Smith, ed., *Letters of Delegates to Congress*. (Washington: Library of Congress, 1976-1979), 1:453.

comprehensive conspiracy against liberty throughout the English-speaking world”²⁷⁹ became, for men like Duane, a fear that those without property would themselves conspire to use the tumult of revolution to overthrow the existing order and create a democratic society. While for Duane this issue was a core concern, it was a concern rarely voiced in Congress or their letters, and likely took a back seat to other issues, since the American Revolution, no less than the Constitution, was not a conspiracy to protect wealthy landowners.²⁸⁰

On May 10, 1776 Congress recommended to all the colonies that they adopt a government capable of handling the exigencies of the conflict, if none existed.²⁸¹ John Adams, just after it had been adopted, admitted that the colonies should have recommended this a year ago, which would’ve benefited the colonies greatly.²⁸² Robert Morris, Caesar Rodney, and Elbridge Gerry each attributed the desire of all men in the colonies to form new governments to the king’s proclamation that there could be no peace except under submission.²⁸³ Many congressmen spoke excitedly about the resolution, thinking it truly revolutionary; governments, founded in compact, would truly

²⁷⁹ Bailyn, *Ideological Origins*, viii-x.

²⁸⁰ James Duane to Robert Livingston, Philadelphia June 7, 1775, in Paul H. Smith, ed., *Letters of Delegates to Congress*. (Washington: Library of Congress, 1976-1979), 1:453. For a critique of Charles Beard’s thesis—that the constitution was an effort to protect wealthy class interests—see Forrest McDonald, *We The People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, 1958).

²⁸¹ *Journals of Congress*, 2:166

²⁸² John Adams to Joseph Palmer, May 16, 1776, in Smith, *Letters of Delegates to Congress*, 4:3-4.

²⁸³ Morris to Deane, Philadelphia June 5, 1776, in Smith, *Letters of Delegates to Congress*, 4:148; Caesar Rodney to Thomas Rodney, Philadelphia, June 5, 1776, in Smith, *Letters of Delegates to Congress*, 4:149; Elbridge Gerry to James Warren, Philadelphia, June 6, 1776, in Smith, *Letters of Delegates to Congress*, 4:152-153.

be instituted for the first time, with real, rather than imagined, consent.²⁸⁴ Indeed, some members of Congress considered it, or the May 15th resolution, a preamble designed to explain the necessity of the May 10th resolution, on par with a declaration of independence.²⁸⁵ James Duane, for instance, was apprehensive about the apparent move by Congress for independence, which he thought might alienate moderate colonies like Pennsylvania and Maryland.²⁸⁶ Thomas Stone, too, thought the move was rash and bound to bring a new relation between Britain and America of “Conqueror & vanquished.”²⁸⁷

Well before Thomas Jefferson submitted his draft of the Declaration of Independence on June 7, most Congress thought it was a foregone conclusion. In May of 1776, only sneaking doubts that perhaps independence might be staved off remained for a few members; even then, they only had reservations about declaring independence, thinking it likely.²⁸⁸ As Elbridge Gerry wrote, “All are sensible of the perfidy of Great Britain, and are convinced there is no medium between unqualified submission and actual independency....A final declaration is approaching with great rapidity.”²⁸⁹ Independence was the next obvious step, according to Francis Lightfoot

²⁸⁴ Oliver Wolcott to Samuel Lyman, Philadelphia, May 16, 1776, in Smith, *Letters of Delegates to Congress*, 2:16-17; and Thomas Jefferson to Thomas Nelson, Philadelphia, May 16, 1776, in Smith, *Letters of Delegates to Congress*, 2:12-13.

²⁸⁵ John Hancock to Thomas Cushing, Philadelphia, May 17, 1776, in Smith, *Letters of Delegates to Congress*, 26; John Adams to Abigail Adams, May 17, 1776, in Smith, *Letters of Delegates to Congress*, 4:17.

²⁸⁶ Duane to Jay, Philadelphia, May 18, 1776, in Smith, *Letters of Delegates to Congress*, 4:34-35.

²⁸⁷ Thomas Stone to James Hollyday? Philadelphia, May 20, 1776, in Smith, *Letters of Delegates to Congress*, 4:46-47.

²⁸⁸ Robert Morris to Silas Deane, Philadelphia June 5, 1776, in Smith, *Letters of Delegates to Congress*, 4:146-148.

²⁸⁹ Elbridge Gerry to James Warren, May 20, 1776, in Smith, *Letters of Delegates to Congress*, 4:42-43.

Lee.²⁹⁰ On May 15, the Virginia convention resolved and sent instructions to the Virginia delegates that the colonies should declare themselves independent, which agreed with the sentiments of North Carolina. Because of this, Elbridge Gerry wrote that with the opinions of North Carolina and Virginia explicitly in favor of independence, Congress must soon follow.²⁹¹ By this point, John Adams was proselytizing heavily for independence, writing that the colonies would even be justified of invading Britain, if it were practicable: “The Policy of Rome, in carrying their Arms to Carthage, while Hannibal was at the Gates of their Capitol, was wise and justified by the Event, and would deserve Imitation if We could march into the Country of our Enemies.”²⁹²

As it turned out, May 15th was a fateful day for the Revolution. On that day, Congress drafted the preamble to their resolution to the colonies to erect new governments, Virginia instructed its delegates to persuade Congress to declare independence, and even recalcitrant Maryland “abolish[ed] the oaths of allegiance” to Britain they had previously required of their representatives.²⁹³ In June 1776, delegates from Virginia moved for independence and dissolving political ties with Britain, requesting the formation of a confederation of colonies. Against the motion for independence were James Wilson, Robert Livingston, Edward Rutledge, and John Dickinson. While they were not against independence *per se*, they argued that it was not the right time for independence, and that some of their instructions instructed them

²⁹⁰ Francis Lightfoot Lee to Landon Carter, Philadelphia, May 21, 1776, in Smith, *Letters of Delegates to Congress*, 4:57.

²⁹¹ New Hampshire Delegates to Meshech Ware, Philadelphia, May 28, 1776, in Smith, *Letters of Delegates to Congress*, 4:93-94; Elbridge Gerry to Joseph Palmer, Philadelphia, May 31, 1776, in Smith, *Letters of Delegates to Congress*, 4:106-107.

²⁹² John Adams to Henry Knox, Philadelphia, June 2, 1776, in Smith, *Letters of Delegates to Congress*, 4:115.

²⁹³ John Adams to Richard Lee, Philadelphia, June 4, 1776, in Smith, *Letters of Delegates to Congress*, 4:135.

to disapprove of any resolution for independence, as James Wilson's did. This was a striking difference than what would have been argued one year earlier; even the greatest opponents of radical measures said they "were friends to the measures themselves." It was not yet the time avowed treason, they thought, so long as the middle colonies were still cold to independence. Congress' delegation should follow that of the states, and a secession of one or more colonies from the whole would be disastrous to the union. If the middle colonies were upset by the May 15th resolution, how could Congress move to declare independence? In addition, they thought confederacy should precede independence.²⁹⁴ Dickinson continued to vainly believe that reconciliation was possible, when all others had given up in it, thinking it "may perhaps be in a Year or two." Dickinson also thought it would be better to conceal the desire for independence if that was their aim, rather than unite Britain against them and renew her vigor with a declaration: "England, Holland & the Empire acknowledged the Duke of Anjou King of Spain while arming to dethrone him," he said. Edward Rutledge also warned broadcasting their intentions: "giving our Enemy Notice of our Intentions before we had taken any Steps to execute them." Rutledge, unlike Dickinson, was doubtful that moderates in Congress could oppose the tide of independence.²⁹⁵

For the resolution were John Adams, Richard Henry Lee, and George Wythe. They argued that the commencement of hostilities had dissolved their federal connection with Britain. We declared allegiance to the king, they said, but after the

²⁹⁴ Thomas Jefferson, Notes of Proceedings in Congress, June 7-June 28, 1776, in Smith, *Letters of Delegates to Congress*, 4:158-164; Delegates' Certification of James Wilson's Conduct in Congress, Congress Chamber Philadelphia, June 20, 1776 in Smith, *Letters of Delegates to Congress*, 4:271-272

²⁹⁵ John Dickinson, Notes for a Speech in Congress, June 8-10? 1776, in Smith, *Letters of Delegates to Congress*, 4:165-168; Edward Rutledge to John Jay, June 8, 1776, in Smith, *Letters of Delegates to Congress*, 4:174-175.

commencement of hostilities, the colonies no longer owed him allegiance. Contrary to those against the measure, they declared that the people wanted Congress to “lead the way.” Regardless of what some representatives of the colonies felt about the measure, the voice of the people was what mattered, and they supported it, they argued. Also contrary to what those against said, “the history of the Dutch revolution, of whom three states only confederated at first proved that a secession of some colonies would not be so dangerous as some apprehended.” John Adams had his own peculiar list of advantages a Declaration would bring to the united colonies:

The Advantages, which will result from Such a Declaration, are in my opinion very numerous, and very great. After that Event, the Colonies will hesitate no longer to compleat [sic] their Government. They will establish Tests and ascertain the Criminality of Toryism. The Presses will produce no more Seditious, or traiterous [sic] Speculations. Slanders upon public Men and Measures will be lessened. The Legislatures of the Colonies will exert themselves, to manufacture Salt Petre, Sulphur, Powder, Arms, Cannon, Mortars, Cloathing [sic], and every Thing, necessary for the Support of Life.²⁹⁶

Lastly, it was crucial for the colonies that trade be reopened again with the world, which they could do in independence.²⁹⁷

According to Jefferson, in the early debates it was New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina who were apprehensive about

²⁹⁶ John Adams to John Winthrop, Philadelphia, June 23, 1776 in Smith, *Letters of Delegates to Congress*, 4:298-299.

²⁹⁷ Jefferson, Notes of Proceedings, June 7-June 28, 1776, in Smith, *Letters of Delegates* 4:158-164.

independence, and because of their apprehension, decision on a declaration ought to be postponed until July 1. In the meantime, a committee would be appointed to declare independence consisting of John Adams, Benjamin Franklin, Roger Sherman, Robert Livingston, and Thomas Jefferson. The committee ultimately tasked Jefferson to write the Declaration, which he submitted to the committee on June 28th, 1776.²⁹⁸ Hoping to make a last ditch effort to stop independence, on June 29th, Edward Rutledge entreated John Jay to be present during the coming week, in which “A Declaration of Independence, the Form of a Confederation of these Colonies, and a Scheme for a Treaty with foreign Powers will be laid before the House.” Rutledge wanted them each there so that they could “oppose the first, and infuse Wisdom into the others.”²⁹⁹

When July 1st came around, a resolution for the Declaration of Independence was put to a vote in a committee of whole. South Carolina and Pennsylvania voted against it (with Pennsylvania’s delegates acknowledging its votes were against the wishes of the people), while New York could not cast a vote because of its instructions, which did not give them specific authority to vote for independence, and Delaware’s delegation was divided on the question. South Carolina would vote for it the next day, after Edward Rutledge of South Carolina had voted to postpone it until July 2nd, reversing its position from the previous day. Both Pennsylvania and Delaware were also able to change their vote from no and divided, respectively, to yes because of the arrival of additional delegates in favor, leading to a vote of twelve colonies in favor of the Declaration, with none against (New York did not vote), making it a unanimous

²⁹⁸ Jefferson, Notes of Proceedings, June 7-June 28, 1776, in Smith, *Letters of Delegates*, 4:158-164.

²⁹⁹ Edward Rutledge to John Jay, Philadelphia, June 29, 1776 in Smith, *Letters of Delegates to Congress*, 4:337.

Declaration.³⁰⁰ After the Declaration, the New York delegates, George Clinton, Henry Wisner, John Alsop, William Floyd, and Francis Lewis, asked their colony to consider itself bound by the vote for independency in Congress, because the delegates thought it crucial that Congress continue on with the war effort, with the sustained unanimity of the thirteen colonies unperturbed. New York would approve on July 9th of the measure for independence.³⁰¹

Debate on the specific provisions in the Declaration went on until July 4th, with a number of notable passages being eliminated, including the clause in Jefferson's draft that concerned censuring Britain for enslaving Africans. South Carolina and Georgia each moved strongly in favor of its removal, since they wanted the importation of slaves to continue; even some Northern colonies were sensitive to the issue since they were often the largest slave traders and carriers.³⁰² The final declaration was approved on the morning of July 4th, and naturally validated the synthesis of natural law and constitutionalism; by the time the Declaration came around, there was little argument over the source of American rights: all had been firmly established under Congressional precedent. Early on in the document, it was a clear validation of natural law thinking, in which Jefferson wrote about "the laws of nature and of nature's god," and "inalienable rights," or rights which individuals *cannot* consent to give up when consenting to governments—something that one would not find in the tradition of British

³⁰⁰ Francis Lightfoot Lee to Richard Henry Lee, Philadelphia, June 30, 1776 in Smith, *Letters of Delegates to Congress*, 4:342-343; Thomas Jefferson, Notes of Proceedings in Congress, July 1-4, 1776 in Smith, *Letters of Delegates to Congress*, 4:358-364.

³⁰¹ New York Delegates to the New York Provincial Congress, Philadelphia, July 2, 1776 in Smith, *Letters of Delegates to Congress*, 4:371-372; Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789* (Washington: Library of Congress, 1976-1979), 4:372n1.

³⁰² Thomas Jefferson, Notes of Proceedings in Congress, July 1-4, 1776, in Smith, *Letters of Delegates to Congress*, 4:358-364.

constitutionalism, wherein a government could be absolutist if the people consented to it.

In any event, Jefferson spoke to both the constitutionalist and natural law traditions when he described how people instituted governments, essentially leaving the state of nature, and mentioned that the principle of consent was the foundation of the social contract, which was also the foundation of British Constitutionalism, as the colonists argued all along. In addition, Jefferson's mention that people had a right of revolution, where people have a right "to alter or abolish" a government that no longer functioned to protect rights, was a position that would have found a more natural home in natural law thinking than constitutionalism, which was far less open to this sort of radical change. Nonetheless, Jefferson nodded in the direction of conservative constitutionalists when he argued that "Prudence indeed will dictate that governments long established should not be changed for light & transient causes"; only "when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce them under absolute despotism" did it make sense for the people to make use of this radical right. In listing the "long train of abuses and usurpations," Jefferson, though he didn't say it, used the familiar American understanding of the British Constitution to find grievances with Britain when it issued oppressive acts the colonists did not consent to, and when there were rights they had been owed under the British constitution but denied.

In addition, Jefferson used a Republican understanding of the science of government to identify government actions by Britain that wrought mischief and the general corruption that Americans felt infested Britain that led to such misbehavior. A

government that “kept among us in times of peace standing armies without the consent of our legislatures” was one that would not promote the public good; nor was it good government to make “judges dependant on his [Majesty’s] will alone, for the tenure of their offices, & the amount & paiment [sic] of their salaries; the same went for “quartering large bodies of armed troops among” colonial homes, “for cutting off our trade with all parts of the world,” and “for imposing taxes on us without out consent.”

The Declaration, then, represented the pinnacle of the blending of natural law and constitutionalist thinking; it located the ultimate source of man’s rights in his humanity, but looked to the science of government, or the combination of reason and practical experience, to determine and list what acts were oppressive. In the principle of consent, both natural law and British constitutionalism had a natural harmony, as showcased in the Declaration.

The immediate significance of the Declaration to many Congressmen was unparalleled. Hancock called the Declaration “the Ground & Foundation of a future Government,” which he thought would soon follow with a confederation.³⁰³ Congress immediately set to work on a seal of the United States, which it felt was necessary for legitimacy, of its future actions, diplomatic relations, and for the Declaration of Independence itself, not signed until August 2nd.³⁰⁴ Samuel Adams thought the delay in the issuance of a Declaration meant losing the possibility of being allied with Canada, which at this point was lost.³⁰⁵

³⁰³ John Hancock to Certain States, Philadelphia, July 6, 1776 in Smith, *Letters of Delegates to Congress*, 4:396.

³⁰⁴ John Adams to Samuel Chase, Philadelphia, July 9, 1776 in Smith, *Letters of Delegates to Congress*, 4:414-415.

³⁰⁵ Samuel Adams to Joseph Hawley, Philadelphia, July 9, 1776 in Smith, *Letters of Delegates to Congress*, 4:416.

4 CONCLUSION

The American Revolution was at least a revolution in ideas, both social and political, resulting in a distinctive tradition of American thought. Broadly speaking, this change resulted in a synthesis of natural law and British constitutionalism. It is important to realize that this synthesis was possible because of the overlap between the two traditions as they were understood by Americans, not because they shared a single foundation. As such, it should be recognized that this understanding was pluralistic; though the traditions were combined and reinforced each other in the minds of many Americans, they were also distinct to them. This can easily be seen through the debates among members of Congress and their diaries, recollections, and letters from the period, where members argued for one tradition or the other, usually exclusively. However, the nature of the political situation—external to Congress with Britain, and internal by the need to maintain a unified consensus as often as possible—meant that it was necessary for Congress to compromise and embrace each tradition, doing their best to reconcile them. Americans certainly had an enlarged sense of their rights, embracing radical thought far more than their conservative British counterparts—an irreverent radicalism more favorable to natural law and experimentalism in society and government. But, they had a healthy respect for history and tradition as a way of demonstrating what worked in the past, and what didn't—the accumulated experimental results of human experience; hence, their gravitation to British constitutionalism as well, in its whiggish variant.

This combination was not created in a vacuum—it had to be refined in the generations leading up to the Revolutionary War. And because experience had yet to provide an experiential proving-ground for a government truly founded on consent and

designed explicitly to protect natural rights, it took a “long train of abuses,” beginning in the decade or so before the First Congress and accelerating in frequency and severity before members of Congress were willing to take a revolutionary step, declaring their independence and establishing the foundation of their rights in both reason and experience: natural law and British constitutionalism.

The Intolerable Acts caused the colonies to meet at the First Congress in the first place. The closure of the port of Boston and the reorganization of the Massachusetts government without their consent was a substantial grievance that they looked upon with great opprobrium and were willing to go to extralegal means to secure redress. Members of Congress came into Congress with specific delegations of authority, as well as practical limitations on what they could agree to. They were often limited to securing redress of grievances, which meant they could only go so far in their radicalism. Shortly after they began sitting in Congress, the Powder Alarm, followed shortly by the Suffolk Resolves, radicalized the Congress. Committed to radicalism, they issued the Declaration of Rights and Grievances, in which they established the foundation of their rights as both natural law and the British Constitution. This synthesis was necessary because of Congress’ desire to maintain unity as well as not limit their ability to secure redress by only choosing one source or another.

After the First Congress concluded, and shortly before the Second Congress met, open hostilities broke out at Lexington and Concord, which many members of Congress thought meant would make redress more difficult. The outbreak of hostilities meant Congress concerned itself more with the war effort in a day to day basis. As petitions to the King failed, and the British began escalating the war, including acting in

ways that made the colonists feel like the British were trying to oppress them rather than seek reconciliation, more reticent members of Congress began thinking reconciliation was hopeless. In the Spring of 1776, with the failure of the Canada expedition and the recent, bloody Battle of Bunker Hill, the time was ripe for more radical steps. Many colonies had recently changed their instructions to their delegates and removed the limitations that prevented them from seeking independence, and would change them up through July of 1776, which was crucial to the two major, radical resolutions they agreed to in May and July of 1776. Congress issued a resolution advising the colonies to enact new state governments, which many thought was itself a *de facto* Declaration of Independence in May. Two months later, Congress agreed to the actual Declaration of Independence, which would be signed unanimously by the colonies in Congress.

The Declaration of Independence was this combination of experience and reason and cemented the foundation of their rights as a combination of natural law and British constitutionalism. But the Declaration and previous Congressional resolutions were undoubtedly a product of the circumstances of war: the need to promote unity combined with events that increasingly made reconciliation unlikely, producing a unique statement of American thought whose importance is arguably unrivaled in the history of the world.

American thought would continue to develop as the war wore on. Congress would agree to the Articles of Confederation in 1778, with the last-needed state approving the Articles in 1781, setting off a new system of responsibilities for Congress, but also explicitly reserving every other power to the states. In doing so, Congress was carrying on the legacy of the revolution, and previous resolutions of Congress, by reserving matters of internal policing and taxation to the states, while granting Congress

powers concerning issues requiring the unity and coordination of the states, such as war and peace.

This Confederation was a unique experiment in constitutional governance that strictly adhered to the ideals of the Revolution, using reason and experience to design something entirely new. Nevertheless, the Articles did not comport entirely to the developments discussed in this paper. Both natural law and British constitutionalism did not play as large a role in their development as the Declaration did. The Articles were crafted against a background of a natural law understanding—they did not want to violate natural rights—but themselves had little to do with it. British constitutionalism largely served as an example of what to avoid—they did not want a hereditary monarch or a Congress that ruled over those without representation—but the confederacy they formed was far different than the British system. The U.S. Constitution, with the Bill of Rights, would be a closer match to the synthesis of natural law and British constitutionalism: it brought back a relatively strong executive, it enlarged the powers of Congress, and the Bill of Rights represented the best of the constitutional rights they held under Britain and the natural rights individuals possessed prior to government. While this is outside the scope of this paper, since it is concerned with the years from 1774 to 1776, the U.S. Constitution likely went too far back in the direction of the enlarged power of government they had despised when Britain had them—though the source of this complaint against British was largely that Britain claimed these powers over the colonies when the colonies did not or could not have representation was largely that they did not or could not have representation, or the means to consent, which was not true under the U.S. Constitution.

Nevertheless, the Declaration stands as *the* timeless monument to the American fusion of British constitutionalism and natural rights. Because of the lasting impact of the Declaration on contemporary American understandings of the Founding Era, it will continue to impact American identities in ever-changing ways, both predictable and unpredictable.

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