

## I. Introduction to the 18th century

- A. The colonial constitutions of the 17th and early 18th century could be said to be pioneering.
- i. They were pioneering in the sense that they created new more “liberal” political institutions, than had been seen before, or at least since the Greek democracies of 400 BCE.
  - ii. They were also pioneering in the sense that their was not much in the way of a scholarly legal and political theory upon which to base their early institutions.
  - iii. They were pioneering in the sense that they were literally negotiated by pioneers in many cases.
- B. Much of this pioneering work (political innovation) was driven by the necessity of attracting labor and capital from Europe without substantial assistance from the European governments or companies sponsoring colonization.
- i. This required self-sufficient governance that newcomers could trust to protect economic and cultural opportunities: property, person, contracts, and religious "freedom" and/or tolerance.
  - ii. The use of fairly broadly elected assemblies with veto power over new taxes and legislation was a common solution to the problem, although this solution was not in most cases the first governmental institutions tried.
  - iii. Competition between the colonies for labor and capital helped speed the evolution and liberalization of those early governments.
- C. However, the colonial charter amendment process was driven to a substantial degree by the colonists themselves (not all of whom were members of the colonial elite) who took it upon themselves to “theorize” about what better institutions would look like.
- i. The colonists largely accepted the relatively new and evolving concept of popular sovereignty (in its contractarian sense) as their basis for judging constitutions.
    - ◆ Did a constitution make “citizens” better off or not?
    - ◆ Could a constitutional reform make life better or not?
  - ii. [Property rights could be said to be a more central concern in the colonies than elsewhere, because so many more of the colonists were “freeholders” than in Europe. For example, property remained a “royal grant” even for nobles until early in the Eighteenth century.]
  - iii. Politically active colonists did this to a considerable degree before the great political philosophers hit on similar ideas (Hobbes, 1651, Locke, 1689, Montesquieu, 1748, or Smith, 1776), although they were subsequently influenced by these thoughtful men as well.
  - iv. And, perhaps most importantly, these colonial ideas influenced colonial charters and subsequent national documents as we will see today.

- D. By the middle of the 18th century, there was a large body of experience in self-governance--which included elected governors in a few New England colonies--but which always included relatively broadly elected parliaments.
- i. What might be called the political elite were used to having significant responsibilities over government.
  - ii. The fairly broad colonial middle class (50-90% of white men) were used to selecting representatives to parliament.
  - iii. And, in the small towns and cities, many directly participated in public policy decisions at town meetings.
- E. There was also an emerging body of political literature and law the influenced the thinking of educated persons in the colonies--which also included a fairly broad cross section of persons within each colony.
- i. A good deal of local political theorizing was done in newspapers and in church sermons.
  - ii. However, there were also several colleges: Harvard, Princeton, Yale, the University of Pennsylvania, and William and Marry where “elites” were educated in law, philosophy, science and religion.
  - iii. Moreover, a significant number of relatively wealthy colonists were educated in Europe, especially at English universities (Oxford and Cambridge).
  - iv. And, of course, new books from Europe found their way to the book shelves of private and public libraries.

## II. A Digression on some secular writings by 18th century “colonists”

- A. Local writers (pamphleteers) such a Thomas Paine wrote and sold small political tracts to a broad cross section of readers within the colonies. Paine in particular was much more politically liberal in his reasoning than European scholars.

[Paine on “European Identity,” from *Common Sense*, 1776]

**“A man born in any town in England divided into parishes, will naturally associate most with his fellow parishioners** (because their interests in many cases will be common) and distinguish him by the name of neighbor; if he meet him but a few miles from home, he drops the narrow idea of a street, and salutes him by the name of townsman; if he travel out of the county and meet him in any other, he forgets the minor divisions of street and town, and calls him countryman, i. e. countryman: but if in their foreign excursions they should associate in France, or any other part of Europe, their local remembrance would be enlarged into that of Englishmen.

And by a just parity of reasoning, all Europeans meeting in America, or any other quarter of the globe, are countrymen; for England, Holland, Germany, or Sweden, when compared with the whole, stand in the same places on the larger scale, which the divisions of street, town, and county do on the smaller ones; Distinctions too limited for Continental minds. **Not one third of the inhabitants, even of this province, [Pennsylvania], are of English descent."**

[Paine on "The Origin and Design of Government," from *Common Sense* 1776]

"SOME writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher.

"**Society in every state is a blessing, but Government, even in its best state, is but a necessary evil**; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries by a Government, which we might expect in a country without Government, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of the bowers of paradise."

"... necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each other; but as nothing but Heaven is impregnable to vice, it will unavoidably happen that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other: and this remissness will point out the necessity of establishing some form of government to supply the defect of moral virtue."

B. Perhaps the most famous, distinguished, and versatile man in 18th century America was Ben Franklin. Franklin was a self-taught and self-made man, who rose from apprentice printer, to printer, to engineer, scientist, philosopher, politician, colonial lobbyist and ambassador, constitutional designer, and "wise man."

i. Among his most influential work in the colonies were his newspapers and especially his Poor Richard's Almanac which was widely sold from around 1732 onward. The almanac included practical advise on living as well as snippets of history, weather prediction, and news.

ii. In 1758, Franklin published a collection of advice as, perhaps, the first "how to get rich" book, the *Way to Wealth*, which stresses the value of a work ethic for personal progress.

- ♦ (Franklin's book is course published well over a hundred years before Max Weber's famous work on the Protestant work ethic.)

[Excerpts from Franklin's *Poor Richard Almanac* (1732-1758), collected and published by Franklin as *the Way to Wealth* 1758]

"So **what signifies wishing and hoping for better times?** We may make these times better, if we bestir ourselves. Industry need not wish, and he that lives upon hopes will die fasting. There are no gains without pains; then help, hands, for I have no lands; or, if I have, they are smartly taxed. **He that hath a trade hath an estate; and he that hath a calling, hath an office of profit and honor**, as Poor Richard says; but then the trade must be worked at, and the calling followed, or neither the estate nor the office will enable us to pay our taxes. If we are industrious, we shall never starve; for, At the working man's house hunger looks in, but dares not enter. Nor will the bailiff or the constable enter, for Industry pays debts, while despair increaseth them.

What though you have found no treasure, nor has any rich relation left you a legacy, **Diligence is the mother of good luck, and God gives all things to industry**. Then plow deep while sluggards sleep, and you shall have corn to sell and to keep. Work while it is called today, for you know not how much you may be hindered tomorrow.

"**One, today is worth two to-morrows**, as Poor Richard says; and further, Never leave that till tomorrow, which you can do today. If you were a servant, would you not be, ashamed that a good master should catch you idle? Are you then your own master? Be ashamed to catch yourself idle, when there is so much to be done for yourself, your family, your country, and your king. Handle your tools without mittens; remember, that The cat in gloves catches no mice, as Poor Richard says. It is true there is much to be done, and perhaps you are weak-handed; but stick to it steadily, and you will see great effects; for Constant dropping wears away stones; and By diligence and patience the mouse ate in two the cable; and Little strokes fell great oaks.

"Methinks I hear some of you say, 'Must a man afford himself no leisure?' I will tell thee, my friend, what Poor Richard says, Employ thy time well, if thou meanest to gain leisure; and, since thou art not sure of a minute, throw not away an hour. Leisure is time for doing something useful; this leisure the diligent man will obtain, but the lazy man never; for A life of leisure and a life of laziness are two things."

### III. English Politics and the Path to the Revolutionary War

- A. A good deal of the colonies' freedom to develop political independence reflected political turmoil in England as the result of its civil war and a series of weak queens and kings in the early 18th century.
- ♦ But, this was good luck came to an end in 1702.
- B. After the unexpected death of William III in 1702, English crown moved to less ambitious heads.
- i. Anne, George I, and George II, who were less interested in English governance and colonial affairs than William and the Stuarts had been, and the "blind eye" that had allowed colonial autonomy to flourish in the mid-sixteenth century was again turned to the colonies.
    - ♦ Indeed, Kings George I and II did not even speak English.
  - ii. Within Great Britain itself power continued to shift from the crown to parliament during this period, as ministers rose in importance for much the same reason.
  - iii. With the accession of George III in 1760 and his new ministers, British governance returned to more ambitious men, and colonial affairs received renewed attention.
    - ♦ Renewed effort to increase control of colonial governance was evident in the appointments of new colonial governors and the imposition of new colonial taxes by Parliament without consulting colonial assemblies (Miller 1943: 227-8, 255-6).
    - ♦ Economic elites were concerned about increasingly costly regulations restricting development and trade (the 1764 Sugar Act, and 1764 Currency Act) and new economic taxes (the 1765 Stamp Act); for financial as well as political and ideological reasons (Miller 1943: 193, 180-3; Wish 1950: 187-91; Schofield 2004).
    - ♦ Enforcement of the long-standing Navigation Acts were again strengthened and judicial authority was transferred from colonial courts to the Admiralty Courts (the 1767 Revenue Act).
    - ♦ Protestant groups feared the establishment of an American Episcopal Bishopric, which they regarded with "papist" suspicions (Wish 1950: 194; Miller 1943: 188-91).
    - ♦ In 1774 the Coercive Acts were passed, the Charter of Massachusetts revoked, and most local town meetings in Massachusetts once again banned.
  - iv. These Acts affected all the colonies, and induced colonial governments to try to coordinate their lobbying efforts to have these laws overturned.
- C. Thus, the **first truly national efforts** in what became the United States of America were colonial efforts to negotiate with the Parliament and King George III.

### IV. Government by Treaty and the Revolutionary War

- A. What is most relevant about the "revolutionary period" for the purposes of this course is the creation of new national institutions.
- ♦ These were slowly created, and in the end transformed 13 essentially independent colonies into a new nation, with its own government.
- B. The formal process of forming a national government can be said to begin in 1754 in Albany NY, when Ben Franklin and Thomas Hutchison proposed the Albany Plan of Union to the British crown. The Albany plan was an attempt to coordinate colonial efforts to deal with Indian attacks and possible French incursions into the English colonies. It was passed by the Albany delegates and called for:
- i. "a general government be administered by a President-General, to be appointed and supported by the crown; and a Grand Council, to be chosen by the representatives of the people of the several Colonies met in their respective assemblies"
  - ii. Representatives to the Grand Council were to be determined by the colonial populations with Massachusetts and Virginia having 7 votes each, Pennsylvania having 6, Connecticut having 5, New York, North Carolina and South Carolina having 4 votes each, New Jersey would have 3, and Rhode Island and New Hampshire 2 each.
  - iii. The council was to meet in Philadelphia, and new representatives were to be elected every three years.
  - iv. The proposal was subsequently **rejected by the crown and several colonial assemblies**.
  - v. (The predicted French and Indian war took place shortly afterwards. Franklin years later (1789) speculated that had his plan been accepted, their might not have been an American revolution because no British troops would have been sent to America, no Stamp Act might have been passed...)
  - vi. Future efforts to develop a national government in 1774, clearly resembled the original Albany plan, but even without forming a government, meetings of colony representatives continued to take place.
- C. However, new common interests were produced by the policies of the English government adopted by parliament and King George III. (See B iii above.)
- D. Resolution of the Congress of 1765 (Coordinated Lobbying)
- i. The members of this Congress, sincerely devoted, with the warmest sentiments of affection and duty to His Majesty's Person and Government, inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit the circumstances of the said colonies, esteem it our indispensable duty to make the following declarations of our humble opinion, respecting

the most essential rights and liberties Of the colonists, and of the grievances under which they labor, by reason of several late Acts of Parliament.

- ii. That His Majesty's subjects in these colonies, owe the same allegiance to the Crown of Great-Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the Parliament of Great Britain.
- iii. That His Majesty's liege subjects in these colonies, are entitled to all the inherent rights and liberties of his natural born subjects within the kingdom of Great-Britain.
- iv. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them, but with their own consent, given personally, or by their representatives.
- v. That the people of these colonies are not, and from their local circumstances cannot be, represented in the House of Commons in Great-Britain.
- vi. That the only representatives of the people of these colonies, are persons chosen therein by themselves, and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.
- vii. That all supplies to the Crown, being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British Constitution, for the people of Great-Britain to grant to His Majesty the property of the colonists.
- viii. That trial by jury is the inherent and invaluable right of every British subject in these colonies.
- ix. That the late Act of Parliament, entitled, An Act for granting and applying certain Stamp Duties, and other Duties, in the British colonies and plantations in America, etc., by imposing taxes on the inhabitants of these colonies, and the said Act, and several other Acts, by extending the jurisdiction of the courts of Admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

#### E. Royal Response of 1768 "Circular Letter to the Governors in America"

- i. I have his Majesty's commands to transmit to you the enclosed copy of a letter from the speaker of the House of Representatives of the colony of Massachusetts Bay, addressed by order of that House to the speaker of the assembly of each colony upon the continent of North America.
- ii. As his Majesty considers this measure to be of a most dangerous and factious tendency, calculated to inflame the minds of his good subjects in the colonies, to promote an unwarrantable combination, and to excite and encourage an open opposition to and denial of the authority of Parliament, and to subvert the true principles of the constitution; it is his Majesty's pleasure that you should immediately upon the receipt hereof exert your utmost influence to defeat this flagitious attempt to disturb the public peace by prevailing upon the Assembly of your province to take no notice of it, which will be treating it with the contempt it deserves.

- iii. The repeated proofs which have been given by the Assembly of [ ] of their reverence and respect for the laws, and of their faithful attachment to the constitution, leave little room in his Majesty's breast to doubt of their showing a proper resentment of this unjustifiable attempt to revive those distractions which have operated so fatally to the prejudice of this kingdom and the colonies; and accordingly his Majesty has the fullest confidence in their affections. But if, notwithstanding these expectations and your most earnest endeavors, there should appear in the Assembly of your province a disposition to receive or give any countenance to this seditious paper, it will be your duty to prevent any proceeding upon it by an immediate prorogation or dissolution.

#### F. Partly in response to this English policy, the colonists shifted from formal meetings to informal "committees of correspondence" which attempted to coordinate lobbying efforts within the colonies and abroad without forming an "assembly."

- i. For about ten years these were not standing organizations, but rather were created to address specific policy concerns the colonists (colonial parliaments) had with respect to the Crown and Parliament, as for example in Massachusetts when the Crown assumed responsibility for paying the Governor's salary.
  - ◆ [Why did the Massachusetts colonists care about this "generosity" of the crown?]
- ii. However, in the 1770's these became standing organizations in colonies and within many large towns and cities, creating an informal "official" network of communication and coordination.

#### G. In 1774, the "first" **Continental Congress** met, in violation of the British instructions.

- i. As in the Congress of 1765, the goal was negotiating with the British government and coordination.
- ii. Formally, the Congress was a meeting of committees or embassies (Wilson and Jillson, *LSQ* 1989), and it functioned as "treaty organizations" often do:
  - ◆ It resolved that each "embassy" has a single vote. (Wilson and Jillson)
  - ◆ It established the tradition of electing a presiding officer, who would run the meetings, was established. These were elected unanimously and served various periods of time from a few days up to 29 months, when they would resign and often return home to their state offices (Wilson and Jillson).
  - ◆ By in large, "rotation" was used to increase consensus for a presiding officer, by reducing his power and through the assurance that each delegation would get "its" turn.
  - ◆ The basic structure of rotating presidents, 1 voter for each colony, continued throughout the war period, until the articles of confederation were adopted.
  - ◆ [The first president of the United States could thus be said to be either: (i) Peyton Randolph of Virginia in 1774, who served first, John Hanson of Maryland (and Scandinavian decent) who was in office at the time the Revolution was won, in 1781, or



George Washington, who was the first to occupy the new much more powerful office of President created by the new constitution in 1889.]

- iii. As a "treaty organization" it naturally used consensus (unanimous agreement) to make decisions, since it had no power to impose its will on a colonial government (member state).
  - iv. Besides developing operating procedures, the first continental congress also developed internal rules of order and a "committee system."
    - ♦ It also resolved that no one could speak more than twice on an issue and that the doors would be kept closed during deliberations
    - ♦ Two committees were established one focused on grievances and the other on possible resolutions.
- H. The first Continental Congress--a weak treaty organization or not--did manage to adopt a formal letter to the British Government, the "**Declaration of Rights and Grievances**," and adopt an agreement to boycott English goods.
- i. "Whereas, since the close of the last war, the British parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various presences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county:
    - ♦ And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the crown alone for their salaries, and standing armies kept in times of peace: And whereas it has lately been resolved in parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned:
    - ♦ And whereas, in the last session of parliament, three statutes were made; one entitled, "An act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading, or shipping of goods, wares and merchandise, at the town, and within the harbor of Boston, in the province of Massachusetts-Bay in New England;" another entitled, "An act for the better regulating the government of the province of Massachusetts-Bay in New England;" and another entitled, "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts-Bay in New England;" and another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights:

- ii. And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt, by his Majesty's ministers of state:
- iii. The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North- Carolina and South-Carolina, justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed deputies to meet, and sit in general Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE,
- iv. That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:
  - ♦ Resolved, N.C.D. 1. **That they are entitled to life, liberty and property: and they have never ceded to any foreign power** whatever, a right to dispose of either without their consent.
  - ♦ Resolved, N.C.D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, **entitled to all the rights, liberties, and immunities of free and natural- born subjects**, within the realm of England.
  - ♦ Resolved, N.C.D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.
  - ♦ 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, where their right of representation can alone be preserved, in all cases of taxation and internal polity, 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 bon fide, 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, N.C.D. 5. That the **respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage**, according to the course of that law.
  - ♦ Resolved, N.C.D. 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.
  - ♦ Resolved, N.C.D. 7. That these, his Majesty's colonies, are likewise **entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws**.
- v. Resolved, N.C.D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.
- vi. Resolved, N.C.D. 9. That the **keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law**.
- vii. Resolved, N.C.D. 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.
- ♦ All and each of which the aforesaid deputies, in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties, which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their representatives in their several provincial legislature.
  - ♦ In the course of our inquiry, **we find many infringements and violations of the foregoing rights**, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which **demonstrate a system formed to enslave America**.
- viii. Resolved, N.C.D. That the following acts of parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great Britain and the American colonies, viz.
- ♦ The several acts of Geo. III. ch. 15, and ch. 34.-5 Geo. III. ch.25.-6 Geo. ch. 52.-7 Geo.III. ch. 41 and ch. 46.-8 Geo. III. ch. 22. which impose duties for the purpose of raising a revenue in America, extend the power of the admiralty courts beyond their ancient limits, **deprive the American subject of trial by jury**, authorize the judges certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights.
  - ♦ Also 12 Geo. III. ch. 24, entitled, "An act for the better securing his majesty's dockyards, magazines, ships, ammunition, and stores," which declares a new offense in America, and **deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person**, charged with the committing any offense described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.
- ♦ Also the three acts passed in the last session of parliament, for stopping the port and blocking up the harbor of Boston, for altering the charter and government of Massachusetts-Bay, and that which is entitled, "An act for the better administration of justice, etc."
  - ♦ Also **the act passed in the same session for establishing the Roman Catholic religion, in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger** (from so total a dissimilarity of religion, law and government) of the neighboring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.
  - ♦ Also the act passed in the same session, for the better providing suitable quarters for officers and soldiers in his majesty's service, in North-America.
  - ♦ Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.
- ix. To these grievous acts and measures, **Americans cannot submit, but in hopes their fellow subjects in Great Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity**, we have for the present, only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association. 2. To prepare an address to the people of Great-Britain, and a memorial to the inhabitants of British America: and 3. To prepare a loyal address to his majesty, agreeable to resolutions already entered into.

## V. The Constitutional Transition to Independence and a National Government: the Second Continental Congress

### A. The "second" Continental Congress met in 1775.

- i. It continued to function as a meeting of ambassadors, with much letter writing and negotiations over joint communications and joint policies.
- ii. It remained more or less in session from 1775 until the end of the Revolutionary War (War of Independence) and the ratification of the first true constitution of the United States: the Articles of Confederation.
- iii. Franklin proposed a draft "articles of confederation in July of 1775, with the proviso that the final version be ratified by each state's assembly or by special conventions formed for this purpose.
  - ♦ This was the method used to adopt the post revolution constitutions, which again was analogous to the standard operation of a treaty organization (see the Avalon project, Articles of Confederation..

- ◆ A final version was approved by the second Continental Congress in November 1777, but it was not ratified by the colonies until March 1, 1781.
- B. It was the Second Congress that organized:
- i. The declaration of independence in 1776, one of the great political documents of the modern era.
    - ◆ [The first draft was penned by Jefferson with Ben Franklin and John Adam's assistance, which was then edited (fairly extensively) by the Congress.]
    - ◆ "When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
    - ◆ We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.
    - ◆ Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed."
  - ii. The continental army headed by George Washington
  - iii. The creation of new state constitutions, which were remarkably similar
    - ◆ [See the listing of state constitutions at the Avalon Project, Yale University]
  - iv. Organized a national currency (the continental)
  - v. Foreign treaties with France
- C. The Second Continental Congress did this all this using the "weak" machinery of a treaty organization with rotating presidencies and consensus decision making.
- ◆ [Note that the EU has made very similar institutions work reasonably well during its much longer history.]
- D. Finally in March 1781, the articles of confederation were ratified by the last state assembly and the United States of America was officially begun.
- i. The American victory over the British occurred the following fall, on October 18, 1781.
  - ii. New treaties and loans were forthcoming from the Netherlands and France

- iii. And, the final peace settlement with England, however, took two more years to be finalized in the treaty of Paris adopted in September 1783 and ratified on January 14, 1784..

## VI. The Articles of Confederation

- A. The Articles of Confederation resemble to a significant degree the two other European federations of that time: the United Provinces of the Netherlands and the Swiss Confederacy.
- ◆ The confederacy was a treaty organization of independent states, however, many of its provisions were carried forward in the constitutions that would replace it in less than a decade.
  - ◆ These are worth noting, both as evidence of "institutional conservatism" and as evidence of continuity even within a "radical" change in the power of the central government and its organization.
  - ◆ The Articles begin with the following:
- B. "To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting. **Articles of Confederation and perpetual Union** between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.
- i. The Style of this Confederacy shall be "**The United States of America.**"
  - ii. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.
  - iii. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.
  - iv. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, **paupers, vagabonds, and fugitives from justice excepted**, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the

owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

- v. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.
  - vi. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.
  - vii. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to **meet in Congress on the first Monday in November, in every year**, with 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.
- C. **No State shall be represented in Congress by less than two, nor more than seven** members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.
- i. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.
    - ♦ [Recall Franklin's old Albany plan with its population weighted representation with weights from 2 to 7, however in this scheme there is no weighted voting, as often the case in treaty organizations and confederations.]
  - ii. In determining questions in the United States in Congress assembled, **each State shall have one vote**.
  - iii. **Freedom of speech** and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonment, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.
  - iv. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; **nor shall the United States in Congress assembled, or any of them, grant any title of nobility**.
  - v.
  - vi.
  - vii.

- viii. **All charges of war, and all other expenses** that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which **shall be supplied by the several States in proportion to the value of all land** within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.
  - ♦ The **taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States** within the time agreed upon by the United States in Congress assembled.
- ix. The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, **unless nine States assent to the same**: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.
- x. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the **voice of nine States** in the Congress of the United States assembled be requisite.
- xi. Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.
- xii. All bills of credit emitted, moneys borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.
- xiii. **Every State shall abide by the determination** of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.
  - ♦ [In force, after it was ratified by all the colonies. The last of the original 13 colonies to accept the "treaty" was Maryland on March 1781.]



**VII. Weakness of the First National Constitution**

- A. It is of some interest that the decision making power of the central government was increased by these rules relative to those of the Continental Congress.
- ◆ The Articles replaced consensus (unanimity) with super majority rule. Under the articles of confederation, 9 of 13 states can bind the remaining 4.
- B. But nonetheless, the central government had trouble fulfilling its stated duties.
- ◆ it had a difficult time raising money to pay off the war debts (it could not itself raise taxes, and the states would not always send in their required payments)
  - ◆ it had a difficult time settling boundary disputes among the states (again the states would not always accept its judgments)
  - ◆ It had a difficult time raising a sufficient military force to protect the new country from potential attacks.
- C. After just a few years, a new more centralized state was proposed and ratified.
- ◆ [Read through the articles and try to see what is missing. How does the EUA avoid such problems, or does it?]