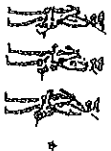


Norrgen, Edmund S. The Birth
of the Republic 1763-89.
Chicago: University of Chicago
Press. 1992.



“The Critical Period”

The period during which the United States was governed under the Articles of Confederation, from 1781 to 1789, used to be considered a dark and doubtful time. A hundred years after it was over the historian John Fiske dubbed it “the critical period.” Though the name has struck, more recent historians have found much to praise in this critical period, so much that they have accused the politicians who ended it of acting for dubious, not to say sinister, motives. And indeed any serious student must acknowledge that under the Articles of Confederation the achievements of the United States were impressive. When the Articles were adopted, the country was at war for its existence. When they were abandoned, the war had been won, peace had been concluded on favorable terms, a postwar depression had been weathered successfully, and both population and national income were increasing.

Viewed in detail, the achievements are even more impressive, though marred by some sordid episodes. We have already seen how land speculation and republican principles combined to make a national domain possible. In March 1784, when the long anticipated acquisition of the Northwest (the area north of the Ohio, west of Pennsylvania, and east of the Mississippi) by Congress at last became fact, the members lost no time in arranging for its

government and settlement. On April 23, 1784, an ordinance, drafted principally by Thomas Jefferson but reflecting previous Congressional discussion of the subject, carved the territory into seven districts (with provision for more to the south when the Southwest should be ceded). Each was to be admitted to the union as a state on equal terms with the original thirteen as soon as it had as many free inhabitants as the smallest of them. Meanwhile, in each district the settlers were to govern themselves temporarily according to the constitution and laws of any one of the existing states, but were forbidden to interfere with any arrangements made by Congress for the sale of public lands. Such arrangements were made in a second ordinance, passed in 1785, which provided for the survey and sale of these lands in townships six miles square, the lines running north-south and east-west. Each township was to contain thirty-six lots a mile square in area (640 acres), to be sold for not less than one dollar an acre.

The surveying started as soon as the ordinance was passed, but before sales could get under way or government be organized, speculation entered the picture again. By a deal with corrupt congressmen a group of New Englanders, organized as the Ohio Company, bought a million and a half unsurveyed acres at a price that amounted to less than ten cents an acre in hard money. Congress was ready to consent to so drastic a discount not merely because influential congressmen were cut in on the bargain but also because the Northwest was filling up with settlers who showed no disposition to buy land at all. Without waiting for Indian treaties or surveys or sales, men who carried long rifles and an easy conscience were crossing the Ohio and setting up shacks and cabins on the land from which Congress hoped to pay its debts. Some of them even claimed a natural right to the land and denied that Congress had the authority to keep them off or to sell it at all.

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

These provisions embodied the principles which Congress and the Ohio Company thought necessary to make settlement attractive to land buyers. They also embodied the basic principles won in the Revolution, for the men who wrote them knew that unless these were guaranteed, few Americans, law-abiding or otherwise, would care to live in the region. Though the ordinance of 1787 was

perhaps less liberal in some respects than that of 1784, it did offer the promise of self-government; it did offer greater security to property rights; and it did offer, by its prohibition of slavery, a more completely free society than could be found in most of the existing states.

The prohibition of slavery (which Jefferson had tried in vain to have incorporated in the earlier ordinance) was doubtless aimed at prospective buyers in New England, for New Englanders by this time had become strongly opposed to slavery. The members of the Ohio Company and the congressmen who worked with them may or may not have been opposed to it themselves, but in any case self-interest had once again aligned with principle to produce a beneficial result for the American people.

The two failed to combine so favorably in the treatment of the Southwest, the area west of the mountains and south of the Ohio River, which remained in the possession of Georgia, the Carolinas, and Virginia. But even here, in spite of the greedy squabbling of rival speculators, the period saw the foundations laid for creation and admission to the union of new, independent states. Throughout the war, in spite of resistance from the Indians living there, settlers poured into this rich territory; the ubiquitous speculator always with them or a little ahead of them. Cut off by the mountains from the governments to the eastward, the people were obliged to form governments for themselves if they wanted to have any at all.

The first settlers of North Carolina's western lands banded together in the Watauga Association as early as 1772 and exercised governmental functions until 1776, when the area was organized as Washington County. In 1782 the state began selling large quantities of this western land to eastern speculators, but other competing speculative interests were already at work in the region itself, and between the two the settlers were pulled and hauled in several

directions at once. In 1784 the state legislature, under the influence of the eastern group of speculators, ceded sovereignty over Washington County to Congress, but the next year, influenced by the other group, repealed the act. The settlers themselves, taking the cession at face value, organized a new state, calling it Franklin, and demanded admission to the union. For the next three years there were two governments contesting the area, that of Franklin and that of North Carolina, not to mention the Spanish government, which was exerting its influence through Liberty to pull the settlers into Spanish allegiance. North Carolina was able to assert its control and do away with the state of Franklin, but only after actual fighting had occurred. The area was finally ceded permanently to the United States in 1790 and in 1796 became the state of Tennessee.

Meanwhile, the same kind of thing was going on immediately south of the Ohio in the region that Virginia had not turned over to Congress in 1784. Rival groups of speculators were busy here too, some working for separation, others for staying with Virginia. In 1786 the state passed an act enabling the westerners to become independent on condition they join the United States (not Spain!), but it was 1792 before this new state of Kentucky was actually created. Much farther north the squabbles of New York and New Hampshire over the land along the Connecticut River led the settlers to organize a government of their own as early as 1777. Here too land speculation complicated the dispute, which did not finally end until New York renounced its claims in 1790 and the state of Vermont was admitted to the union in 1791.

Though the story of Kentucky and Tennessee and Vermont was not a happy one, there is no evidence of an intent to keep the people of these regions in a dependent status. Taken as a whole, the record of the Confederation with regard to the West showed real progress, especially by comparison with the static years of Brit-

ish control. England acquired secure title to the West in the year of 1763. The acquisition came after considerable deliberation, the result of a decision that this region had a greater future than the sugar islands of the West Indies, which could have been chosen instead. Yet between 1763 and 1774 England failed to provide a civil government for the area. In 1774 the Quebec Act provided one by extending the boundaries of Quebec, with its authoritarian government and Roman Catholic church, to cover the entire territory north of the Ohio and west of the Alleghenies, a move that infuriated the Americans who wished to settle there. Congress, on the other hand, within little more than three years after it acquired the Northwest not only provided for sale and settlement of the lands but developed a complete program for westward expansion on republican principles, a program that with little alteration carried the United States to its present continental limits.

The record of "the critical period" on the economic front was checkered. The first years of peace posed an extraordinary problem for Americans. For a century and a half, in spite of the notoriety of certain kinds of smuggling, their economic life had been adjusted to membership in the British Empire. The Navigation Acts, as we have seen, caused no great hardships: the colonists were content for the most part to ship their raw materials to the mother country and take her manufactures in return. In 1776 when the old channels of trade were abruptly closed, American merchants turned to privateering and to trade with France. But when peace returned in 1783, American consumers were clamoring for the familiar old British goods.

For a time it looked as though American merchants would be able to supply them in the old manner. In England Adam Smith's *Wealth of Nations*, preaching the gospel of free trade, had been published in the same year as the Declaration of Independence, and

British government in 1783 included several high officials, Secretary the Earl of Shelburne and William Pitt the younger, who had been converted to the new doctrine. Benjamin Franklin had been converted to the peace negotiations; so win commercial reciprocity with the United States, and Pitt and Shelburne favored granting it, in spite of their efforts England decided that the Americans should not eat their cake and have it too. They might purchase British manufactures if they chose, the more the better, and English merchants would buy their tobacco. But they could not send their ships to British ports in the West Indies. Without this outlet for their fish and farm produce the Americans found themselves unable to pay their bills, and a deep depression settled over the country.

In France Thomas Jefferson, serving as American ambassador, struggled to open up new markets for his countrymen, and throughout the rest of the world American merchants began to explore what other opportunities there might be. They sailed their ships into European, African, and Asian ports wherever the local government would allow them and often where it would not. But for a time the going was rough and the results sparse.

At home Americans began to reconsider some old assumptions. Before the Revolution most people had assumed that manufacturing could not be profitable for Americans because of the high cost of labor in a country so full of free land and so short on labor. But the Revolution had obliged Americans to make things for themselves that they had formerly imported. They had begun when the nonimportation agreements obliged them to, and the war that followed, with the British blockading their coasts, had made self-help a continuing necessity. When the war ended, the buying spree that ran them into debt and depression reminded them that manufacturing might still be a political and moral necessity, even if it did not appear to be economically profitable.

The nonimportation agreements, which first directed Americans seriously toward manufactures, had in fact tapped a rich vein in the American character: the desire to bring pressure on England turned even before the war into an urge for self-sufficiency. Native American manufactures were extolled not simply as a means to an end but as a form of virtue. There was for the Protestant American, deeply committed to the virtue of thrift, something morally appealing in avoiding the importation of foreign goods and making do with what one could manufacture at home. If God demanded that an individual improve his talents, it was obvious that a nation too should husband its resources and not spend its money on things it could make for itself.

In order to further this end after the artificial stimulus of war had ceased, many states passed protective tariffs giving local manufactures an advantage over foreign imports (but usually exempting imports from other states in the Confederation). But the attempt to protect domestic manufactures in this way could not be effective unless all the states adopted identical regulations. Otherwise the importation of foreign manufactures into a state with no or low tariffs would overflow into all the other states. What was needed was a national regulation of trade, and that the Articles of Confederation did not sanction. Despite this deficiency, the economic history of these years was not entirely gloomy. Americans had known periods of depression as colonists too; with independence they were at least free to find their own way out. And by 1787, with new trade routes and new markets opening up, the depression had begun to lift.

The country gave signs of its social sanity by the speed with which the wounds of war were healed in the rehabilitation of colonists who had remained loyal to the King. If the American Revolution was in any sense a civil war, the Confederation did a much

"THE CRITICAL PERIOD"

faster and much better job of reconstruction than the United States did after Appomattox. How many thousand loyalists departed for Canada or England is not known, but whatever their number their places were quickly filled. Of those who stayed behind, many suffered loss of property and, for a time, of political rights, but the end of the Confederation period saw them reabsorbed into the community on equal terms with no enduring heritage of bitterness.

The social health of the new nation was also apparent in the proliferation of intellectual activity following the war. National pride found expression in appeals for an American culture, and though the appeals were frequently more eloquent than the response, there was an astonishing production of historical writing, verse, painting, and even schoolbooks dedicated to magnifying America. New scientific societies were begun, notably the American Academy of Arts and Sciences at Boston, while the older American Philosophical Society breathed a new vigor. Companies of eager reformers sprang up everywhere and organized to improve agriculture, remodel penal codes, abolish slavery, prevent drunkenness, help immigrants, build libraries. The Americans were already embarked on their tireless, and to many Europeans tiresome, campaign to improve themselves and the world.

Although the perspective of nearly two centuries enables us to see the United States of the 1780s as a healthy, thriving young nation, there were many Americans at the time who thought otherwise. The achievements of the period just outlined, except in western policy, were the work either of the state governments or of smaller groups or of individuals. Only in relation to the West could the national government point to any notable accomplishment, and only in relation to the West did it really have any power to act independently of the state governments. True, it had supervised the war and the negotiation of the peace, but those who had partici-

pated in the government during that time were aware of how heavily they had leaned on France. Congress had found it much easier to get both troops and money from France than from the states, a fact which dimmed the pride they felt in victory.

As for the peace, reliance on France had led Congress to impose a shameful set of conditions on its diplomats, namely, that they follow French dictates in everything except insistence on independence. Only by ignoring their instructions had the United States ministers been able to secure the terms which gave Americans land west of the Appalachians. Even at that it was not the strength of the United States but rather the rivalry of England and France that had made possible the negotiation of such favorable terms. England had been generous in an attempt to drive a wedge between the United States and its ally.

After the war, American diplomats in Europe felt for the first time the full meaning of their country's impotence. Jefferson, who took Franklin's post in France, found the job an excellent school of humility, and John Adams at the Court of St. James's was treated with studied contempt, while England steadfastly refused to grant a commercial treaty and clung to her trading posts in the Northwest area in direct violation of the peace treaty. Spain, left in undisputed possession of the Mississippi for three hundred miles from its mouth, closed the port of New Orleans to American commerce in the not unreasonable hope of detaching Kentucky and Tennessee. The American frontiersmen there could scarcely exist unless they could float their produce to market via the Mississippi, and yet Congress almost agreed to a proposed treaty negotiated by John Jay that would have yielded for twenty-five or thirty years whatever claim the United States had to navigation of the river through Spanish territory. In return eastern merchants would have obtained

"THE CRITICAL PERIOD"

commercial privileges in Spain. Since the American claim was a very dubious one at best, the treaty was not a bad one, and it received a majority of votes in Congress, though not the necessary nine-state majority. It nevertheless antagonized the westerners, whose interests it seemed to sacrifice to those of eastern merchants.

In retrospect it is possible to see that the diplomatic failures of the Confederation period were the result of forces that lay beyond the control of the United States in its infant condition. Though independent, its three million people scarcely constituted a world power. No matter how their national government had been constructed, they could not have carried a big enough stick to command respect in Europe. But this thought, when it occurred to people at the time, was cold comfort. Men like Washington, Madison, Hamilton, Jay, John Adams, Robert Morris, men who had caught a vision of American greatness, wished to see it translated into fact without delay. As they struggled to operate the government they had created and repeatedly found themselves blocked by a lack of power, they became increasingly convinced that greatness would never attend a country whose government rested so helplessly on the capricious sufferance of thirteen superior state governments.

These men did what they could to make the national government under the Articles of Confederation as strong as that document and the prevailing temper of the state delegations would allow. Even before the Articles were formally put into operation, they moved to consolidate administrative responsibility by appointment of separate secretaries to manage each of the important activities with which the government must be concerned: foreign affairs, war, and finance. Hitherto the United States had no real executive departments, the matters requiring continuous attention being handled by various congressional committees. In January 1781, a Department of For-

ign Affairs was created and in February the departments of Finance and War, each to be run by one man who would be responsible to Congress and hold office during its pleasure.

In selecting a Superintendent of Finance, Congress was fortunate in having available Robert Morris, a leading Philadelphia merchant. Morris was able to bring a semblance of order into the chaos he encountered upon undertaking the job. Though he had to beg and borrow from state governments and from foreign countries, and though he seems to have mingled private gain too closely with public, he kept the United States almost solvent during the remainder of the war. In order to assist him, Congress authorized the remaining national bank on May 26, 1781, thus exercising a power that was to be a matter of controversy for some time to come.

In appointing heads of the other departments, Congress made less fortunate choices. Robert R. Livingston, the first Secretary for Foreign Affairs, was elected with the active assistance of the French minister La Luzerne in August 1781, but resigned the following year and was not replaced by John Jay until 1784. Jay, like Livingston, was more ready to listen to the demands of other countries than was proper in a secretary whose business was to bargain with them. The office of Secretary at War was held successively by Benjamin Lincoln and Henry Knox, neither of them distinguished. Nevertheless, the very existence of secretaries whose sole business was to administer a department and who could be held responsible for its activities was a considerable advance in the creation of an effective national government. Each department developed a small staff of workers who became the first professional civil servants of the United States and in many cases continued to work in the same capacities under the new government after the Confederation ended. But the creation of administrative departments did not in itself furnish the power to take necessary or desirable actions. After the

Articles of Confederation were adopted, the more nationalistic congressmen began to feel out the possibilities of a more effective general government by suggesting that Congress had by implication the power to use whatever means were necessary to carry out its functions. As long as the war with England lasted, they frequently persuaded the other members to take bold actions, as in creating the national bank, laying an embargo on trade with England, or giving Washington authority to impress food and supplies. But the members were not yet ready to ask, nor would the states have been willing to grant, a general authority to execute laws. Once the war ceased and united action became less urgent, Congress became increasingly timid about asserting itself, and its strength ebbed rapidly. There was even a reversion in administration: Robert Morris resigned as Superintendent of Finance and a committee took charge again.

As Congress spoke in feebler tones, the state governments grew contemptuous of its authority. They violated the Articles of Confederation by ignoring the nation's treaties with foreign countries, by waging war with the Indians, by building navies of their own. They sent men with less vision and less ability to represent them and at times failed to send any, so that Congress could scarcely muster a quorum to do business. They refused to fill congressional requisitions any better than they had those imposed by Great Britain during their colonial days.

As in the years before Confederation, it was in financial matters that the impotence of the national government was most acutely felt. From 1780 when its paper money became worthless until 1787 when it began to realize a small income from the sale of public lands, the government was totally dependent, except for loans, on the unobliging states. Congress sought a remedy by proposing an amendment to the Articles of Confederation giving the United

States the right to levy and collect a 5 percent duty on foreign imports. Amendment, however, required unanimous acceptance and in 1782 failed because Rhode Island, the smallest state of the union, flatly rejected it, while the other states attached various conditions to their acceptance. In the following year Congress tried again by coupling the proposal with a number of others designed to win favor for it. By 1786 every state but New York was ready to agree in some form, but New York's refusal was enough to defeat the scheme once more.

It had become clear, to the country's leaders at least, that Congress as then constituted could never perform its functions. When the Articles of Confederation were drafted, Americans had had little experience of what a national government could do for them and bitter experience of what an arbitrary government could do to them. In creating a central government they were therefore more concerned with keeping it under control than with giving it the means to do its job. Their state governments, they felt, should hold a leading rein on this new power. State governments were closer to home, closer to the people, and could be relied on to prevent Congress from getting the bit in its teeth and rushing into tyranny.

Time had by no means disappointed these calculations: Congress had never got out of hand. But anyone with half an eye for the nation's welfare could see by 1787 that state governments had proved unworthy masters. They would not allow Congress to act whether action was needed or not. Congress had been safeguarded into impotency, its deliberations rendered as ineffective as those of a debating society, while the states grew ever stronger. Washington had seen what was happening and warned against it as early as 1780: "I see one head gradually changing into thirteen. . . . I see the powers of Congress declining too fast for the consequence and respect which is due to them, as the grand representative body of

"THE CRITICAL PERIOD"

America. In the summer of 1787 James Wilson sadly confirmed the fact:

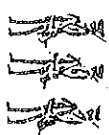
Among the first sentiments expressed in the first Congress one was that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more. We are now one nation of brethren. We must bury all local interests and distinctions. This language continued for some time. The tables at length began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

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

And so, in addition to the need for a government which could act effectively for the nation, there began to be felt the need for a central authority with power to meet this new threat to property rights. Without such an authority, it was feared by many, the whole country would degenerate into anarchy. Was not property the only real security for life and liberty? Those who felt this way saw a dreadful portent for the future in what had happened in Massachusetts in the autumn of 1786. Farmers in the western part

of the state, hit hard by a combination of low prices and high taxes, rose in armed rebellion under Daniel Shays. Shays and his men closed the courts in Berkshire, Hampshire, and Worcester counties, thus ending suits at law and preventing creditors from collecting debts. They defied the state government, and if the loyal militia of the state had not come to the rescue, the United States arsenal at Springfield would have fallen to an armed mob, with the central government helpless to prevent it. Without men or money it would be equally helpless to cope with future, possibly worse, threats of anarchy.

The prospects of remedying the situation looked dim, for with the states so powerful and so irresponsible it was unlikely they would agree to give up their death grip on the central government. Even if the majority of them should be willing, one dissent was sufficient to prevent amendment of the Articles of Confederation. But while wise men shook their heads over Daniel Shays and talked hysterically of the advantages of monarchy or dictatorship, events were already stirring which would give the United States a government true to the principles of the Revolution and commensurate with the national vision of its greatest leaders.



10

The Constitutional Convention

The year 1786 was the low point of the Critical Period. It was the year of Shays' Rebellion, the year of John Jay's proposed treaty with Spain, a year in which the depression in trade reached its lowest ebb. In the midst of discouragements Virginia took the lead in an attempt to breathe a little life into the national government. Virginia proposed an interstate convention to discuss a uniform regulation of commerce. If the delegates could agree on a set of recommendations, the states might then authorize Congress to carry them out. Several states expressed a readiness to take up Virginia's proposal, and the meeting was scheduled for Annapolis, Maryland, on the first Monday in September 1786.

Not much is known about the maneuvering that preceded the Annapolis convention, but there is evidence that some of the commissioners saw in it the opportunity to inaugurate a thorough overhaul of the Articles of Confederation. New Jersey sent a delegation empowered to consider not only commerce but "other important matters." New York sent Alexander Hamilton, an ardent nationalist, and Virginia sent James Madison, who wrote to Jefferson a month earlier that "Gentlemen both within and without Congress wish to make this meeting subservient to a plenipotentiary convention for amending the Confederation." At the time he wrote, Madi-