

The Revolutionary Spirit of the Articles of Confederation

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While never a true governing document, perhaps no piece of parchment holds more significance to Americans than the Declaration of Independence. Drafted by Thomas Jefferson and adopted by the Second Continental Congress, the Declaration has served as an inspiration to an American Revolution against the government of Great Britain, and countless other revolutions within American society and across the world. As you can see bolded on page one of your packet, more than 80 years after its drafting, then-senatorial candidate Abraham Lincoln provided – in the context of the fight over slavery – perhaps the clearest explanation as to the importance of the document in American society:

Now, my countrymen, if you have been taught doctrines conflicting with the great landmarks of the Declaration of Independence; if you have listened to suggestions which would take away from its grandeur, and mutilate the fair symmetry of its proportions; if you have been inclined to believe that all men are not created equal in those inalienable rights enumerated by our chart of liberty, let me entreat you to come back. Return to the fountain whose waters spring close by the blood of the Revolution. . . . do not destroy that immortal emblem of Humanity---the Declaration of American Independence.¹

This impassioned defense of the Declaration as the clouds of Civil War loomed in less than three years makes clear that the document remained, and remains, foundational to how Americans understand their governmental project. That project produced two governing documents: the Articles of Confederation (drafted 1777, effective 1781), and its successor, the Constitution (drafted 1787, effective 1789). For obvious reasons, public focus on comparison between the two documents generally leads to the conclusion that the Articles of Confederation were a failure, and the Constitution was the true successor to the spirit of the Declaration of Independence. But this conclusion is overly reductive and erases the complicated and uncertain way the United States of America maneuvered its post-Revolutionary period. **The Articles of Confederation in**

¹ Abraham Lincoln, *The Collected Works of Abraham Lincoln*, version The Abraham Lincoln Association, ed. Roy P. Basler, vol. II (New Brunswick, NJ: Rutgers University Press, 1953), <https://quod.lib.umich.edu/l/lincoln/lincoln2/>, 545-547.

some significant ways captures the spirit of the Declaration of Independence more accurately than the United States Constitution.

June 11, 1776, was a busy day for the Second Confederation Congress. As you can see on page six, three resolutions were passed that indicate the Congress' desire to change the course of history. The Congress voted to create three committees: One committee would draft a model treaty to be used as a template for commercial treaties that the United States planned to make with other countries during the Revolution, one five-person committee to prepare a declaration of independence from Great Britain, and one committee, made up of one member from each colony, would, "prepare and digest the form of a confederation to be entered into between these colonies." One day produced the momentum for the ideological underpinning, foreign policy goals and governmental structure of what would become the United States.² The next day, 12 members were selected to represent 12 of the 13 colonies in the Congress.³ The final member, New Jersey's Francis Hopkinson, was added on June 28, 1776, the same day that the New Jersey delegation arrived at Philadelphia.⁴ Over the course of the next five months, the Committee of Thirteen would produce an initial draft, then be forced into numerous revisions. The central debates about the proposed plan centered around state tax responsibilities – would the requisition requests be made based on population or state wealth – and representation – should each state have equal power in the coming Congress, or should votes be based on population. These issues

² *Journals of the Continental Congress: 1774-1789*, vol. V (Washington: Government Print. Office, 1906), <https://archive.org/embed/journalscontine00unkngoog>, 431.

³ *Journals*, vol. V, 433

⁴ *Journals*, vol. V, 489-91

becoming the central areas of disagreement foreshadow the conflicts that would emerge in the next decade.⁵

On November 17, 1776, the Second Continental Congress transmitted a letter to the thirteen states, which can be found on pages seven through ten. Congress said in the letter that, “We have reason to regret the time which has elapsed in preparing this plan for consideration,” and that the work described, “has, in its progress, been attended with uncommon embarrassment and delay.” However, on page nine, you can see Congress justify the delay in the goals it was attempting to accomplish:

without it, we may soon be constrained to bid adieu to independence, to liberty, and safety blessings which, from the justice of our cause, and the favor of our Almighty Creator, visibly manifested in our protection.⁶

The Congress was sending to the states what became known as the *Articles of Confederation and Perpetual Union between the States*. The *de facto* government, the Second Continental Congress, was preparing a *de jure* government organized as a loose confederacy through a formal, written constitution. And it was doing so in the shadow of the Declaration itself.

The first clue about the Declaration of Independence’s influence on the Articles of Confederation is in the text itself. In the preamble of the Articles, found on page 13, the document starts, “Whereas the Delegates of the United States of America in Congress assembled did on the 15th day of November in the Year of our Lord One Thousand Seven Hundred and

⁵ Thomas Jefferson, “Notes of Proceedings in the Continental Congress, 7 June–1 August 1776,” Founders Online (National Archives and Records Administration), accessed November 14, 2022, <https://founders.archives.gov/documents/Jefferson/01-01-02-0160>.

⁶ *Journals of the Continental Congress: 1774-1789*, vol. IX (Washington: Government Print. Office, 1908), [https://memory.loc.gov/cgi-bin/ampage?collId=lljc&fileName=009/lljc009.db&recNum=7&itemLink=r?ammem/hlaw:@field\(DOCID+@lit\(jc0092\)\)%230090008&linkText=1, 932-935](https://memory.loc.gov/cgi-bin/ampage?collId=lljc&fileName=009/lljc009.db&recNum=7&itemLink=r?ammem/hlaw:@field(DOCID+@lit(jc0092))%230090008&linkText=1, 932-935).

Seventy Seven, and in the Second Year of the Independence of America.” This reference to the time of the drafting of the Declaration of Independence as the marker of a new epoch clearly communicates the idea that the Articles exists within a space first explored and defined by the Declaration. The reference to years of the Revolution would continue to be included in official government documents but would fall in prominence, as it typically appears closer to the end – as it does near the bottom of the Constitution⁷ and of a variety of presidential proclamations from the Washington⁸ to Biden⁹ administrations – rather than right at the beginning. An example, a proclamation from Washington calling for the end of the Whiskey Rebellion in 1794, can be found on page 25.

If the Declaration of Independence sought to answer one of historian Carl L. Becker’s famous questions – the question of home rule – then the Articles of Confederation sought to answer the second question – who should rule at home.¹⁰ And the answer to that second question was clearly answered, and clearly aligned to the Declaration: The people, through their states. The Articles of Confederation famously created a “firm league of friendship” in which each state would retain almost impenetrable sovereignty. While the national government was given some power on paper, the lack of a specific enforcement mechanism or an effective means of taxation meant that the Confederation Congress as organized under the Articles would more often than

⁷ “The Constitution of the United States: A Transcription,” America’s Founding Documents (National Archives and Records Administration), accessed November 16, 2022, <https://www.archives.gov/founding-docs/constitution-transcript>.

⁸ George Washington, “Proclamation, 7 August 1794,” Founders Online (National Archives and Records Administration), accessed November 16, 2022, <https://founders.archives.gov/documents/Washington/05-16-02-0365>.

⁹ Joseph R. Biden, “A Proclamation on Loyalty Day, 2022,” The White House (The United States Government, April 29, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/29/a-proclamation-on-loyalty-day-2022/>.

¹⁰ Carl Lotus Becker (University of Wisconsin, 1909), p. 22, https://www.google.com/books/edition/The_History_of_Political_Parties_in_the/Eeie8hDV4OUC.

not remain a debating society.¹¹ It was at the state level where the people would have their voice heard and the levers of power would be controlled. In the framework of the representative system of government that exists under the present Constitution, the Confederation Congress – with its members appointed by state legislatures alone – looks less than a full democracy. However, as the document was designed for union between the *states*, and not necessarily the *people*, the goal laid out by the document is established through the Congress it creates. It is also important to recognize, though, that through a lesser-known feature of the Articles of Confederation, the people could potentially impact Congress more significantly and more rapidly than the system that would come to exist under the present Constitution. According to Article V of the Articles of Confederation, found on page 14, while states had the power to appoint delegates each year, they also had, “a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.”¹² Under the Articles of Confederation, delegates had shorter terms than are seen in the most popularly responsive house under the Constitution, the House of Representatives. *And* those terms were not guaranteed. If public pressure built on state legislatures, they could choose to recall and replace any or all of the state’s chosen delegates at any time. While the check on delegate overreach was never exercised during the decade-long effective period of the Articles of Confederation, its existence ensured delegates reflected the will of the states.¹³ This system clearly aligns with the

¹¹ Kennie L. Gill, ed., “SENATE MANUAL CONTAINING THE STANDING RULES, ORDERS, LAWS, AND RESOLUTIONS AFFECTING THE BUSINESS OF THE UNITED STATES SENATE,” 1 SENATE MANUAL CONTAINING THE STANDING RULES, ORDERS, LAWS, AND RESOLUTIONS AFFECTING THE BUSINESS OF THE UNITED STATES SENATE § (2002), pp. 935-947, <https://www.govinfo.gov/content/pkg/SMAN-107/pdf/SMAN-107.pdf>.

¹² U.S. Art. of Confed. art V

¹³ Jonathan Elliot, ed., *The Debates, Resolutions, and Other Proceedings, in Convention, on the Adoption of the Federal Constitution, as Recommended by the General Convention at*

Declaration of Independence's goal, "that as Free and Independent **States**, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do."

Both the Declaration of Independence and the Articles of Confederation were products of the same era, and that era was defined by the threat of war. While the Declaration of Independence was adopted on July 4, 1776, significant fighting between Great Britain and the colonists had begun more than a year before with the Battles of Lexington and Concord. In the next 15 months, fighting took place from Massachusetts to Georgia, and Patriots even ventured into locales like Quebec and the Bahamas. The act of declared independence was certainly a significant escalation, but it would be naïve to believe that the drafting of the Articles of Confederation was completed without the clear goal of military management in mind. The Articles of Confederation contains clauses that allow the Confederation Congress to both raise and support a military and regulate state militias – powers that can also be found in the United States Constitution. However, a lesser-known clause of the Articles of Confederation shows the document is much more focused on strengthening American independence and weakening British influence in North America. Much like the Constitution, the Articles of Confederation prevents any entity from joining the United States of America without the consent of Congress through a legislative action. Under the Constitution, a majority vote is necessary in both houses, while in the Articles of Confederation nine states must give their assent (note: this is the same majority necessary to pass laws under regular order in the Articles). However, the Articles of Confederation has within it a special carve-out, found in Article XI on page 21: "Canada

Philadelphia, on the 17th of September, 1787: With the Yeas and Nays on the Decision of the Main Question, vol. I (Washington, DC: The Pennsylvania Avenue, 1827), https://www.google.com/books/edition/The_Debates_Resolutions_and_Other_Procee/wUWsf5O4DdwC, 258.

acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union.”¹⁴ This allowed Canada to join the union without any additional consent from either the national or state governments. This provision clearly reflects two main objectives of the Declaration of Independence: popular sovereignty for North American settlers and a weakening of Great Britain sufficient to allow the United States of America to stand on its own. From a militaristic standpoint, the benefit of acquiring British Canada was obvious. If the United States controlled the Atlantic seaboard from the Arctic Circle to the St. Marys River on the southern border of Georgia, it would make a land invasion from the north impossible and from the west implausible. While Great Britain did technically control Florida at the onset of the war and could attempt a southern invasion through its possession of Florida, its control over the colony was tenuous at best, emphasized by the capture of strategically significant points by Spanish Governor of Louisiana Bernardo de Gálvez during the Revolutionary War. Ultimately, if the U.S. was not able to separate from and defend itself from Great Britain, the aspirational language of the Declaration of Independence would be all for naught. From a political standpoint, inviting Canada into the United States fits clearly within the original purpose of the Declaration of Independence. While the Declaration – which can be found on pages two through four – is signed by, “the Representatives of the united States of America, in General Congress, Assembled,” significant portions of the document avoid specific mentions of the soon-to-be-separated British America. The first paragraph, which contains the preamble, indicates that the purpose of the document is to explain to all mankind, not just the colonists, why the separation is happening. The Declaration of Human Rights in paragraph two explains both the condition of man (equal, endowed with unalienable rights) and the proper role

¹⁴ U.S. Art. of Confed. art XI

of government in serving man (empowered by the people's consent to secure the aforementioned rights), without stating that those rights are conditioned on residence in British America, or Great Britain at all. The 27 grievances obviously address issues between colonists and King George III, but a number of the grievances could also apply to Canada. The Articles of Confederation's "Canada clause" reflects a revolutionary spirit within both the Second Continental Congress and the states at large in the late 1770s, with a particular focus on extending the protection of natural rights as far as possible, even if it meant creating special Constitutional mechanisms to do so. The Constitution drafted at the Philadelphia Convention of 1787, instead of looking for more opportunities to rapidly expand American influence, instead removes the Canada clause, settling on a state admission process largely created under the Articles of Confederation regime through the Land Ordinance of 1784 and the 1787 Northwest Ordinance.

The Articles of Confederation, which was formally ratified in 1781 and designed as a "Perpetual Union," lasted for less than a decade. It was replaced, in 1789, by the ratified United States Constitution, which still guides the government of the United States today. The Articles of Confederation is generally considered a failure. Its extreme deference to state sovereignty, its nearly nonexistent executive power, and its functionally impossible amendability¹⁵ make it appear, to modern analysts, as a document doomed from the onset. The Constitution, on the other hand, is venerated as a model government, the perfect reaction to the failed action in the Articles of Confederation. Its Supremacy Clause keeps states from overwhelming national interests, its presidency ensures the laws of Congress are followed, and the Constitution's Article V process of amendment ensures that the states are able to make necessary changes to governing without

¹⁵ Richard Peters, ed., *The Public Statutes at Large of the United States of America ...*, vol. I (Boston: Charles C. Little and James Brown, 1845), <https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db>, 4-9.

unanimity.¹⁶ If the Articles of Confederation are considered the first draft of American government, the Constitution is considered the final draft, closing the Revolutionary Period with a *magna carta libertatum* worthy of Patriotic sacrifice. However, some of the perceived flaws in the Articles of Confederation actually reflect choices in line with the spirit of the Declaration of Independence, while some of the perceived fixes in the Constitution can be seen as perfidies of the revolutionary spirit. Take, for example, the perceived weakness of the Articles of Confederation to respond to insurrection within a member state. The 1786 uprising known as Shays' Rebellion is one of several tax revolts seen in the fledgling country during that Critical Period between 1783 and 1789. Practicality might have called for a reorganization of government under a new national charter, like the Constitution. At the conclusion of Shays' Rebellion, George Washington, then retired from his Revolutionary-era service as General and Commander-in-chief of the Continental Army, wrote to his successor as senior officer of the United States Army, Major General Henry Knox:

On the prospect of the happy termination of this insurrection I sincerely congratulate you; hoping that good may result from the cloud of evils which threatned not only the hemisphere of Massachusetts but by spreading its baneful influence, the tranquillity of the Union. Surely Shays must be either a weak man—the dupe of some characters who are yet behind the curtain—or has been deceived by his followers. Or which may yet be more likely, he did not conceive that there was energy enough in the Government to bring matters to the crisis to which they have been pushed.¹⁷

Washington's endorsement of the suppression of the rebellion and fortification of national power sounds like a ringing endorsement of the Constitution-to-be – after all, he was the President of the Philadelphia Convention of 1787 that led to its drafting. However, a closer read of the

¹⁶ Peters, 10-20

¹⁷ George Washington, "From George Washington to Henry Knox, 25 February 1787," Founders Online (National Archives and Records Administration), accessed November 29, 2022, <https://founders.archives.gov/documents/Washington/04-05-02-0048>.

conditions in Massachusetts in the summer of 1786 might present a different understanding of which side has the spirit of the Declaration of Independence behind them. Shays' Rebellion did not exist in a vacuum – as stated before, it was one of a number of tax revolts throughout the colonies, one of which led to what is called an “electoral revolution” and inflationary monetary policy in neighboring Rhode Island.¹⁸ Additionally, Shays' Rebellion was not an impulsive action without attempts at resolution and de-escalation. A week before the onset of conflict in Shays' Rebellion, on August 22, 1786, a convention of delegates from fifty towns in Hampshire County, Massachusetts met and, over the course of the next three days, agreed on twenty-five articles. The articles specify grievances with Massachusetts state government, and its judiciary in particular. The grievances identify perceived violations of the rights and liberties of farmers in the county, as well as proposed solutions. Those solutions included – but were not limited to – the soft money policy carried out by the Country Party of neighboring Rhode Island after its electoral revolution in 1786. The commencing of the meeting coincided with the opening of the Courts of Common Pleas and General Sessions of the Peace, approximately one week later.¹⁹ While Washington may have seen the actions of Shays and the regulators of Massachusetts as “insurrection,” it is unquestionably true that King George III saw his actions, and the actions of the Second Continental Congress, in largely the same way. A cohort of elites who respond to a list of grievances put forth by individuals who claim equal citizenship by reforming the

¹⁸ Samantha Payne, “‘Rogue Island’: The Last State to Ratify the Constitution,” *Pieces of History* (National Archives and Records Administration, May 18, 2015), <https://prologue.blogs.archives.gov/2015/05/18/rogue-island-the-last-state-to-ratify-the-constitution/>.

¹⁹ George Richards Minot, *History of the Insurrections in Massachusetts in the Year Seventeen Hundred and Eighty Six, and the Rebellion Consequent Thereon.*, Second (Boston, MA: James W. Burditt & Co., 1810), https://www.google.com/books/edition/The_History_of_the_Insurrections_in_Mass/dY4-AAAAYAAJ, 32-38.

government of the country itself, instead of addressing the grievances themselves, is much more akin to the actions of Great Britain in 1775 and 1776 than that of those responsible for the Declaration of Independence. It is, perhaps, no surprise that the same Rhode Island Country Party that inspired Daniel Shays and other rebels to resist excess taxation is the same party that would refuse to send delegates to the Philadelphia Convention of 1787 that eventually produced the Constitution,²⁰ and the same party that would resist ratifying that Constitution until May 29, 1790, more than a year after George Washington was sworn in as the first President of the United States under that Constitution.²¹ Irrespective of the validity of Rhode Island's monetary policy, or the legitimacy of the grievances of supporters of Shays, the Constitution can be seen as a somewhat counterrevolutionary document specifically in the context of these events. This viewpoint is bolstered by the actions of John Hancock, who was president of the Second Continental Congress at the time of the adoption of the Declaration of Independence and is famous for his large signature on the document. In response to the reaction of then-Massachusetts governor James Bowdoin (BOW-den) to the rebels, Hancock ran to recapture the governor's office in 1787 and won convincingly. One of his first actions in office was to issue a proclamation of "mercy and indemnification" to those involved in "treasons or misprisions of treason," which can be found on page 26 and 27. Daniel Shays, the namesake of the rebellion, was one of nine men singled out in the proclamation of pardon.²²

²⁰ "June 24, 1788," Center for Civics Education (Concordia University Irvine, June 7, 2021), <https://www.cui.edu/centers-institutes/center-for-civics-education/becoming-america-the-constitutional-convention-of-1787/post/june-24-1788>.

²¹ Samantha Payne, "Rogue Island"

²² John Hancock, "Proclamation of John Hancock," Shays' Rebellion & the Making of a Nation (Springfield Technical Community College, 2008), https://shaysrebellion.stcc.edu/shaysapp/artifact_trans.do?shortName=proclamation_clemency.

The Articles of Confederation was functionally flawed. The Constitution remains a beacon for the strength of representative democracy more than two centuries after its ratification. Naturally, one document is bound to attract more attention and favor than the other. However, I do hope that Americans, and particularly those charged with maintaining and advancing the spirit of the Revolution like us, appreciate the Articles of Confederation both in its important place in American history and in the unique way it served as a natural continuation of the Declaration of Independence.

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