

FOUNDING FATHERS' SHIFT

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The Founding Fathers' Shift Towards Anthropological Pessimism

From the Articles to the Constitution

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**Abstract**

American colonists grew to abhor the evils of a strong and tyrannical government. After freeing themselves, they created an intentionally weak government that placed trust in the masses to contribute to the country's well-being. The weak government of the Articles of Confederation was too weak, and the people did not act as virtuously as was hoped.

There were many problems of the Articles, and eventually a poor economy led to riots and rebellions. After being given nearly unbridled freedom, the people revealed themselves to be selfish. The Founding Fathers decided that the people needed a stronger government to regulate society but would not become tyrannical.

### **The Founding Fathers' Shift Towards Anthropological Pessimism from the Articles to the Constitution**

When the Articles of Confederation of Perpetual Union was ratified in 1781, the colonists had just fought a war to free themselves from the tyrannical monarchy of Great Britain. Therefore, the colonists created a national government with little power to ensure it would not become tyrannical. Unfortunately, the national government under the Articles was too weak to carry out the duties necessary to ensure the wellbeing of society. The Articles were formed with the belief that the freer a people, the better the society. The people proved otherwise in a few short years. Under the Articles of Confederation, the mass of the people proved themselves to be as selfish and greedy as a tyrant, so the Founding Fathers crafted the Constitution with the aim to balance the selfishness of the rulers and the ruled in order to bring out the virtue of both.

### **Founding the Articles of Confederation**

Before the American Revolution had even been completed, America was tasked with the job of creating a government as the war raged on. The colonists had long been ruled by monarchical Great Britain and faced the daunting task of creating an entirely new government. As 20<sup>th</sup> century historian John Patrick says, "the war had broken bonds of political authority that had been built during more than 160 years of British rule in North America. So, American revolutionaries had to face the challenge and opportunity of constructing new political institutions, with new foundations of authority and

legitimacy.”<sup>1</sup> Unifying such a vast and diverse population as the American colonies was a daunting task. Debate ensued over how the government should be formed and function. One thing was certain; the new government would not have the power of the British monarch or parliament. Creating a unified government seemed nearly impossible as Americans disagreed how a government should be set-up in order to balance defense and liberty while preventing tyranny.

While fighting a war to gain freedom from a tyrant king, colonists detested powerful government but adored the common man. People's ideas of the masses changed. As historian and Pulitzer prize winner Gordon Wood says:

Monarchies, based on the presumption that human beings were corrupt, had persisted almost everywhere for centuries because they offered security and order. Left alone and free, people, it was assumed, would run amuck, each doing what was right in his own eyes. Such a selfish people had to be held together from above, by the power of kings who created trains of dependencies and inequalities, supported by standing armies, strong religious establishments, and a dazzling array of titles, rituals, and ceremonies.<sup>2</sup>

People in America generally disagreed that free people would cause chaos. They had seen poor people earn a fortune through hard work. They had seen common people settle in the Americas and govern themselves effectively before Britain renewed its control. They believed the people of America could govern themselves without the control of an authoritarian government. Americans wanted its own republic.

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<sup>1</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 35.

<sup>2</sup> Gordon S. Wood, *American Revolution: a History*, New York: Random House, 2003, 93.

Some people still feared giving the people too much control over the government. Wood says, “The Revolutionary leaders were not naïve and they were not utopians – indeed, some of them had grave doubts about the capacities of ordinary people. But by adopting republican governments in 1776 all of them necessarily held to a more magnanimous conception of human nature than did supporters of monarchy.”<sup>3</sup> Even for those who did fear the whims of the people, their fear of tyranny was far greater. They chose a republic as the lesser of two evils. Colonial advocate for American Independence Thomas Paine says, “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.”<sup>4</sup> The vast majority of the Americans believed a republic was the necessary evil compared to the intolerable evil of Great Britain.

A republic would grant significantly more power to the people to control the government. Wood states, “Republicanism challenged all these assumptions and practices of monarchy. By throwing off monarchy and becoming republicans in 1776, Americans offered a different conception of what people were like and new ways of organizing both the state and the society.”<sup>5</sup>

As America decided to become independent, many people made suggestions as to how the new republic should operate. One anonymous writer published a paper in New

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<sup>3</sup> Gordon S. Wood, *American Revolution: a History*, New York: Random House, 2003, 93.

<sup>4</sup> “Common Sense.” The Project Gutenberg E-text of Common Sense, by Thomas Paine. Accessed April 29, 2020. <https://www.gutenberg.org/files/147/147-h/147-h.htm>.

<sup>5</sup> Gordon S. Wood, *American Revolution: a History*, New York: Random House, 2003, 93.

Hampshire with his ideas for the new government.<sup>6</sup> The writer did not expect all of his ideas to be accepted but wanted the new government to be “founded on the principles that have been laid down.”<sup>7</sup> The principles he suggested were to keep the power of the government as close to the people as possible. Thomas Paine agreed. In the infamous *Common Sense*, Paine explains a similar idea of a government controlled by the people.

Thomas Paine gave the example of a small colony where each individual voted for every issue the colony faced. Paine believed that this would be a great system to ensure the welfare of all members of the society. However, as the colony grew in size and population, this would no longer be feasible. He said the problem created by the growth would “point out [to the colonists] the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those who appointed them, and who will act in the same manner as the whole body would act were they present.”<sup>8</sup> For Paine, this was the next best form of government; a small group of people acting just as the entire group would want them to. Patrick says in order to carry this out on a larger scale, “Paine recommended government based on a one house-house or unicameral legislature. This legislature, directly representative of the voters, would select by majority vote the

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<sup>6</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 48.

<sup>7</sup> *The People the Best Governors: or a Plan of Government Founded on the Just Principles of Natural Freedom*, 1776, in *Founding the Republic: A Documentary History*. John Patrick. Westport, Conn: Greenwood Press, 1995. 41.

<sup>8</sup> “Common Sense.” The Project Gutenberg E-text of Common Sense, by Thomas Paine. Accessed April 29, 2020. <https://www.gutenberg.org/files/147/147-h/147-h.htm>.

executive and judicial members of the government, who would be responsible to the legislature.”<sup>9</sup>

There were many objectors to this weak unicameral legislature. Robert Morris was one of them. Historians James Martin and Mark Lender say, “The inability of Congress to deal with basic wartime issues appalled Morris and the emerging nationalist group. Their vision of the republic encompassed the need for a central government capable of providing military strength, economic stability, and political endurance. Unlike republican purists, they did not fear concentrated power.”<sup>10</sup>

Another contemporary opponent of Paine’s view was John Adams. Patrick says, “after reading *Common Sense*, Adams lauded its author’s persuasive argument for American independence, but he rejected Paine’s model of government.”<sup>11</sup> Adams had many objections to the unicameral system and, “to counter and defeat ideas like Paine’s, John Adams readily offered his views on good government for the new American states.”<sup>12</sup> Adams proposed an alternative solution: “Adams rejected legislative supremacy in favor of three separation of powers among three coordinate branches of government –

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<sup>9</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 36.

<sup>10</sup> James Kirby Martin and Mark Edward Lender, *A Respectable Army the Military Origins of the Republic, 1763-1789*. S.I.: Wiley, 2015, 196.

<sup>11</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 36.

<sup>12</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 36.



legislative, executive, and judicial – and a system of checks and balances whereby each branch had certain powers to limit or hold in check the powers of the branches.”<sup>13</sup>

Adams says his first concern with unicameral legislature was the same concern as people had for the general population: “a single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgements. And all these errors ought to be corrected defects supplied by some controlling power.”<sup>14</sup> Adams believed just as people need the necessary evil of a government to rule them, a congress needs other branches of government to keep it in check. Adams also feared that “a single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual.”<sup>15</sup> Adams feared that after voted into office, the officials would refuse to leave unless forced to do so by another branch. Another concern Adam had was that, “a representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch.”<sup>16</sup> The duties

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<sup>13</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 36.

<sup>14</sup>John Adams, *Thoughts on Government: Applicable to the Present State of the American Colonies*, April 1776, in *Founding the Republic: A Documentary History*, John Patrick, Westport, Conn: Greenwood Press, 1995. 47.

<sup>15</sup>John Adams, *Thoughts on Government: Applicable to the Present State of the American Colonies*, April 1776, in *Founding the Republic: A Documentary History*, John Patrick, Westport, Conn: Greenwood Press, 1995. 47.

<sup>16</sup>John Adams, *Thoughts on Government: Applicable to the Present State of the American Colonies*, April 1776, in *Founding the Republic: A Documentary History*, John Patrick, Westport, Conn: Greenwood Press, 1995. 47.

of Adams' executive branch could not be effectively carried out to ensure the welfare of society by a unicameral legislature government. Nor could it carry out the duties of the judicial branch: "a representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws. Because a single assembly, posed of all the powers of government, would make arbitrary laws for their own interest, and adjudge all controversies in their own favor."<sup>17</sup> Many people came to agree with Adams that unicameral legislature was not independently sufficient to govern the new nation. Adams' three-branch government was eventually adopted, but not before the nation experimented with a sole legislature government. The country wanted no powerful executive such as King George.

Therefore, a simple government with little power was created: "The Articles of Confederation, the first constitution of the United States, was drafted in November 1777, ratified in February 1781, and superseded in June 1788 by ratification of a new federal constitution."<sup>18</sup> The Articles created a government with just a congress that held all the responsibilities of the central government. Article III of the Articles of Confederation says, "The said states hereby severally enter into a firm league of friendship with each other, for their common defence, 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

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<sup>17</sup>John Adams, *Thoughts on Government: Applicable to the Present State of the American Colonies*, April 1776, in *Founding the Republic: A Documentary History*, John Patrick, Westport, Conn: Greenwood Press, 1995. 47.

<sup>18</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 115.

any pretence whatever.”<sup>19</sup> In finality, the Americans did become unified. However, the union was held together by a weak government. The Founding Fathers granted the people too much power that could not be held in check by the weak government.

### **Problems of the Articles**

America experienced troubling times between the war for independence and the ratification of the Constitution. Understanding the troubling times under the Articles of Confederation helps one to understand the creation of the Constitution. There were problems in the Articles of Confederation that led to economic crisis and rebellion, which stirred the founding fathers to reconsider the effectiveness of the government under the Articles. The people were given power with little governmental oversight because it was believed the common man would act out of benevolence for the good of the community. The masses soon disappointed, and the Founding Fathers faced the dilemma of ruling a selfishly unruly people with a weak government designed for virtuous constituents.

The problems of the Articles stemmed from the intentional lack of power the Articles provided the national government. The colonists had just fought a war to free themselves from the tyrannical monarchy of Great Britain. Therefore, the colonists created a national government with little power to ensure it would not become tyrannical. But the national government under the Articles was too weak to carry out the duties necessary for a healthy society. Patrick says, “From its inception in 1781, government

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<sup>19</sup> The Articles of Confederation (1781), in *Founding the Republic: a Documentary History*. John Patrick. Westport, Conn: Greenwood Press, 1995. 115-24.

under the Articles of Confederation was fatally flawed.”<sup>20</sup> The intentional design to keep the national government weak led to an unintentionally weak nation as a whole. The problems of the government quickly became evident. The only form of national government was the Congress, which had little power.

Congress did not have the power to create trade deals with other nations or raise a standing army to defend the country from foreign threats. Historian Richard Brown says, “The most serious doubts about the adequacy of the Articles of confederation arose within the realm of foreign affairs. Indeed, it was the inability of Congress to frame and implement adequate foreign policies in the mid-1780s that originally provided nationally minded politicians with the most compelling set of reasons for contemplating major constitutional reform.”<sup>21</sup> It quickly became apparent that the national government needed the ability to raise an army for protection, and to negotiate trade deals for the benefit of the economy. The Articles declared that states had to make individual trade deals with foreign countries. Another historian Harlow Unger says, “Rather than trying to negotiate separate agreements with thirteen states, therefore, many foreign traders simply stopped doing business with the America.”<sup>22</sup> The weak national government hurt America economically as other countries stopped conducting business with individual states.

Another problem was the difficulty to pass legislation under the Articles of

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<sup>20</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 112.

<sup>21</sup>Richard D. Brown, *Major Problems in the Era of the American Revolution, 1760-1791 : Documents and Essays* (Boston: Houghton Mifflin, 2000), 369.

<sup>22</sup> Harlow G. Unger, *America's Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 9.

Confederation. Article V of the Articles of Confederation says, "In determining questions in the united states in Congress assembled, each state shall have one vote."<sup>23</sup> Each state had one vote, and all states had to agree in order for an amendment to be implemented. Patrick noted, "it was often difficult for Congress to act, because the approval of nine states was required for decisions on particularly important matters. Unanimity, the approval of all thirteen states, was required for amendments to the Articles of Confederation."<sup>24</sup> As divisive as most political debates were, reaching a unanimous conclusion to enact change was often times insurmountable. Unger agrees by saying, "To pass any important law dealing with war, treaties, or borrowing money, nine of the thirteen state delegations in Congress had to approve- and even with their approval, the Confederation had no power to enforce any of the legislation Congress passed."<sup>25</sup> Even when Congress would finally reach a nine state majority, it often lacked the power to carry out the new law. Such a situation was quickly created major problems for the nation. Historian Edmund Morgan says, "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

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<sup>23</sup> The Articles of Confederation (1781).

<sup>24</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 110.

<sup>25</sup> Harlow G. Unger, *America's Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 8-9.

of Confederation.”<sup>26</sup> The process of fixing the problems of the Articles by amendment was too difficult, which eventually led to a complete disbanding of the Articles.

The problems of the Articles soon created an economic problem in America. Morgan believed that the economic problems exposed the shortcomings of the Articles: “As in the years before the constitution, it was in financial matters that the impotence of the national government was most acutely felt.”<sup>27</sup> The American government was in debt from the Revolutionary War. Joseph Ellis says the government under the Articles had “inherited a federal debt of between \$30 million and \$40 million, swelling each month because of interest payments.”<sup>28</sup> Most governments would simply raise taxes in order to pay off the debts; however, the Congress could not tax under the Articles. Unger explains, “The Articles denied Congress the single most important legislative and executive power for governing any nation: the power to raise money. Congress could not levy taxes or collect duties on imports and exports. In the end, the only ‘power’ the Articles gave the national government was the right to borrow money.”<sup>29</sup> The Congress raised money by requesting it from the states. Historian Joseph Ellis says, “The annual requests for money from the states, called requisitions, had become laughably plaintive pleas that the state legislatures, with debts of their own to pay, simply ignored. In 1781,

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<sup>26</sup>Edmund S. Morgan and Joseph J. Ellis, *The Birth of the Republic: 1763-89* (Chicago: The University of Chicago Press, 2013), 128.

<sup>27</sup> *Ibid.*, 125.

<sup>28</sup>Joseph J. Ellis, *The Quartet : Orchestrating the Second American Revolution, 1783-1788* (New York: Alfred A. Knopf, 2015), 35.

<sup>29</sup> Harlow G. Unger, *America's Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 9.

for example, the Congress requested \$3 million from the states and received \$39,138 in return.”<sup>30</sup> States had no desire to pay the Congressional requisitions. Ellis makes the comment, “A standing joke within Congress was that the ‘binding Requisitions are as binding as Religion is upon the Consciences of wicked men.’”<sup>31</sup> The consequences of the Articles failing to give the Congress the power to tax were quickly felt. Patrick adds, “During the latter part of 1786, Americans suffered acutely from an economic depression. These hard times increased the mounting pressures for constitutional reform. Then, an explosive event, known as Shay’s Rebellion, erupted in Massachusetts and pushed many reluctant reformers into the camp of Hamilton, Madison, and other advocates of political change.”<sup>32</sup> The weaknesses of Congress led to a nation-wide economic crisis, which became violent.

The nation was forced to confront the problems of the Articles after a violent uprising called Shay’s rebellion. Ellis says, “Debt ridden farmers of western Massachusetts, especially burdened by the economic depression, rallied around Daniel Shays, a captain of the Continental Army during the recent revolutionary war. Shays led an uprising to close the courts that enforced debt collections and to prompt changes in government.”<sup>33</sup> Shays led a group of around 500 men to march on a federal arsenal in

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<sup>30</sup> Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1788* (New York: Alfred A. Knopf, 2015), 34.

<sup>31</sup> *Ibid.*, 34.

<sup>32</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 113.

<sup>33</sup> *Ibid.*

Springfield. Unger explained, “Shay’s men attacked, but their pitchforks were no match for the arsenal’s artillery, which unleashed a devastating barrage that sent the farmers fleeing in panic.”<sup>34</sup> Although the uprising was easily suppressed, it still caused doubt in the national government. Patrick says, “Shay’s Rebellion was suppressed easily by the superior fire power of the Massachusetts militia, but it created an appearance of national crisis that compelled many Americans to join the movement to revise or replace the Articles of Confederation.”<sup>35</sup> The problems of the Articles was brought to everyone’s attention after Shay’s rebellion. Many even feared the small rebellion would lead to another major war. Unger adds, “As farmer rebellions spread from state to state, fears increased that Shaysites had asked British emissaries in Canada to send troops back into the United States to help establish a new independent state.”<sup>36</sup> Many feared that the British would aid the farmers, effectively creating another war for independence against the British. The uprising caused everyone to consider whether the Articles were effective in providing security and prosperity to the nation.

### **The Call for Revision**

Events such as Shay’s rebellion caused many founding fathers to consider revising the American government. Among the most prominent advocates for disbanding the Articles were John Jay, George Washington, Alexander Hamilton, and James

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<sup>34</sup> Harlow G. Unger, *America’s Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 24.

<sup>35</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 113.

<sup>36</sup> Harlow G. Unger, *America’s Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 24.



Madison. One figure who advocated change was Alexander Hamilton, who said, “The fundamental defect is a want of power in Congress.”<sup>37</sup> He argued, “The idea of an uncontrollable sovereignty in each state over its internal police will defeat the other powers given to Congress and make our union feeble and precarious.”<sup>38</sup> Hamilton was not alone in his cries for revision. Patrick noted others: “Hamilton, Washington, and many other leaders agreed that the Articles of Confederation had to be revised or replaced to provide the kind of government needed by the United States.”<sup>39</sup> These leaders started the conversations that led to the disbanding of the Articles.

John Jay and George Washington were two important figures in the change in government. Patrick says, “John Jay of New York had served in the Continental Congress and was convinced of its fundamental flaws, which, if not corrected, would destroy the United States. His concerns were heightened by outbreaks of political unrest in the states.”<sup>40</sup> In a letter to Washington, Jay wrote, “Representative bodies will ever be faithful copies of their originals, and generally exhibit a checkered assemblage of virtue and vice, of abilities and weakness. The mass of men are neither wise nor good, and the virtue like the other resources of a country can only be drawn to a point and exerted by

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<sup>37</sup> Alexander Hamilton to James Duane, Sept. 3, 1780.

<sup>38</sup> Alexander Hamilton to James Duane, Sept. 3, 1780.

<sup>39</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 110.

<sup>40</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 129.

strong circumstances ably managed, or a strong government ably administered.”<sup>41</sup>

Washington responded that, “He, too, feared the imminent possibility of disunion and disorder, unless effective powers were granted to a central government that could enforce social order and secure personal liberty.”<sup>42</sup> They both believed that the Articles did not delegate enough power to the national government, and therefore should be changed.

Washington says, “We have errors to correct. We have probably had too good an opinion of human nature in forming our confederation. Experience has taught us that men will not adopt and carry into execution the measures best calculated for their own good without the intervention of a coercive power.”<sup>43</sup> After the tyranny of King George, many believed that the general population should be freer; Washington is saying that people need to be free, but also need boundaries mandated by the government. Washington did not believe the Articles could define or defend these boundaries. Washington called for a stronger central government: “I do not conceive we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states.”<sup>44</sup> George Washington became an advocate for changing the government. Patrick says, “as one of his last actions as commander of the United States Army, General Washington wrote a letter to the governors of the thirteen states to warn them about defects of the Articles of

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<sup>41</sup> John Jay to George Washington (June 27, 1786), 129.

<sup>42</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 131.

<sup>43</sup> George Washington to John Jay (August 1, 1786), 131.

<sup>44</sup> George Washington to John Jay (August 1, 1786), 131.

Confederation and the dire consequences that could result from failure to repair the flaws in government.”<sup>45</sup> In this letter Washington says, “It is indispensable to the happiness of the individual States, that there should be lodged somewhere, a Supreme Power to regulate and govern the general concerns of the Confederated Republic, without which the Union cannot be of long duration.”<sup>46</sup> Washington’s opinion weighed heavily on the nation and its leaders and helped lead to change.

The nation also looked to the ideology of the early enlightenment thinkers to consider the present flaws in the government. The founding fathers were familiar with the writings of enlightenment philosophers such as John Locke, Thomas Hobbes, and Charles de Montesquieu. These individuals had extensive writings that explained the nature of man, and the proper role of government.

John Locke wrote extensively on the fallibility of man. Locke believed that man had the capability to know the right thing to do but would either choose not to learn the correct action or choose to do act contrary to the law for their own purposes. He explains this in his *Second Treatise of Government*: “For though the law of nature be plain and intelligible to all rational creatures; yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.”<sup>47</sup> Men have the selfish desire to prioritize

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<sup>45</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 125.

<sup>46</sup> George Washington to State Governors (June 8, 1783).

<sup>47</sup>John Locke, “Second Treatise of Government,” Accessed October 26, 2020, <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

themselves over the law, by either refusing to learn the law, or acting against it knowingly. Thomas Hobbes makes a similar point in the *Leviathan*. Hobbes says, “The source of every crime, is some defect of the understanding; or some error in reasoning; or some sudden force of the passions. Defect in the understanding is ignorance; in reasoning, erroneous opinion.”<sup>48</sup> Man’s understanding can be flawed, their reasoning can be poor, and their passion can cloud their judgement. Men can, and will, go wrong in many ways.

In his *Essay on Human Understanding*, Locke addresses how to prevent men’s desires to act against the law: “Moral laws are set as a curb and restraint to these exorbitant desires, which they cannot be but by rewards and punishments, that will overbalance the satisfaction any one shall propose to himself in the breach of the law.”<sup>49</sup> Locke argues that rewards and punishments are necessary to enforce the laws that bind the evil tendencies of man. The Articles of Confederation did not have the power to punish lawbreakers. Locke explained that a government too weak to carry out this duty is useless: “It would be in vain for one intelligent being to set a rule to the actions of another, if he had it not in his power to reward the compliance with, and punish deviation from his rule, by some good and evil, that is not the natural product and consequence of the action itself.”<sup>50</sup> After experiencing the failings of the weak Articles of Confederation,

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<sup>48</sup>Thomas Hobbes, “Leviathan,” Accessed October 26, 2020, <http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.

<sup>49</sup>John Locke, “An Essay Concerning Human Understanding,” Accessed October 26, 2020, <https://www.gutenberg.org/files/10615/10615-h/10615-h.htm>.

<sup>50</sup>John Locke, “An Essay Concerning Human Understanding,” Accessed October 26, 2020, <https://www.gutenberg.org/files/10615/10615-h/10615-h.htm>.

the founding fathers agreed with the assertions of these thinkers. They knew they needed to change the government by giving it more power to regulate men's erring behavior.

The process of changing the government first came into fruition at the Annapolis convention. Patrick says, "The movement for constitutional change gained momentum in the latter part of 1786 at an extraordinary gathering known as the Annapolis Convention. It was organized by James Madison of Virginia."<sup>51</sup> At this convention, many prominent leaders met to discuss how the government should be changed. Patrick says that the result of this convention was that, "Madison and others at this Annapolis Convention decided to issue a report on the need to improve the government of the United States. This report, drafted by Alexander Hamilton of New York, proposed that another convention of the states should be held for the purpose of revising the Articles of Confederation."<sup>52</sup> After discussing the problems the group concluded, "That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable, from the embarrassments which characterise the present State of our national affairs — foreign and domestic."<sup>53</sup> The report that was sent out to the states began the process of meeting to disband the Articles, and eventually draft the Constitution. The Articles would never have been disbanded if it were not for prominent leaders and founding fathers taking the lead in calling out and fixing the problems of the

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<sup>51</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 112.

<sup>52</sup>Ibid., 133.

<sup>53</sup> Proceedings of the State Commissioners at Annapolis, Maryland (September 11 – 14, 1786), 134.

Articles.

However, not all prominent founding fathers, such as Richard Henry Lee and Thomas Jefferson, were prepared to disband the Articles. Richard Henry Lee was another founding father and patriot who wanted America to prosper. Lee feared changing the Articles in order to create a stronger Congress and central government could easily lead to tyranny. Lee wrote in a letter to John Adams, "I think Sir that the first maxim of a man who loves liberty should be, never to grant to Rulers an atom of power that is not most clearly & indispensably necessary for the safety and well being of Society."<sup>54</sup> Lee feared a stronger government would be as tyrannical as King George.

Thomas Jefferson opposed a stronger government for similar reasons as Lee. Jefferson believed the people of Shay's rebellion should not be punished harshly for their actions: "An observation of this truth should render honest republican governors so mild in their punishment of rebellions, as not to discourage them too much. It is a medicine necessary for the sound health of government."<sup>55</sup> Jefferson believed that rebellions should happen when a government no longer satisfies the desires of the population. Jefferson believed in the common people's ability to discern when a government needs to be overthrown. Jefferson says, "I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves."<sup>56</sup> Jefferson believed the people were wise enough to correctly

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<sup>54</sup> Richard Henry Lee to Samuel Adams (March 14, 1785), 127.

<sup>55</sup> Thomas Jefferson to James (Madison, January 30, 1787), 139.

<sup>56</sup> Thomas Jefferson to Edward Carrington (January 16, 1787), 136.

change government for the good of the people, while Washington and others believed people needed a strong government to lead people through their shortcomings. In response to Shay's rebellion Jefferson said, "I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. Unsuccessful rebellions indeed generally establish the incroachments on the rights of the people which have produced them."<sup>57</sup> Jefferson did not believe as others that Shay's rebellion exposed the weakness of the national government was too weak under the Articles. Patrick says, "If Shays's Rebellion had been an isolated event, then Jefferson's benign view of it might have prevailed. But it sparked a flurry of unrest in several states, where impoverished debtors physically resisted both private bill collectors and public tax collectors. In South Carolina, for example, debt ridden farmers riotously shut down the Camden Courthouse."<sup>58</sup> The majority of founding fathers believed the central government was too weak; therefore, the Articles were disbanded, and the Constitution was created.

### **Creation of the Constitution**

People had to be convinced significant change was necessary before such a dramatic change would be accepted to the government. There were many people writing and speaking of the changes needed in order to correct the problems. One of the most well-known writings were the *Federalist Papers*, a series of essays written from 1787 to

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<sup>57</sup> Thomas Jefferson to James (Madison, January 30, 1787), 139.

<sup>58</sup> John J. Patrick, *Founding the Republic: a Documentary History* (Westport, Conn: Greenwood Press, 1995), 113.

1788. James McClellan explains the role of the *Federalist Papers*: “Although the essays written by Hamilton, Madison, and Jay (‘Publius’) in *The Federalist* were by no means the only thoughtful response to Anti-Federalists’ arguments, they were surely the most influential.”<sup>59</sup> The *Federalist Papers* addressed finding the balance between “the extremes of tyranny and anarchy.”<sup>60</sup> Under the rule of Great Britain, the colonists were closer to the extreme of tyranny, but under the Articles they were closer to anarchy. The former placed power in the government, while the latter placed power in the hands of the masses. John Locke noted that “The great question which, in all ages, has disturbed mankind, and brought on them the greatest part of their mischiefs ... has been, not whether be power in the world, nor whence it came, but who should have it.”<sup>61</sup> The *Federalist Papers* explained how the new government would place power in the government while maintaining civil liberties. While the Articles were mainly written to avoid tyranny, the Americans now faced the daunting task of avoiding tyranny while providing the government the power to effectively rule the people. Alexander Hamilton said, “A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection.”<sup>62</sup> Hamilton wanted a strong

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<sup>59</sup>James McClellan, *Liberty, Order, and Justice : An Introduction to the Constitutional Principles of American Government*, 3rd ed. Indianapolis: Liberty Fund, 2000.

<sup>60</sup> Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

<sup>61</sup>John Locke, “An Essay Concerning Human Understanding,” Accessed October 26, 2020, <https://www.gutenberg.org/files/10615/10615-h/10615-h.htm>.

<sup>62</sup> Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*. (1787) accessed at



enough union to suppress insurrections such as Shay's rebellion. Hamilton explained in *The Federalist no. 9*, that the stronger union proposed by the Constitution would be able to destroy future rebellions by quoting enlightenment thinker Charles Montesquieu: "Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty."<sup>63</sup> The shift towards establishing a government with enough power to quench insurrection came after experiencing insurrections such as Shay's rebellion. After being recently freed from the tyrannical British, the colonists feared tyranny and oppression and believed power should rest with the people. As hoistorian Bernard Bailyn said, "There was, they knew, no 'worse state of thralldom than a military power in any government, unchecked and uncontrolled by the civil power'; and they had a vivid sense of what such armies were: gangs of restless mercenaries, responsible only to the whims of the rulers who paid them, capable of destroying all right, law, and liberty that stood in their way."<sup>64</sup> The colonists believed that power corrupted individuals, but the masses were generally virtuous. After experiencing a government with little power, and people with nearly unlimited freedom, they were exposed to the malignant capability of the masses. People acted selfishly, they

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Congress.gov.

<sup>63</sup> Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

<sup>64</sup> Bailyn, Bernard, *The Ideological Origins of the American Revolution : Fiftieth Anniversary Edition*. Cambridge, Mass.: Harvard University Press, 2017, 62.

rioted, they refused to pay the requested funds to congress, and they rarely acted on behalf of the population. This changed view of humanity can be seen in the writings of the *Federalist Papers*. James Madison wrote, "As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves."<sup>65</sup> Madison speaks of selfishness, and how it negatively affects one's ability to properly reason. He also addresses how faction, or political party divisions stem from man's flawed nature:

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts.<sup>66</sup>

Madison is explaining how Party division is caused by the flawed nature of man, and lead to increased strife and disunion. Madison also notices how factions act as compounding factor for division: "In all questions, however unimportant in themselves, or unconnected

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<sup>65</sup>James Madison, *Federalist No. 10*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

<sup>66</sup>James Madison, *Federalist No. 10*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

with each other, the same names stand invariably contrasted on the opposite columns.

Every unbiased observer may infer, without danger of mistake, and at the same time without meaning to reflect on either party, or any individuals of either party, that, unfortunately, PASSION, not REASON, must have presided over their decisions.”<sup>67</sup>

Once parties have been established, they further divide men. People disagree because their reason is spoiled by their selfishness, they form parties based on their disagreement, then they begin to side with their party on all issues while failing to use reason at all, leading to an even further division. The Founding Fathers began to fear that one faction would try to overtake the nation based on a factional passion with no regard to sound reasoning. Madison says, “When men exercise their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same.”<sup>68</sup> This can be dangerous when a group of people reason based on selfish reasons to form a faction, and then commit egregious atrocities against their fellow countrymen. For example, Shay’s rebellion caused a faction of people to act with great passion and selfish reason to attack their own country’s garrison. The realization that man’s flaws could so easily lead to anarchical chaos caused trepidation in the Founding Fathers: “The PASSIONS, therefore, not the REASON, of the public would sit in judgment.”<sup>69</sup> The fear of these selfish and evil passions ruling the government caused the

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<sup>67</sup>James Madison, *Federalist No. 50*, in *The Federalist Papers*. (1788) accessed at Congress.gov.

<sup>68</sup>James Madison, *Federalist No. 50*, in *The Federalist Papers*. (1788) accessed at Congress.gov.

<sup>69</sup>James Madison, *Federalist No. 49*, in *The Federalist Papers*. (1788) accessed at Congress.gov.

Fathers of the Constitution to create a government that could control these passionate outbreaks. Madison says, “it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government.”<sup>70</sup> No government can change man’s flawed nature into perfection, but it could minimize its impact: “The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.”<sup>71</sup> In order to control these effects, more power would need to be given to the federal government.

While there was a newfound realization that the masses of people were not virtuous enough to freely act continuously for the good of society, the tyrant King George was not forgotten. But his tyranny, and tyranny in general, was viewed differently. Prior to the American Revolution, tyranny was considered to stem from the corruption of a tyrant brought upon him by the coercive force of power. As Bailyn says, “What turned power into a malignant force, was not its own nature so much as the nature of man — his susceptibility to corruption and his lust for self-aggrandizement.”<sup>72</sup> The previous view that power corrupted men was replaced after the Founding Fathers saw men with no power who were corrupted by their own selfish desires. Even the debt-ridden farmers of the rural communities of America had been corrupted by greed as evidenced by Shay’s rebellion. Those who revolted with Daniel Shay were viewed so poorly by the

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<sup>70</sup>James Madison, *Federalist No. 49*, in *The Federalist Papers*. (1788) accessed at Congress.gov.

<sup>71</sup>James Madison, *Federalist No. 10*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

<sup>72</sup> Bailyn, Bernard, *The Ideological Origins of the American Revolution : Fiftieth Anniversary Edition*. Cambridge, Mass.: Harvard University Press, 2017, 59.

government, that Massachusetts passed an Act forbidding them from serving in a jury. The Act says, “within one year from the [passing of] this Act... Selectmen are hereby required to withdraw from the jury-boxes, the names of all such persons as they judge to have been guilty of favouring the [present] Rebellion, or of giving aid or [support] thereto.”<sup>73</sup> With the new realization of the incapability of the masses to act for the common good, the arduous task before the country was to create a government without the possibility of tyranny, yet with the power to suppress the evil masses were capable of. George Washington wrote to Benjamin Harrison that he did not fear tyranny nearly so much as he feared the country’s weak government:

I am returned to & am now mingled with the class of private citizens & like them must suffer all the evils of a Tyranny or of too great an extension of federal powers. I have no fears arising from this source in my mind, but I have many & powerful ones indeed which predict the worst consequences from a half starv’d, limping Government that appears to be always moving upon crutches & tottering at every step.<sup>74</sup>

Washington and others saw the need to create a much stronger government. Hamilton again quoted Montesquieu who described this form of government: “A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences.”<sup>75</sup>

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<sup>73</sup> “Commonwealth of Massachusetts: In the Year of our Lord One Thousand Seven Hundred and Eighty-Seven. An Act for preventing Persons serving as Jurors who in consequence of having been concerned in the present Rebellion, are by Law disqualified therefor.” 1787.

<sup>74</sup> George Washington to Benjamin Harrison, Jan. 18, 1784. *American in Class*.

<sup>75</sup> Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*. (1787) accessed at Congress.gov.

The society chosen was a constitutional republic with checks and balances to ensure that no one branch of government could usurp the other. As Bailyn explains, “Yes, people were innately evil and self-seeking, and yes, no one could be trusted with unconfined power. That was as true in America as anywhere else. But under the Constitution's checks and balances power would be far from unconfined, and for such a self-limiting system there would be virtue enough for success.”<sup>76</sup> The Constitution’s goal was to balance the people’s natural leaning towards either tyranny and anarchy by creating a consolidated power that was held in check by the people. In order for this to work, some level of virtue was needed among some men. Bailyn says the, “federalists argued, virtue existed sufficient for the purposes of a government of checks and balances — in fact, must exist, as Madison said, in "any form of government" that secured liberty and happiness.”<sup>77</sup> While they may have believed in some virtue for the general population, they believed in it far less than they had just years ago.

The lack of faith in the natural virtue of man can be seen in the importance placed on the Constitution itself. Debate ensued for years during the writing of the Constitution, and it took many more years to ratify the document. The hope to hold the Union together for the common good was not placed in the people running the government, nor the general people electing the officials. Both were proven to be easily susceptible to selfishness that harmed society. Hope was placed in the Constitution’s ability to keep

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<sup>76</sup> Bailyn, Bernard, *The Ideological Origins of the American Revolution: Fiftieth Anniversary Edition*. Cambridge, Mass.: Harvard University Press, 2017, 369.

<sup>77</sup> Bailyn, Bernard, *The Ideological Origins of the American Revolution: Fiftieth Anniversary Edition*. Cambridge, Mass.: Harvard University Press, 2017, 371.

both the rulers and the ruled in check, bring out the virtue in both, while suppressing man's inherent selfishness that was so detrimental to society. The Founders decided that a written constitution is not subject to the selfishness that men naturally exude.

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