

THOMAS BURKE: SOUTHERN PATRIOT IN THE
AMERICAN REVOLUTION

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Thomas Burke, who emigrated from Ireland in the 1760's, played an active political role during the American Revolution. He was a member of the North Carolina provincial Congress which worked out that state's transition from colony to statehood, and he served three terms as a delegate to the Continental Congress. He also served one term as Governor of the state of North Carolina. This study is an attempt to determine the extent of Burke's influence at the state and national level, and the effect of one man's personality on the revolutionary period in America.

The presentation of this material is divided into three major divisions and an epilogue. Chapter I, "Thomas Burke's Rise to Prominence," provides the background of Burke's early life, including his move to North Carolina, his professional career, and his first political activities in the North Carolina statehood movement. Chapter II, "Thomas Burke in the Continental Congress," describes the most important phase of his career. From 1777 to 1781 Burke imposed his states rights philosophy on the Continental Congress and prevented the formation of a national government under the Articles of Confederation. Chapter III, "Governor Thomas

Burke," discusses the final phase of his career. He became governor of North Carolina in 1781 when the state was under seige by both British and Loyalist forces. Burke was kidnapped and subsequently paroled to James Island, off the coast of South Carolina. His reputation was ruined when he broke his parole and returned to complete his term as the state's executive. The epilogue is an analysis of Burke's career in politics, and also includes a description of Burke's disillusionment and subsequent death.

Excellent primary source material is available for this study although information of a personal nature is generally lacking. The microfilmed collection of the Thomas Burke Papers (compiled by the University of North Carolina Library), The Colonial Records of North Carolina (edited by William Saunders), The State Records of North Carolina (edited by Walter Clark), and the Journals of the Continental Congress (edited by Worthington C. Ford and Gaillard Hunt) are invaluable sources of information. For further information and added insight into the circumstances and personalities involved, the Letters of the Members of the Continental Congress (edited by Edmund C. Burnett), and James Iredell (edited by Griffith J. McRee) proved to be of great help. Background material was provided by several excellent secondary accounts, including Merrill Jensen, The Articles of Confederation, Lynn Montrose, The Reluctant Rebels, and several books on North Carolina history written by Hugh T. Lefler.

This study concludes that Thomas Burke played a significant role in upholding the concept of state sovereignty under the Articles of Confederation, and preventing the Continental Congress from expanding its authority over the states. The concept of states rights was capably supported by the delegate from North Carolina. But Thomas Burke's influence in North Carolina politics is less evident. He was liked and respected by the government officials because he reflected their views in the Continental Congress. But there is little evidence to indicate that he, alone, influenced the structure of the state government or the leaders' attitudes toward state sovereignty.

A more detailed study is needed to bring out the importance of Thomas Burke's influence on the radical group in North Carolina since this state was one of the first to advocate action against Great Britain in 1775, and one of the last to accept the federal constitution drawn up in 1787.

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CHAPTER I

THOMAS BURKE'S RISE TO PROMINENCE

Thomas Burke was an Irish boy, in his mid-teens, when he made his way from Ireland to the American colonies in the 1760's. His move was prompted by a quarrel with his family, probably over an inheritance. He arrived in America very much alone, without friends, money, or recommendations, and still harboring the unforgettable memory of violent scenes with his parents. The damage to his pride did not diminish with time, and it was only after much reluctance and soul-searching that he was able to inquire about the welfare of his father and mother a few years later.¹

This young Irishman was no ordinary immigrant to America. Burke's accomplishments during the few short years of his life point to his remarkable ability as a doctor, lawyer, author, politician, and leader in the revolutionary movement. His success was prompted by a determination to show his family that he could make good on his own. There is no evidence that

¹William A. Sanders, editor, The Colonial Records of North Carolina, 10 vols. (Raleigh, 1890), IX, 828. (Hereafter cited C. R.) Walter Clark, editor, The State Records of North Carolina, 20 vols. (Winston, 1895-1905), XIX, 918-919. Hereafter cited S. R.; The Thomas Burke Papers, Microfilm edition, 5 reels, Southern Historical Collection, University of North Carolina Library, (Chapel Hill, 1967), II, 630. (In citations of the Burke Papers, roman numerals indicate reel numbers, and arabic numerals indicate frame numbers.); S. R. XIX, 921.

Burke ever wrote to his parents; he limited his correspondence to a cousin, Mrs. Jones, and an uncle, John Bloomfield. In a letter to his cousin, Burke wrote of his ambition. He said he had no desire to lead a harmless, secure life, but wanted to "Excell in some of its most eminent Characters." But the young man also missed Ireland and mentioned his homesickness in several letters. "I look forward [to returning home] . . . as does the Pilgrim to his promised Heaven."²

Burke was delighted to learn from his uncle, in 1772, that someone in Ireland had inquired about his circumstances in America. He said he had assumed that he was no longer remembered by family or friends. He thoroughly enjoyed the opportunity to extoll his accomplishments to his relatives, and he did not lack for youthful braggadocio. He wrote of his years of self-study, which had enabled him to enter the medical profession with an ability equal to the best. Later, he decided the law profession was more profitable, and within a few months time, passed an examination and was licensed to practice law.³ He expressed the hope that if he ever saw Europe again he would like to obtain "a degree in some of the first Colleges."⁴ At the age of twenty-two, Burke wrote to

²Ibid., pp. 917-920.

³Burke Papers, V, 228; ibid., II, 682.

⁴S. R., XIX, 925.

his uncle that although he was not happy and still missed Ireland, his connections were so valuable and engaging in America that he would be reluctant to leave.⁵

Burke's rise to prominence began with his opposition to the Stamp Act in 1765. He had settled in Accomac County, Virginia, and had become a successful practicing physician. The Stamp Act crisis turned him to politics. He said he had always been a "passionate lover of liberty and a hater of tyranny."⁶ He wrote an ode on the repeal of the Stamp Act which was published in Virginia newspapers and brought him some publicity. He included a copy of the poem in a letter to his uncle and said it had been pronounced a "prodigy of Genius."⁷ Burke continued to write poetry throughout his career, and served on many state and federal committees where his talent for writing was utilized in drafting propaganda documents for the patriot cause.

Thomas Burke was of medium height and good build. A severe case of smallpox had cost him the sight of one eye and left him visibly scarred. Burke also had an Irishman's temper and was too sensitive about his pride. He was easily angered

⁵Letter probably written in 1769. Burke Papers, II, 630. There is very little personal correspondence in the Burke Papers, and most of it is not dated. Apparently no letters were written to Ireland after 1774.

⁶Burke Papers, I, introduction p. 8; *ibid.*, II, 630.

⁷S. R. XIX, 923; Elisha P. Douglass, "Thomas Burke, Disillusioned Democrat," North Carolina Historical Review, XXVI (1949), p. 151.

by a supposed insult and never shirked a fight in defense of his honor. He was challenged to a duel by Joseph Calvert in June, 1769, and the issue dragged on through the summer. Presumably, Burke had insulted Calvert in one of his frequent moments of candor. Again in 1777, he nearly came to blows with General John Sullivan because Burke had made some derogatory remarks in Congress about Sullivan's conduct in the Battle of Brandywine.⁸ Apparently neither duel actually took place, but in each instance Burke made arrangements for a confrontation, including the choice of a second. Francis Nash felt that if Burke had not let his pride overpower him he would have "ranked as a statesman with [the more notable North Carolina leaders] for . . . he had the mental characteristics that would have made him equal if not surpass them all"⁹

In spite of his temper and arrogance, Burke had many devoted friends who considered him a man of great ability. In fact, two of the most eminent men in North Carolina history, Samuel Johnston and James Iredell, became Burke's close friends upon his arrival in North Carolina, and remained his friends for life. This is especially significant since both men were politically conservative while Burke was somewhat radical in his views.

⁸Francis Nash, Hillsboro, Colonial and Revolutionary (Raleigh, 1903), p. 33.; Burke Papers, V, 14-15, 26; S. R. XI, 668; ibid., XV, 84-86.

⁹Nash, Hillsboro, p. 34.

Even though Thomas Burke claimed to have a thriving law practice in Virginia, he moved to Hillsboro, North Carolina in 1772. Burke said he was moving for health reasons, and he had been quite ill in 1770,¹⁰ but financial considerations also prompted his resettlement in a more desirable area. Burke had found it necessary to borrow money to pay numerous small bills in 1769, and had approached Michael Christian of Northhampton in June with a scheme for drawing drafts on Christian whenever necessary, the amounts to be repaid with interest. Again in December, he asked for another loan of £100 from Christian to pay for his notarial commission. Burke said his practice was slow because the courts were late.¹¹

The slow wheels of justice probably induced Burke to leave Virginia. He complained about the county court system in his province shortly before leaving in 1772. He said that it took two or three years to settle a case, and the courts of his county were among the slowest.¹² Burke began to make preparations for his move in 1771 when he received authorization from the Governor of North Carolina to practice law in that colony. He and his wife, Mary, moved to Hillsboro sometime during the year, 1772, and purchased a 179-acre plot of land.

¹⁰Burke Papers, V, 98.

¹¹Ibid., pp. 11-12, 80.

¹²Ibid., p. 208.

Burke named his plantation "Tyaquin" after the family home in Ireland, and his letters began to carry this address in November, 1772.¹³

Hillsboro must have looked very inviting to Burke because the climate was healthy, the town was growing, and several wealthy and influential men had recently settled there. The Superior Court for the Hillsboro District was scheduled to be held during the summer of 1772, and would be attended by Josiah Martin, Governor of North Carolina, and numerous important figures in the colonial government. This was the atmosphere Burke desired, and he soon became an important figure among these prominent leaders.¹⁴ He was welcomed by James Iredell, an Edenton lawyer, who wrote to him in April on a legal matter. Iredell said that although he did not know him personally, he "had a very pleasing knowledge of [Burke's] character."¹⁵

The next few years were spent in establishing Burke's legal practice and reputation in North Carolina. The first two years were lean ones for the young lawyer. Burke had purchased the legal practice of a Hillsboro lawyer named Milner, but some of Milner's clients had previously engaged other counsels.¹⁶

¹³Ibid., I, 138, 141; ibid., V, 216, 219.

¹⁴Nash, Hillsboro, pp. 31-32.

¹⁵Burke Papers, I, 157.

¹⁶Ibid., V, 231.

In March, 1773, Milner began to press him for payment and Burke replied that he did not have the money. He wrote Milner that his business was good but that he had not been paid very much. However, Burke agreed that if Milner were desperate, he would dispose of some property to pay his debt. Apparently this was unnecessary, but the remainder of the year was not too promising. Burke's wheat crop was destroyed by hail, and he had to go still further into debt, borrowing from one person to pay another. As late as November, 1773, Burke asked for a loan from still another man, a merchant and friend, Andrew Miller.¹⁷ Fortunately, Burke's credit was good, and his financial situation began to improve the following year. In May, 1774, Burke began negotiations with Andrew Miller to buy a 393-acre tract of land on Little River, near Hillsboro, and in October, he purchased some additional Negroes to work his land.¹⁸

While Burke was establishing himself in North Carolina other activities were taking place which would eventually have a decisive impact on his career. Josiah Martin, the last Royal Governor of North Carolina, had assumed his position in August, 1771, and was unable to cope with the province's myriad problems. The colony had a large disaffected element resulting from the expenses of the war, a boundary dispute

¹⁷Ibid., pp. 231-232, 239, 243; ibid., I, 202.

¹⁸Ibid., pp. 217, 241.

with South Carolina, inequitable taxes, and a problem with the court system. Martin attempted to appease the disaffected element rather than build a strong Royal party; he allowed South Carolina to take a large piece of North Carolina's territory in the boundary dispute, and he caused the courts to cease functioning when he vetoed an act of the Assembly to reorganize the Court system in January, 1773.¹⁹ All of these issues served to antagonize the people against royal authority in the colony, and this opposition was intensified by Parliament's actions against Massachusetts in 1774. When a call was issued for a Continental Congress to meet on September 5, 1774, to determine what action the colonies should take in response to the Coercive Acts,²⁰ North Carolina was determined to send delegates to the meeting.

As early as April, William Hooper had written to James Iredell that the colonies "are striding fast for independence, and ere long will build an empire upon the ruin of Great Britain."²¹ During the summer the spirit of independence grew as the ties with Great Britain became more strained. Governor

¹⁹Enoch Walter Sikes, "The Transition of North Carolina From Colony to Commonwealth," Anglo American Relations and Southern History, edited by Herbert B. Adams. Johns Hopkins University Studies in Historical and Political Science (Baltimore, 1898), XVI, 486-487, 490-493; Griffith J. McRee, editor, Life and Correspondence of James Iredell, 2 vols. (New York, 1949), I, 151, 185.

²⁰Curtis P. Nettels, The Roots of American Civilization (New York, 1963), pp. 646-647.

²¹McRee, James Iredell, I, 197.

Martin was very much opposed to having North Carolina represented at the Continental Congress in September, and since it was customary for the Assembly to appoint delegates to meetings, Martin informed John Harvey, Speaker of the Assembly, that he would not call the Assembly into session. Harvey replied that "the people will convene one themselves," and he issued a call for delegates from each county to meet at Newbern on August 20, 1774.²²

The First Provincial Congress, as the meeting later became known, met on August 24, denounced the restrictive acts of Parliament, declared that North Carolina ports would be closed to British imports after January 1, 1775, and appointed William Hooper, Joseph Hewes, and Richard Caswell to attend the Continental Congress. The Convention adjourned after providing for a committee of five to be chosen in each county to see "that the resolves of the convention be obeyed."²³

In a last desperate effort to maintain his authority after being unable to prevent delegates from going to Philadelphia in 1774, Governor Martin called for a new legislature to convene in Newbern on April 4, 1775. In response, Harvey also called another convention to meet at the same location on April 3.²⁴ Both the Assembly called by Martin

²²C. R. IX, xxix.

²³Ibid., pp. xxx, 1043-1049; McRee, James Iredell, I, 204.

²⁴C. R. IX, xxxii; ibid., p. 1125.

and the Convention called by Harvey met at their designated times. With few exceptions, of which Burke was one, the same men served as delegates to both meetings. The Assembly and the Convention met in the same building and in the same room. John Harvey was elected leader of both groups and "when royal business was before the meeting, Mr. Moderator, Harvey, would become Mr. Speaker, Harvey, without the change of a muscle."²⁵ After four days of this farce Governor Martin gave up and adjourned the only legally elected Assembly in the colony. Royal government ceased to function in North Carolina after April, 1775, although its demise was not acknowledged by the revolutionary government until the following year.

Thomas Burke had not been a member of the First Provincial Congress, and was not a legally elected delegate to the Assembly called by Governor Martin in April, 1775, but he was a delegate to the Second Provincial Congress which was meeting at the same time and place. Burke signed a resolution stating that the Provincial Congress approved of the Continental Association created by the Continental Congress, and would adhere to its directives. The Provincial Congress returned Hooper, Hewes, and Caswell to serve another term in the Continental Congress, and then adjourned after making arrangements for another meeting.²⁶ Burke's first participation in revolutionary

²⁵Ibid., p. xxxiv.

²⁶Ibid., pp. 1179, 1181; Sikes, "Transition," pp. 514-515.

government was minor, but it was only a matter of time until he was to become a very influential figure in North Carolina politics.

Events began to happen very quickly after the adjournment of the Second Provincial Congress on April 7. News soon reached the southern colonies that the battle of Lexington and Concord had occurred on April 19.²⁷ In response to the alarm, the citizens of Mecklenburg county held a meeting at Charlotte, and on May 20, 1775, issued the first declaration of independence to come from the colonies. It preceded the formal declaration by more than a year. The following day they also issued the Mecklenburg Resolves which called for each colony to reorganize its colonial government into a provincial congress to be directed by the Continental Congress.²⁸

This revolutionary atmosphere resulted in much personal harrassment of Governor Martin. Fearing for his safety, Martin fled from his home in May, 1775, and barricaded himself in Fort Johnston on the coast. In July, a rebel gang, led by John Ashe, set fire to the fort and forced Martin's retreat to a British man-of-war lying in the harbor off Cape Fear. Martin made a vain attempt to run the government from his outlying position, but most of his communications were

²⁷McRee, James Iredell, I, 240.

²⁸C. R. IX, 1263-1265. See also Hugh T. Lefler, North Carolina History Told by Contemporaries (Chapel Hill, 1934), p. 99. C. R. IX, 1282-1285. See also Lefler, Contemporaries, pp. 100-101.

intercepted by the patriots, and anyone going to see Martin was "searched, detained, abused, and stript [sic] of any papers"29

As soon as Martin abandoned the palace at Halifax in May, the county committees began to petition for another provincial congress. John Harvey had recently died, and it fell to Samuel Johnston to call the meeting. Johnston wrote the county committees to elect delegates to another convention to meet in Hillsboro on August 20, 1775. When the meeting convened, every county was represented. Samuel Johnston was elected President and the patriots began their first real attempts to run the province.³⁰

Thomas Burke served on numerous committees of the Third Provincial Congress. His prestige had increased considerably since his arrival in North Carolina, and he became one of the more important of the 184 delegates to the Congress. On the first day Burke and six others were appointed to "prepare a Test to be signed by the Members of this Congress." On August 23, his committee reported an oath which disavowed the right of Parliament to collect taxes within the province and

²⁹C. R. X, 142; McRee, James Iredell, I, 240; Sikes, "Transition," p. 516; C. R. X, 231.

³⁰Sikes, "Transition," p. 518; C. R. X, 88, 168; McRee, James Iredell, I, 262.

bound the people of the colony to the acts and resolutions of the Continental and Provincial Congresses.³¹

Burke was also assigned to two other committees which were designed to bring unity to the independence movement. Disunity was a big problem facing the rebel government. North Carolina had experienced a civil war in 1770 when the western farmers, who wanted more equitable taxation, had fought an army of local aristocrats, royal officials, and militia. The Regulator War was fought in Orange county and the western farmers had now become leaders of the revolutionary movement. Consequently, the Regulators were not sympathetic with the cause of independence.³² The purpose of one of the committees to which Burke was appointed was to appeal to this disaffected element in the province to join in the common cause against Parliament's arbitrary assumption of power. Burke was probably chosen because he represented the western section where discontent was centered and because he had no previous affiliation with the Regulator War. Enoch W. Sikes reports that these attempts to achieve unity were largely ineffective, however, because the committee contained some members who had fought the Regulators in 1770, and the westerners felt they could not trust their former adversaries.³³

³¹C. R., X, 169, 171.

³²Nettles, American Civilization, pp. 540-542.

³³C. R., X, 169; Sikes, "Transition," p. 522.

Burke also served on a committee to prepare an address to the people of North Carolina. It was to justify the reasons for forming a new government, and to explain the necessity for taking up arms. The reasons adopted by the committee and approved by Congress declared that Governor Martin's flight from the province in July had left the people without a government; thus, it had become necessary for them to form one of their own. They justified the need for a military force on the basis of Martin's active opposition to their political activities, and the threat to all the colonies posed by Parliament's hostile acts against Massachusetts.³⁴

From his off-shore location on the British ship, Governor Martin continued to oppose the revolutionary government. On August 8, he wrote a proclamation which was directed to the Moderator of the Convention at Hillsboro. In the document Martin called the conventions' delegates and their activities seditious, and urged the people in the western counties to put down the rebellion. The proclamation was read to the convention on August 25, and the delegates voted that it was "a false, Scandalous, Scurrilous, malicious . . . libel tending to disunite the good people . . . and to stir up Tumults and Insurrections" The document subsequently

³⁴C. R., X, 174, 185-186.

was burned "by the common hangman."³⁵ Obviously, Martin's influence was at an end in North Carolina.

The need for some kind of centralized government was uppermost in the minds of most North Carolina leaders. They feared that the province faced an imminent threat of anarchy. The county committees, having no higher authority to control their activities, had assumed arbitrary powers over their respective areas. They made and enforced their own laws, passed judgment, and meted out punishment. Consequently, the Provincial Congress created the Committee for Internal Peace and Security and assigned it the task of organizing a temporary civil government for North Carolina. On August 24, 1775, forty-six delegates were appointed to take into consideration the structure of the government, its powers, the method and qualification for electing delegates, and the number of delegates necessary to represent each town and county.³⁶ Thomas Burke was included on this, the largest and most important, committee of the Third Provincial Congress.

On September 9, the committee reported their recommendations for a form of government. It was approved by Congress and remained in effect until a permanent government was formed the following year. The province was divided into six districts. Congress appointed a thirteen-member Committee of Safety for

³⁵Ibid., pp. 146, 180.

³⁶Sikes, "Transition," p. 523; C. R. X, 175.

each district to maintain control over the militia and provide law and order. A Provincial Council, consisting of two members from each of the six districts and one member appointed by Congress, exercised control over the district committees. The committees and Council had full civil, military, and judicial powers within the province, their actions being limited only by acts of Congress and subject to congressional review. Town and county committees were retained to provide local government, but were made subordinate to the higher authority. The freeholders in each county were eligible to vote each October for delegates to Congress, and each county was allowed a maximum of five representatives to be apportioned by population.³⁷

Government at the province level was not the only concern of the Third Provincial Congress. A plan of confederation for all thirteen colonies had been submitted to the North Carolina government by the Continental Congress and was under consideration throughout the meeting in 1775. The "Franklin Plan"³⁸ was ultimately rejected by all of the colonies, but North Carolina objected specifically because it gave the northern provinces larger representation in the federal legislature. In fact, North Carolina leaders objected so strongly to the

³⁷Ibid., pp. 208-210, 211-213.

³⁸For a copy of the "Franklin Plan of Confederation," see Provincial Congress of North Carolina, August 20, 1775, Records of the States, Microfilm collection in the NTSU library.

proposed plan that they placed restrictions on their delegates to the Continental Congress. The delegates were instructed "not to consent to any plan of Confederation . . . until the same shall be laid before and approved by the Provincial Congress."³⁹ Also, perhaps in fear of the type of confederation under consideration, the Provincial Congress made resolutions at the end of the session on September 14, that contradicted their actions during the past month. They determined that it was not presently expedient to organize a confederation, and that every effort should be made to achieve reconciliation with Great Britain. The inconsistency of this action lay in the fact that on August 31 Congress had voted to raise a military force of 1,000 men for the defense of North Carolina, and on October 8, 1775, the Provincial Council began making preparations for war.⁴⁰

The first military action in North Carolina took place at the Battle of Moores Creek on February 27, 1776. It was a civil conflict between Patriot Whigs and Loyalist Highlanders which resulted in a decisive victory for the Whigs. This clash of arms bore testimony to the strength of the government formed the previous fall, and caused "the people . . . [to speak] more and more of independence." Therefore, an

³⁹John R. Alden, The First South (Baton Rouge, 1961), p. 28; C. R. X, vii, 192.

⁴⁰Ibid., pp. 185-186, 192; Sikes, "Transition," p. 530.

independence movement was not unexpected when the next Provincial Congress made definite moves in that direction.⁴¹

When the Fourth Provincial Congress met in April, 1776, it was evident that the atmosphere of reconciliation had changed since the previous session. Johnston wrote to James Iredell on April 5, 1776, that "all our people here are up for independence."⁴² North Carolina took the lead in the independence movement, and Burke was among the group of men who comprised the colony's revolutionary leaders. On April 8, Burke, Cornelius Harnett, Abner Nash, Thomas Person, John Kinchen, and Allen Jones were appointed to a special committee "to consider the usurpations and violences attempted and committed by the king and Parliament"⁴³ Walter Clark, editor of the Colonial Records of North Carolina, says "the Committee was an exceptionally strong one, every member of it having a notable record There was no room for mere figureheads."⁴⁴ On April 12, they reported the Halifax Resolves which empowered the delegates to the Continental Congress to vote for independence and form foreign alliances. They also reserved the right to draw up a state constitution, make laws, and appoint delegates to meet with delegates from

⁴¹McRee, James Iredell, I, 270-272; Sikes, "Transition," p. 533; C. R. X, xiv, xlii.

⁴²McRee, James Iredell, I, 275.

⁴³C. R. X, 504, 512; Lefler, Contemporaries, pp. 103-104.

⁴⁴C. R. X, xviii.

other colonies. The report, which was unanimously adopted, preceded by more than one month an explicit declaration of this kind by any other colony.⁴⁵

Thomas Burke's influence was also felt by his activities on other important committees. He became the chairman of the very powerful Committee of Secrecy, Intelligence, and Observation. The committee not only directed the movements of military men and supplies, but also had the authority to force "attendance before them of all suspected persons and . . . witnesses, and to procure all such papers as may give information with respect to such offenders" ⁴⁶ On April 27, Burke's committee was authorized to remove up to forty families who were deemed capable of creating insurrection against America. The committee was not required to report its activities to anyone, not even Congress. Later references to Burke's humanity support the assertion that he did not abuse his power,⁴⁷ but as head of a secret police organization, he was limited only by his own conscience, and could have been quite ruthless if so inclined.

Burke served on the Ways and Means committees which took into consideration the expenses involved in supporting the

⁴⁵McRee, James Iredell, I, 276; C. R. X, xviii, 512; Lefler, Contemporaries, p. 104.

⁴⁶C. R. X, 507, 519.

⁴⁷Ibid., p. 519, 544; C. R. XI, 293; Samuel A'Court Ashe, History of North Carolina, 2 vols. (Greensboro, 1925), I, 695.

militia troops, and the means of supplying war material to the province. They were also to look into the expediency of erecting manufacturing establishments for salt petre, gunpowder, and sulphur purification. He was appointed Paymaster for the militia in the Hillsboro district,⁴⁸ and served on numerous less important committees of the Fourth Provincial Congress.

Needless to say, the delegate from Orange county was a busy man, but the committee which probably took up more of his time than any other during the session was the one to which he was appointed on April 13. It was the most important committee of the April, 1776, Congress. Its purpose was to prepare a constitution for the new state of North Carolina. Burke had gained experience in drawing up the temporary governmental structure in September, 1775, and he would need all of his experience and talents as an author and politician for the task which lay ahead.

Nineteen members served on the committee, and the list of notables included Samuel Johnston, Abner Nash, Cornelius Harnett, Thomas Jones, Willy Jones, Thomas Person, William Hooper, and John Penn, as well as Thomas Burke.⁴⁹ Disagreement immediately developed over the type of government desired. This division resulted in the creation of two factions, the

⁴⁸C. R. X, 507, 516, 584.

⁴⁹Ibid., pp. 515-516.

radicals and conservatives.⁵⁰ The main points of disagreement were over the suffrage requirements and a provision for checks on the representatives of the people. The Conservative minority, led by Samuel Johnston, wanted a representative republicanism which was not wholly dependent on the will of the people, and an independent judiciary secured by tenure in office during good behavior.⁵¹ Burke's position fell somewhere in between this conservative minority and the radical majority, led by Willy Jones and Thomas Person, which wanted all officers and judges chosen by the people with every freeman having the right to vote.⁵²

The committee met every evening but found it difficult to come to any agreement. At one point Samuel Johnston threatened to resign because of the radicals' control of the committee. However, he ultimately won his demand for annual elections to provide a check on the representatives of the people. Thomas Jones wrote to Iredell on April 28, stating that the constitution was going slowly and he was very fatigued by the long hours. He described the structure of the government presently under consideration. It called for a two house legislature and an annually elected Executive Council, consisting of a President and six councillors, to

⁵⁰R. D. W. Connor, Cornelius Harnett; An Essay in North Carolina History (Raleigh, 1909), p. 152.

⁵¹McRee, James Iredell, I, 276.

⁵²Nash, Hillsboro, p. 54.

sit continuously. The judiciary was not mentioned, but he did say that the suffrage was to be extended to all freeholders.⁵³

Although Burke's activities and influence on the committee are not recorded, he was a moderating force within the group. This conclusion is based on the fact that the original committee was dissolved after Congress debated the proposed form of government for two days and failed to come to any agreement. The decision was made to delay final action on the constitution until the October session of the Assembly.⁵⁴ A new committee was appointed on April 30, 1776, to form a temporary government to function until October. This group was much smaller than the original committee. It contained only nine members. Thomas Burke was made chairman, and the leaders of both extremes were excluded.⁵⁵

On May 11, 1776, Congress approved the second committee's plan for a temporary civil government. The previous Provincial Council and the district Committees of Safety were dissolved and a new Council of Safety was created. It had virtually the same representation and powers as the old Provincial Council. It remained subordinate to Congress and lacked taxing power, but the new Council had full authority to provide for the defense and protection of the people, including

⁵³McRee, James Iredell, I, 276-277, 278.

⁵⁴Ibid., pp. 279, 280; Hugh T. Lefler and Paul Wager, editors, Orange County 1752-1952 (Chapel Hill, 1953), p. 45.

⁵⁵C. R. X, 552; Sikes, "Transition," pp. 537, 559.

the creation of admiralty courts. In contrast to the old Provincial Council, however, the new Council of Safety lacked judicial power. It was required to sit in session continuously, and all members were obliged to take the same oath of office required of members of Congress.⁵⁶

The Provincial Congress adjourned in May, 1776, and the Council of Safety began to function. Cornelius Harnett served as President from June 5 to August 21, Samuel Ashe served until sometime in September, and Willy Jones then held the office until the permanent constitution went into effect in December. On August 9, the Council of Safety issued a call for the election of delegates to a Constitutional Convention to meet at Halifax on November 12, 1776.⁵⁷

The elections, which were held on October 15, were spirited. The radicals actively campaigned against the conservative leaders, and succeeded in preventing the re-election of both Samuel Johnston and Thomas Burke. Samuel Johnston's defeat was decisive, and he was excluded from participation in the state government for the next twelve years.⁵⁸ But Thomas Burke's setback was only temporary. The confused conditions

⁵⁶C. R. X, 579-581; Connor, Harnett, pp. 153-154.

⁵⁷Ibid., p. 159n; Lefler, Contemporaries, p. 105.

⁵⁸Nash, Hillsboro, p. 55; Frank Nash, "The North Carolina Constitution of 1776 and its Makers," The James Sprunt Historical Publication, Vol. XI, no. 2 (Chapel Hill, 1912), pp. 15-16; Henry Wagstaff, "Federalism in North Carolina," The James Sprunt Historical Publications, Vol. IX, no. 2 (Chapel Hill, 1910), p. 9.

under which the election was held in Orange county provided Burke with a second chance.

In 1776, Orange county encompassed the present day territory of five counties, and for the October election the only polling place was at Hillsboro courthouse. The crowds of voters making their way to the courthouse caused near riots. Four different times during the day it became necessary to close the polls until order could be restored. The polls finally closed permanently at sunset after only one-fourth of the eligible voters had cast their ballots.⁵⁹ Thomas Burke had been defeated for re-election.

Immediately after the Constitutional Convention convened on November 12, the county petitioned for a new election on the grounds that the first election had been unfair. Approximately 550 petitioners claimed they could not enter the courthouse to vote on October 15 for fear of bodily harm from the tumult prevailing around the polls.⁶⁰ The Convention referred the petition to a committee of Privileges and Elections for investigation into the charges. The committee reported that the election had been held in a disorderly fashion. They found that it had been necessary to close the polls several

⁵⁹Nash, Hillsboro, p. 55; Lefler, Orange County, p. 45.

⁶⁰C. R. X, 932. See the Petition of the people of Orange County for a new election in the North Carolina Legislative Records, November 13, 1776, Records of the States, Microfilm collection in the NTSU library.

times during the day, and to close them permanently an hour and a half early. However, the committee determined that the tumult was not a riot, but merely enthusiastic voters trying to get to the polls. Thus, the petition was denied and the contested delegates were seated.⁶¹

This, however, was not the end of the issue. Four days after the petition was rejected it was brought up again for reconsideration. On November 28, the Assembly rescinded the previous decision and approved a new election for Orange county.⁶² No information is available to explain this complete reversal by the committee and the Assembly, but because Burke attended all of the sessions of Congress after it convened on November 12, he was probably influential in getting the original decision changed. In any event, a new election was held in Orange County on December 10, and Burke succeeded in regaining the seat that he had lost in October.⁶³

On December 16, 1776, Thomas Burke and four other delegates from Orange county took their seats in the Constitutional Convention. On that same day, the Bill of Rights was reported out of committee, and during the two succeeding

⁶¹Nash, Hillsboro, p. 55; C. R. X, 932-933.

⁶²Ibid., p. 943; Nash, Hillsboro, p. 55; Lefler, Orange County, p. 45.

⁶³Nash, Hillsboro, p. 56; Lefler, Orange County, p. 45. For a copy of the poll taken in Orange County on December 10, 1776, see the North Carolina Legislative Records, Records of the States in the NTSU library, Microfilm collection.

days the Constitution was debated before the entire Assembly.⁶⁴ It would appear that Burke had arrived too late to take part in the drafting of the final documents, but this was not the case. Burke had played a part behind the scenes, and one historian, Francis Nash, felt that Burke and Samuel Johnston both had influenced the committee's work.⁶⁵

After Burke had been defeated for re-election in October, he wrote a set of guidelines for the Orange County delegates. The Orange Instructions called for a form of government which consisted of a judiciary entirely separate from the other two branches, and an executive branch limited by the legislature. Burke proposed a two-house legislature with each house independent of the other, but both dependent upon the people. The representatives in one house should be chosen by freeholders and householders, and the representatives in the other house should be chosen by freeholders only. All elections should be by ballot, with the president elected annually for no more than three years in succession.⁶⁶

Preceding the instructions on the structure of the government, Thomas Burke also set forth his philosophy of political power which was fairly representative of the ideas of the radical democrats. Burke defined two kinds of political

⁶⁴C. R. X, 970, 973-974.

⁶⁵Nash, Hillsboro, p. 47.

⁶⁶C. R. X, 870h. For a copy of the "Orange Instructions" see ibid., pp. 870f-870h.

power: (1) Principal and supreme power which is possessed by the people, and (2) derived and inferior power which is held by the public officials. Burke stated that the inferior power should possess no authority to alter acts of the supreme power nor should they assume any power that would be injurious to the principal, or supreme, power. The Declaration of Rights, which was reported on December 16, 1776, followed, very closely, Burke's philosophy of governmental power. It provided for numerous personal freedoms, including freedom of religion and separation of church and state, and insured that ultimate political power would be derived solely from the people of the state.⁶⁷

Most of Burke's recommendations for the structure of the government were followed, but not necessarily because they were his own ideas.⁶⁸ The Orange Instructions bore a marked resemblance to John Adams' "Notes on Government" which was available to Burke before the convention opened. In all probability Burke had a copy of these "Notes" when he wrote his "Instructions."⁶⁹

⁶⁷Ibid., p. 1003.

⁶⁸For a copy of the North Carolina Constitution of 1776, see C. R. X, 1007-1011; S. R. XXIII, 980-984; or Lefler, Contemporaries, pp. 107-111.

⁶⁹Burke Papers, III, 10-13; See also Charles Francis Adams, editor, The Works of John Adams, Second President of the United States with a Life of the Author, Notes and Illustrations, 8 vols. (Boston, 1850), IV, 203-209; Hugh T. Lefler and Albert Ray Newsome, North Carolina (Chapel Hill, 1954), p. 211.

The Constitution was approved by the Convention on December 18, and Richard Caswell was elected Governor on December 22.⁷⁰ The document provided for legislative supremacy, with both Houses popularly elected annually. All civil and military officers were to be elected by the Assembly, and the Governor had a Council of State to advise him in the execution of his duties. Property and religious qualifications for voting and holding office were also included. Most historians consider the Constitution a mild form of democracy because the radicals wanted every branch subject to the popular will, and this was not the case with the judicial or executive branches. Once a judge was placed in office by the Assembly, he continued to hold office during good behavior. The Governor was elected by the Assembly, rather than by direct popular vote; therefore, only the legislative branch was directly responsible to the people.

After the Constitution was approved, Thomas Burke became active in helping to set up the new state government. He was immediately placed on a committee to "prepare the business necessary to be done by this Congress." It reported ordinances for the election of state officials, appointment of commissioners, and appointment of port collectors. A court system was set up and provisions made for making and enforcing the state's laws. Burke, himself, submitted several

⁷⁰C. R. X, 991.

resolutions, including one on the methods of voting for state officials, and an ordinance for supplying the treasury with money for expenses.⁷¹ Burke, William Hooper, and Joseph Hewes, were commissioned to procure a state seal to be used by the governor on all public acts, grants, and proclamations.⁷²

Thomas Burke's political career took another step forward on December 20, 1776, when he, Hooper, and Hewes were appointed to serve as delegates to the Continental Congress. They were granted an annual salary of \$2,000 and given sufficient power to bind every inhabitant of the state by their acts in Congress. The term of office was left up to the discretion of the General Assembly, but the term was not to exceed one year, nor could they be elected for more than three years in succession.⁷³

Burke remained in Halifax to finish the committee work he had begun before his appointment, and did not actually arrive in Philadelphia until February, 1777. After his arrival, however, he became one of the most active members of the Continental Congress, serving on 108 different committees during his tenure in office.⁷⁴

There has been much misunderstanding of Burke's position in the statehood movement. The terms radical and conservative

⁷¹Ibid., pp. 973, 979, 981-983, 991.

⁷²S. R. XXV, 998.

⁷³C. R. X, 977-978, 1011; S. R. XXIII, 984.

⁷⁴Lefler, Orange County, p. 46.

are often poorly defined, and Burke has been placed in both groups by different historians. Richard B. Morris called Burke a force in the "democratic party . . . [which wanted] a unicameral legislature, a popularly elected judiciary, and a weak executive" ⁷⁵ Except for the weak executive, Burke wanted none of these features. Samuel Ashe also placed Burke in the radical group; but he admitted lack of information made Burke's specific position uncertain. ⁷⁶ Francis Nash called Burke a conservative, along with Samuel Johnston and Thomas Jones, and believed it was Burke's conservatism that defeated his election to the Constitutional Convention in October, 1776. ⁷⁷ But Johnston did not fully agree with Burke's plan of government. Johnston wrote to Burke in June, 1777, that he had seen the new government in action and that it was as bad as he had expected. "Though your plan might . . . be well adapted to the government of a numerous, cultivated people, it will by no means be attended with these salutary ends which were in the contemplation of its framers." ⁷⁸

Politically Burke was a moderate for he does not fit into either of the extremes. His Orange Instructions indicate

⁷⁵Richard B. Morris, The American Revolution Reconsidered (New York, 1967), p. 158.

⁷⁶Ashe, North Carolina, I, 556-557.

⁷⁷Nash, Hillsboro, pp. 54-55.

⁷⁸S. R. XI, 504.

that he was somewhat conservative in his views, but not conservative enough to suit Samuel Johnston. The misunderstanding over Burke's position stems from his forthright position on states' rights, which he asserted on numerous occasions while he was a delegate to the Continental Congress. Perhaps the terms radical and dogmatic have become confused, and historians have assumed that Burke was a radical democrat because of his dogmatic views on the sovereignty of the states.

Thomas Burke served in the Continental Congress from 1777 to 1781, and his efforts to represent and protect the sovereignty of his state made him a well known, but controversial figure. Francis Nash said of Burke that "North Carolina, perhaps never had a greater influence in national affairs than it had while he was a delegate to Congress."⁷⁹

⁷⁹Nash, Hillsboro, p. 64.

CHAPTER II

THOMAS BURKE IN THE CONTINENTAL CONGRESS

Thomas Burke began the most significant phase of his career when he arrived in Baltimore to take his seat in the Continental Congress on February 4, 1777. During the next four years he witnessed the increasing inability of Congress to overcome its financial problems, fight a successful war for independence, and carry on effective diplomatic relations. Although Burke entered Congress a staunch defender of state sovereignty and individual rights, by 1779 he began to work for a central government powerful enough to collect revenues and negotiate effectively with other countries.

During his first two years as a delegate Thomas Burke assigned himself the role of watch dog over Congress; and he played a significant role in restraining the power of the central authority. His most vocal stands were in defense of states' rights, and he was continually involved in conflicts regarding the jurisdiction of the Continental Congress. He objected when Congress tried to overstep its authority, and he frequently reminded the members that Congress, sitting as an extralegal body at the pleasure of the individual states, had no power of its own.

Soon after Burke entered Congress he began keeping a detailed diary of the proceedings in which he was personally involved. For the short time that he continued this practice, his abstracts of debates are an excellent source of information; but the most valuable source for the study of Burke's activities is his correspondence with Richard Caswell, Governor of North Carolina, and other associates in his home state. His first letter from Congress was written to Caswell the day after he was sworn in as a delegate. In it he expressed his intention to write frequently and keep the governor informed of all congressional business and political activities in the various states.¹

Three days after his arrival in Baltimore, Burke had sufficiently familiarized himself with the workings of Congress to make the first of his numerous speeches before the assemblage. He objected to a proposal that would have required any state to have three delegates in attendance before that state could vote. This action jeopardized Burke's voting status as he was the only delegate present from North Carolina at the time. Coming to the defense of his own state, Burke claimed that circumstances beyond the state's control prevented complete representation; furthermore, the requirement of three

¹Walter Clark, editor, The State Records of North Carolina, 20 vols. (Winston, 1895-1914), XI, 374, 378. (Hereafter cited S. R.); Worthington C. Ford and Gaillard Hunt, editors, Journals of the Continental Congress, 34 vols. (Washington, 1907-1937), VII, 98-99. (Hereafter cited Journals.)

representatives would "imply a censure of his Country [state] and he must therefore protest against it." He argued that the difficulty of obtaining qualified men and adequate funds to send representatives was a problem of varying proportions in each state, and that it should be left up to each state to decide how many it could afford.²

In another attempt to protect the rights of individual states, Burke became involved in a debate over the power of Congress to bypass the states in dealing with deserters from the Continental Army. Congress approved this plan because desertion was a major problem, but Burke protested. He felt that only the states had the power to act coercively against their citizens; if this were not true, he reasoned, then Congress had unlimited power and every state's personal liberty guarantees were void. Burke's arguments prevented Congress from taking any action, and he felt that the opinion of the majority was with him.³

He objected again when Congress wanted to express approval of the action taken by four New England states regarding price controls. It was the intention of Congress to send the proceedings to the rest of the states and recommend that they take similar action. Burke maintained that the right to

²Journals, VII, 99; "Thomas Burke's Abstracts of Debates," Edmund C. Burnett, editor, Letters of Members of the Continental Congress, 8 vols. (Washington D. C., 1921-1936), II, 239.

³Journals, VII, 155; "Thomas Burke's Abstracts of Debates," Burnett, Letters, II, 275-277.

approve implied the right to disapprove. This objection also provoked long debates, with Burke insisting that no delegate had a right to tell his state what it could do. Finally a vote was taken and it was unanimously agreed to submit the proceedings of the New England states to the other states for information purposes only, without implying approval or disapproval of their action.⁴ Burke had again won his point for state sovereignty.

The North Carolina delegate fought almost daily against the encroaching powers of Congress, and he endeared himself to few members because of his uncompromising stand on states' rights issues. During the latter part of February, 1777, the enemy began to advance toward Baltimore. In fear that the city might be attacked, a proposal was made to move Congress from Baltimore to Philadelphia. The Southern delegates objected to moving further north in the winter, but based their opposition on the grounds that important business lay before Congress. Burke thought the move was unnecessary, and in order to prevent further debate, he "moved, in the right of the state, to put off the question." Under the existing rules, all votes were cast by states rather than by individual members. John Adams, and several others who wanted to move, objected to Burke's use of this privilege and argued "that it must be referred to a majority [of Congress] whether the rule could

⁴Journals, VII, 112, 121; "Thomas Burke's Abstracts of Debates," S. R. XI, 390.

apply in this case" Delegates from Maryland, Virginia, South Carolina, and New Hampshire, came to the defense of the North Carolina delegate. Richard Henry Lee, of Virginia, "urged the violent impropriety" of wanting to change a rule when a state was attempting to avail itself of the privilege. Burke did not argue his point. He saw no reason to debate "a right reserved to every state in the original constitution of the Congress . . . [and] if a majority of Congress could vote away the rules which common consent had established, they were a body bound by no rules at all."⁵ When he stated his intention to withdraw from Congress if the issue was put to a vote, opposition was waived and Burke exercised his right to postpone the question. However, the adjournment issue carried the following day.⁶

Having felt the power of Congress against him, Burke wrote to Caswell that he sincerely believed the men serving in the Continental Congress were dedicated to the common good,

⁵Journals, VII, 159n-160n; S. R. XI, 385-386.

⁶The rule was originally intended to provide a check on the majority to prevent their making a decision without due consideration. R. H. Lee agreed that the rule had outlived its usefulness, but that it should be considered for amendment only after the state had exercised its right. Therefore, the rule may have been changed before the next vote was taken. The Journals do not give further explanation as to why the motion to move carried the following day. Journals, VII, 159n-160n.

and were serving at the expense of their private lives. Nonetheless, he was convinced that

unlimited power can not be safely trusted to any man, or set of men on earth Power of all kinds has an irresistible propensity to increase a desire for itself . . . and this is a passion which grows in proportion as it is gratified.⁷

In his opinion, centralized power could produce only evil results, and Burke feared that even small combinations would be detrimental to the good of the individual states, each of which had its own interests to protect.

These myriad interests made it difficult for Congress to achieve any semblance of unity. Burke soon became aware that Pennsylvania, Maryland, and New Jersey were jealous of those states which had claims to western lands. These states, without claims, wanted to give "extensive power to a mere majority [in Congress] in order to get [passed] resolutions unfavorable to the claims of such states [with western lands]" Burke felt that because of this friction all states with western land claims "should be explicit in declaring they will give no power to their delegates to bind them in anything that regards their bounds."⁸

Burke also suspected that the three largest states, Massachusetts, Pennsylvania, and Virginia, in order to increase their own power, would inevitably form a confederacy which

⁷March 11, 1777, S. R. XI, 417-418.

⁸Thomas Burke to Richard Caswell, February 10, 1777, Journals, VII, 106.

they would force the surrounding states to join. Burke thought this would result in the loss of freedom to the smaller states.⁹

This struggle for power by special interest groups only increased Burke's fear of centralized power. Since the Articles of Confederation was a continual topic of debate in the Continental Congress during the year 1777, Burke's fears caused him to see the encroaching power of the central government that other delegates seemingly failed to notice. As a result, Thomas Burke exercised a significant impact on the finished Articles of Confederation by sponsoring an amendment which completely altered the national character of the constitution.¹⁰

The states distrusted all plans of union because relinquishing power to a common government would undermine their independence. Two major problems existed in this power struggle: (1) apportionment of power between the states and the central government, and (2) distribution of power between the large and small states. Two factions existed--the conservatives who wanted to recreate as nearly as possible the system that existed before the war, and the radicals, who saw no reason for a union beyond its military purposes.¹¹ Thomas Burke fit into this latter category. He felt that Congress should

⁹Burke to Caswell, March 11, 1777, S. R. XI, 419-420.

¹⁰Burke to Caswell, April 29, 1777, S. R. XI, 461; Merrill Jensen, The Articles of Confederation (Madison, 1940), p. 174.

¹¹Ibid., pp. 108-110.

be limited to conducting war and handling other military and foreign affairs, and that none of its power, beyond control of the military, should extend into the states.¹² The North Carolina delegate favored a bicameral legislature, with each house providing checks on the other. This proposal, however, failed to pass.¹³

Burke's effect on the Articles of Confederation, however, was far more important than influencing the structure of the legislative branch. Article III of the proposed confederation reserved to the states only the power to regulate their internal police. Burke felt this implied a resignation of all other powers. "[I]t appeared to me," he said, "that this was not what the states expected;" future Congresses would have the power to "explain away every right belonging to the states and to make their own power as unlimited as they pleased."¹⁴ So Burke proposed an amendment granting sovereign power to the states. At first no one seemed to realize the gravity of Burke's proposal for there was a lapse of time before it was seconded by a delegate from South Carolina. Then, as others saw the significance of Burke's amendment, they came to his support, and the proposition carried by a vote of eleven

¹²S. R. XI, 701.

¹³Journals, VII, 328; Burke to Caswell, March 11, 1777, S. R. XI, 422; Edmund C. Burnett, The Continental Congress (New York, 1941), p. 239; Jensen, Articles, p. 179.

¹⁴Journals, VII, 123; Jensen, Articles, p. 131.

to one, with only Virginia dissenting. Burke was pleased to discover that his ideas regarding state sovereignty met with almost unanimous approval. Consequently, Article II of the finished Articles of Confederation, which reserved to the states all of the powers not expressly delegated to Congress, was the result of Thomas Burke's state rights philosophy. Its importance in relation to the Articles as a whole, is emphasized by the fact that it was preceded only by the name of the new country, the United States of America, contained in Article I.¹⁵

Burke was not satisfied with his handiwork, however, and he became more discouraged as attempts were made to provide equal distribution of power among the states while still preserving each state's independence. In October, 1777, he was granted a leave of absence to attend to affairs at home, and he left Congress in the midst of daily debate on the proposed confederation. This would seemingly have kept him in attendance, but he was now convinced that a permanent alliance should be postponed until after the war was won:¹⁶

¹⁵Burke to Caswell, April 29, 1777, S. R. XI, 461; Jensen, Articles, pp. 174-175.

¹⁶S. R. XI, 426, 453-454, 477, 660; Lynn Montrose, The Reluctant Rebels: The Story of the Continental Congress 1774-1789 (New York, 1950), p. 203; Burnett, Continental Congress, p. 255.

[A] time of peace and tranquility [will be] the proper time for agitating so important a concern; but some, and not a few, are of the opinion that advantage should be taken of the present circumstances of the States, which are supposed favorable for pressing them to a very close connection.¹⁷

Less than a month after Burke left Philadelphia, Congress completed the Articles of Confederation. Cornelius Harnett, Burke's replacement, wrote to him on November 13, 1777, that the Articles of Confederation would soon be sent to the state legislatures for ratification. Harnett was also a state rights man, but he and most of the members of the Continental Congress felt that an effective and efficient union was absolutely necessary to provide stability after the war ended. He told Burke that he felt the completed document provided the best confederacy possible, considering the different sizes, interests, and needs of the various states. He knew, however, that Burke would consider the finished product a monster.¹⁸

The completed Articles of Confederation arrived in the state legislature on December 15, just two weeks after Thomas Burke had taken his seat as a representative from Orange County.¹⁹ In a speech to the Assembly, Burke had already made known his

¹⁷S. R. XXII, 974.

¹⁸R. D. W. Connor, Cornelius Harnett: An Essay in North Carolina History (Raleigh, 1909), p. 186; S. R. XI, 677; Cornelius Harnett to Richard Caswell, March 20, 1778, ibid., XIII, 386.

¹⁹In a special election held on November 24, 1777, Burke was elected to fill an unexpired term. Francis Nash, Hillsboro, Colonial and Revolutionary (Raleigh, 1903), p. 71.

impressions of the Continental Congress. He emphasized his fear of majority rule and pointed out that since nine states constituted a quorum, any five states could control the whole. He urged North Carolina to instruct her delegates not to be bound by majority decisions which were contrary to her specific instructions. Remembering the treatment he had received when he tried to postpone the question of adjourning to Philadelphia, Burke said:

Without something of this kind, according to the present constitution of Congress it may be impossible for the Delegates to preserve the Independence of the State from Encroachments [,] for by that constitution they are not allowed to protest or enter their Dissent.²⁰

Burke and three other men were appointed to a committee to serve with a Senate committee to consider the plan of confederation. Burke was in an excellent position to influence North Carolina's decision. After four days of deliberation, the committee reported its recommendations. Only Articles I, II, III, VIII, XII, and some sections of Articles IV and IX were approved. The remaining portions affected

the internal interests and Sovereign Independence . . . and not being immediately essential to the success of the present war ought not to be ratified until there shall be time and leisure . . . for mature and deliberate consideration.²¹

Both houses of the North Carolina legislature approved the committee's recommendations, and on December 24, 1777,

²⁰S. R. XI, 702-703.

²¹Ibid., XII, 229, 385, 411.

Burke was appointed to transmit the decision to the Continental Congress when he returned to complete his term of office. Rejection of portions of the Articles was a temporary decision, however, apparently influenced by Burke's presence, for the General Assembly reconsidered their decision the following April and voted unanimously to ratify the entire Articles of Confederation without reservations or revisions.²²

No doubt, being chosen as a delegate to the Continental Congress was an honor, but it was an honor much disputed by those who held it. Cornelius Harnett had written Burke in November to try to get someone else appointed in his place. "I can not stay here any longer," he declared, "with any pleasure."²³ Harnett had come to the conclusion that honor was not worth the sacrifice to his private life. In December, Harnett wrote Burke again, advising him not to bring Mrs. Burke when he returned to Congress because rooms were almost impossible to obtain and living expenses were exorbitant. Men rarely took their wives when they attended the Congress because the journey required three weeks of travel over intolerably bad roads and frequently under winter weather conditions.²⁴

Early in March of 1778, Burke returned to York, Pennsylvania, where the Continental Congress was meeting. He

²²Ibid., p. 263; ibid., XIII, 452.

²³Ibid., XI, 683.

²⁴Ibid., pp. 678, 697; ibid., XIII, 378.

noted that supplies and morale were deteriorating rapidly after two years of war. The army was poorly fed, and provisions were available only at exorbitant prices. Burke remarked that the pecuniary interests of some merchants could ruin their cause of independence.²⁵

Additional incentives were needed to keep the soldiers interested in their jobs. George Washington wrote the Continental Congress numerous times urging that lifetime pensions be granted to all officers who would remain in the army until the war ended, and this proposal became a topic of debate in Congress for several months. Burke favored the pensions because the officers had "no permanent interests in their commission[s]" and, therefore, could not be disciplined, lest they resign. But Congress feared a standing army and was reluctant to pass legislation to this effect.²⁶

General Washington also wrote to the Congress, criticizing a resolution passed the previous December regarding the exchange of prisoners. The congressional resolution provided for the return of Loyalists to their respective states for punishment when they were captured or exchanged. Washington

²⁵Burke to Caswell, March 12, 1778, Burnett, Letters, III, 128.

²⁶Burke to Caswell, April 9, 1778, ibid., p. 163. See also ibid., pp. xi, xiii.

hoped the law would be ignored because British General Sir William Howe would never agree to an exchange of prisoners under such terms.²⁷

Congress, which had long been apprehensive of Washington's becoming a military dictator, was disturbed that he was attempting to influence civil policy. The Continental Congress proceeded to write a severe rebuke to the General. The letter was not yet completed at 10:00 p.m. on April 10, 1778, when someone moved to adjourn. Burke, who was in agreement with Congress that Washington should be reprimanded, was also ill and very tired from the lateness of the hour. He voted to adjourn, and "declared the states might vote as they pleased, he would upon his honor adjourn himself; and thereupon he [together with the delegate from Georgia, Edward Langworthy,] immediately withdrew." With both men gone, a quorum was no longer present, and a messenger was sent to ask them to return. Langworthy returned, but Burke refused, saying to the messenger: "devil take him if he would come; it was too late and too unreasonable."²⁸

The following morning Burke was charged with a breach of conduct. He denied any guilt since the meeting was adjourned, and he refused to apologize. A debate over Burke's

²⁷Burnett, Continental Congress, pp. 302-303.

²⁸Ibid., pp. 268, 303, 406-307; Journals, X, 334; Secret Journals of the Acts and Proceedings of Congress, 5 vols. (Boston, 1820-1821), I, 65-66. (Hereafter cited Secret Journals.)

conduct ensued for the next few days. Burke admitted calling the messenger a devil, but in reply to the charges of misconduct, he said that he would "not submit to a tyranny of a majority of this Congress, which would keep him here at unreasonable hours." He questioned the authority of Congress over its members and restated his refusal to attend at inordinate hours. In presenting his defense, Burke used exceptionable language and charged Congress with a combination against him since he had observed other members withdrawing at their pleasure without consequence. Burke finished his reply to the charges by stating that he was accountable only to his own state "and [to] no other power on earth."²⁹

Two weeks later, on April 25, a committee appointed to determine what action Congress should take in Burke's regard reported that Burke's behavior was

disorderly and contemptuous; and . . . That the principle upon which he has attempted to justify his withdrawing . . . is dangerous, because it strikes at the very existence of the House, and, as in the present case actually happened, would enable a single member to put an instant stop to the most important proceedings of Congress.³⁰

This conflict between Thomas Burke and the Continental Congress points up the two diametrically opposed concepts of governmental power in a democracy--the conflict between rule

²⁹Journals, X, 336, 339; Secret Journals, I, 67-68; S. R. XIII, 87-88; Burnett, Continental Congress, p. 307.

³⁰Journals, X, 390; Secret Journals, I, 69.

by the majority and protection of minority rights, a problem that eventually led to a civil war, and which has not yet been fully resolved.

Burke must have had some misgivings about his behavior. Ill feeling toward him was running high, and he most likely would have been expelled if his presence had not been necessary to conduct business. He wrote an apology to Henry Laurens, President of the Continental Congress, saying he hoped his actions would not be held against him. Laurens replied to the letter, but did not indicate any forgiveness of Burke's behavior.³¹

It was probably fortunate for all concerned that Burke's term as a delegate ended on April 28, 1778. Burke was bitter toward Congress and was anxious to return to private life where he would be "secure under the protection of the laws and constitution of my Country [state]." It was evident to him that individual and state's rights were held in little regard by the Continental Congress.³²

Burke was convinced that his outspoken denunciation of Congress' infringement of states-rights was the reason behind his censure. But he also admitted that even though he opposed Washington's recommendations to Congress, he and several others objected to the unfriendly tenor of the reply to the General.

³¹g. R. XIII, 107-108, 405.

³²Burke to Caswell, April 25, 1778, ibid., p. 103.

Burke had actively opposed many statements in the reply, and one paragraph had been debated all afternoon before it was made agreeable. When the motion for adjournment was made at 10:00 p.m., Burke realized his presence was necessary to continue business, and fearing the adjournment would not pass, he was "determined to withdraw if no other way was left, to prevent our proceeding so improperly on business of such importance." Burke later admitted that withdrawing from a session without permission was a breach of order, but he considered his action worth the reprimand because the report was amended the following day when the delegates were rested and had had a chance to re-examine the report.³³

Burke went home in May and was subsequently re-elected to represent Orange County in the North Carolina General Assembly. Soon after the session opened, the Assembly received a full account of the incident and censure of Burke by the Continental Congress. The proceedings were read to the full Assembly on August 12, and a joint committee was appointed to consider the matter. The report of the committee was an unqualified endorsement of Burke's action in the Continental Congress. The committee determined that the incident was so trivial that there was no excuse for Congress' having spent fifteen days in debate on the subject. The report also agreed

³³Burke to Caswell, April 25, 1778, *ibid.*, p. 104; Burke to Caswell, April 29, 1778, *ibid.*; Burke to Henry Laurens, April 13, 1778, *ibid.*, p. 87; Burnett, *Letters*, III, 201.

with Burke's position that the Continental Congress was overstepping its authority in assuming the right to punish or censure its members, and that if the states conceded this power they would be giving up a portion of their independence, which could ultimately lead to complete control of the state by Congress.³⁴

From the tenor of this report it is obvious that Burke was expressing the attitude of the government of North Carolina in his numerous arguments in the Continental Congress, or at least that he was very convincing to the Assembly in his defense of his actions in Congress. Sympathy was definitely with Burke in any event because the General Assembly, without waiting for the report of the committee, re-elected him, by almost unanimous vote, to return as a delegate to the Continental Congress. Burke "was [re-elected] to Congress [on August 12, 1778] with an increase of prestige and confidence."³⁵

He and Whitmill Hill were elected delegates to the Continental Congress at this time in order to increase the North Carolina delegation to five members. North Carolina had been unrepresented for two or three months earlier in the year, and had failed to receive all the money due the state from the Continental Congress. The five delegates were to rotate so

³⁴S. R. XII, 825-826, 843-845.

³⁵Ibid., p. 830; Burnett, Continental Congress, p. 309.

that the state would have at least two representatives in Congress at all times.³⁶

When Burke returned to Congress in 1779 he became embroiled in the continuing power struggle between the states and the central government. Paper money was becoming worthless, and in an effort to restore its value, a proposal was made to recall from circulation large amounts of continental currency, and to ask the individual states to reduce their emissions. Since this "implied a power to suspend or repeal our Laws," Burke argued that it should be left up to the states to regulate their own currency. He had always opposed granting Congress the right to borrow or emit money since it could not be done without inequities.³⁷

As early as 1777, and again in 1779, despite his feelings toward state sovereignty, Burke advocated "a tax . . . [as] the only adequate expedient" to maintain the value of paper money.³⁸ His suggestions did not win approval, and by 1779 the country's financial condition was becoming desperate. The following year, 1780, Burke urged Congress to secure permission from the states to levy a one per cent impost on all exports and imports as a means of providing Congress with

³⁶Burnett, Letters, III, 138; S. R. XII, 819, 820, 828-829; Journals, XI, 856.

³⁷Burnett, Continental Congress, pp. 383-384; Burke to Caswell, December 20, 1778, S. R. XIII, 328-329.

³⁸Montrose, Reluctant Rebels, p. 197; Burnett, Letters, IV, 369.

funds for carrying on the war. This motion also failed to pass. Finally, in 1781, a five per cent levy on all foreign imports was approved by Congress and the resolution was submitted to the states. Several states granted their approval, but the necessary unanimous ratification was never achieved.³⁹

During his second term in Congress Burke's attitude toward the power of the central government began to change. He became involved in foreign affairs and began to see the need for some central authority over the states in order to present a united front to the world. France had now actively entered the war and prospects for an American victory were much brighter. The United States needed a central government to conduct foreign affairs and bring the war to a successful conclusion. Since the war was beginning to concentrate in the South, Burke became more aware of the need for a united effort by all the states to aid those areas under attack.⁴⁰

Burke's change in attitude first became apparent in June, 1779, when he served on a committee to determine the jurisdiction of the Committee of Appeals over state Admiralty Courts.

³⁹Journals, XVI, 261; Burnett, Continental Congress, p. 475; Journals, XIX, x, 102, 105, 112, 124-125; ibid., XXII, 81n, 366n, 388, 477.

⁴⁰The Thomas Burke Papers, Microfilm edition, 5 reels, Southern Historical Collection, University of North Carolina Library (Chapel Hill, 1967), I, 457-459. (In citations of the Burke Papers, roman numerals indicate reel numbers, and arabic numerals indicate frame numbers.) Journals, XIII, 283-284, 386; ibid., XIV, 562-563.

Pennsylvania had refused to adhere to a directive by the Court of Appeals regarding a captured sloop. Burke favored central authority over the states in this instance, for without this power Congress would be prevented from giving satisfaction to foreign nations with complaints, and any state thus would have the potential to involve the whole nation in hostilities.⁴¹

Burke also served on a committee which investigated the conduct of several United States ministers to foreign courts, and he became very active on the committee to determine peace terms for ending the war. As a man who desired prominence, Burke must have been delighted to be appointed to this blue ribbon committee of important men. Burke, together with Gouverneur Morris of New York, John Witherspoon of New Jersey, Samuel Adams of Massachusetts, and Meriwether Smith of Virginia, pondered the questions of peace terms: to what lengths would the United States be willing to go to win the war, what would they be willing to concede, and what would force them to continue fighting? The deliberations of this committee kept Burke busy throughout the summer, even though he had expressed his intention to return to North Carolina in March.⁴²

⁴¹This involved capture of a Spanish ship by Massachusetts in May, 1779. Burke wrote the French minister that Congress would make reparations, but that they were limited in their control over the states. Journals, XIII, 134, 286; ibid., XIV, 635.

⁴²Ibid., XIII, 364-368; Burnett, Continental Congress, p. 431; S. R., XIV, 22.

On February 23, 1779, the committee reported that foremost in their demands was the acknowledgement by Great Britain of

the liberty, sovereignty, and independence, absolute and unlimited, of these United States [Also included were] certain minimum boundaries, evacuation of British forces, fishing rights on the banks and coast of Newfoundland, navigation of the Mississippi to the southern boundary of the United States, [and] free commerce with some port or ports below that boundary⁴³

In Congress the Newfoundland fisheries and navigation of the Mississippi River were the two most hotly contested points proposed by the committee. Debate raged throughout March, April, and May. On March 24, Burke, of North Carolina, and William Henry Drayton, of South Carolina, tempered the southern states' demands for free navigation of the Mississippi River with a provision that this would be insisted upon only if the allies were willing to continue their aid until such demands were obtained. This amendment failed to pass.⁴⁴

The northern states were less willing to concede the coastal fishing rights, and when Henry Laurens, of South Carolina, voted with the northern states to continue the war until these rights were obtained, the North Carolina delegation became very angry. They wrote to the South Carolina Assembly suggesting that Laurens be instructed not to vote for pro-

⁴³Burnett, Continental Congress, p. 431. See also Journals, XIII, 240-242.

⁴⁴Journals, XIII, 369-370.

longation of the war when South Carolina was presently unable to continue fighting without help from North Carolina. Burke, Penn, and Hill also wrote to the North Carolina Assembly suggesting that South Carolina no longer needed military aid from North Carolina since she was obviously strong or Laurens would not have voted to continue the war. Henry Laurens interpreted this action by the North Carolina delegates as a personal attack on him for the way he had treated Burke when he was President of the Continental Congress and Burke had been charged with a breach of conduct. There was an angry exchange of letters between Laurens and the North Carolina delegates, but tempers finally cooled and both parties apologized.⁴⁵

In August, Burke indicated that Congress had finally come to an agreement on peace terms which he was not at liberty to divulge. He indicated, however, that the wishes of the southern states prevailed.⁴⁶ This may have been true in 1779, but it certainly was not the case when peace terms were concluded in 1783.

By 1779 a change in Burke's attitude was apparent. Compromise was not characteristic of Burke's earlier nature, but he had been willing to concede the South's most important

⁴⁵Burnett, Letters, IV, 129-132, 145-148; S. R., XIV, 57.

⁴⁶Archibald Cary to Thomas Jefferson, August 26, 1779, Julian P. Boyd, editor, The Papers of Thomas Jefferson, 17 vols. to date (Princeton, 1951-), III, 76.

demand--navigation of the Mississippi River--if it would bring an end to the war. His attitude was becoming more moderate and realistic, and his feelings toward the Confederation were changing. During the summer of 1779, the state of Virginia proposed the formation of a confederacy without Maryland, the only state still refusing to ratify the Articles of Confederation. North Carolina was prepared to go along with this plan, but Burke dissuaded his state with the argument that a "partial confederacy may lay the foundation for disunion" and encourage the British to prolong the war.⁴⁷ Burke was obviously in favor of a permanent alliance in 1779, a position in direct contrast with his attitude toward a confederacy the previous year when he opposed the formation of any permanent league beyond its military purposes until after the war was won.⁴⁸

In August, Burke was finally able to take a break from his duties and return home. Living conditions and expenses had become intolerably bad in Philadelphia by 1779. The delegates repeatedly requested to be relieved. John Williams had resigned in February due to the expense of supporting himself, and Sharpe wrote to Caswell that he was looking forward to being delivered "from the house of bondage." Burke

⁴⁷Montrose, Reluctant Rebels, pp. 262-263; S. R., XIV, 350; Burnett, Continental Congress, pp. 493-494.

⁴⁸Burke to Caswell, April 29, 1777, S. R. XI, 462; Samuel Johnston to Burke, April 19, 1777, ibid., p. 453.

had been home less than two months when Harnett wrote him asking to be relieved in November or December at the latest. Harnett said prices had risen 150 per cent since Burke had left, and he realized it was cruel to ask Burke to return under these circumstances.⁴⁹ Burke was suffering financially because of his political activities, and he had to borrow £500 from a John Allison in October, but this did not deter Burke from his political career. He agreed to serve another term in the Continental Congress and returned to Philadelphia in December, 1779. However, the legislature did raise the delegates' salaries to \$5,000 and agreed to pay their expenses while in Congress.⁵⁰

The year 1780 was critical because the financial structure of the nation had virtually collapsed. How was Congress to feed the existing army, raise an army for the next campaign, and keep the nation solvent? The decline in purchasing power was so alarming that Congress found itself reduced to the barter system. The states were being assigned quotas of supplies, rather than money, to support the Continental army. Congress was considering a reduction of the army to cut expenses, rather than enlarging it as Washington had requested. France was impatient at the delays in military preparations,

⁴⁹Ibid., XIV, 231, 259, 348.

⁵⁰Burke Papers, I, 558; Whitmill Hill to Burke, ibid., III, 41; S. R., XIII, 859.

and Lucerne, the French Minister Plenipotentiary, admonished Congress for its lack of preparedness.⁵¹

When Thomas Burke returned for his third term in Congress, he was assigned to the committee which met with Lucerne and discussed the problems of peace terms and the declining war effort. Lucerne convinced the committee and Congress that another major military campaign was necessary to secure favorable peace terms from Great Britain. He presented dispatches from Great Britain which expressed that country's reluctance to acknowledge American independence. Lucerne also convinced the committee that Great Britain might be seeking armed mediation through secret treaties with other European powers. Armed mediation meant that if the United States did not accept the mediator's terms, the mediator would unite with Great Britain. Any mediator friendly to the British would refuse to acknowledge American independence, and even an impartial mediator could hardly refute Great Britain's claims to territory she was presently holding. Burke wrote the committee's report which explained the

⁵¹Burnett, Letters, V, iv, vi, x; Journals, XVI, 88.

urgency for expelling the enemy from the United States and taking possession of all their territory as quickly as possible.⁵²

Lucerne promised French aid in the form of troops, arms, and ammunition, and Congress assured the French minister that America would provide 25,000 troops and adequate provisions for the French army.⁵³ The United States, with some prompting by the French minister, thus rallied to the final successful campaign of the revolutionary war.

When Burke learned that the British army, led by the Earl of Cornwallis, was headed toward North Carolina, he urged Congress to send a large force to defend his state. His proposal that the army be supplied and paid for by the common efforts of all states was rejected. Again in March, he urged Congress to send a large detachment of Washington's army to aid the South. Congress finally agreed to send one brigade of 800 men, and recommended that the southern states make 5,000 troops available for use as needed by the Southern Department. A commander for the Southern Army was needed, and Burke recommended that General Horatio Gates be named

⁵²No evidence among the papers which Lucerne gave the committee indicated that Great Britain was seeking armed mediation. Great Britain had approached Germany and Russia for aid but had been rejected. Lucerne may have exaggerated the situation in order to spur the Continental Congress on to greater effort. Francis Wharton, editor, The Revolutionary Diplomatic Correspondence of the United States, 6 vols. (Washington, 1889), III, 466-467, 469; 483-485; Journals, XVI, 88-89, 107-108; Burnett, Letters, V,x.

⁵³Journals, XVI, 88, 112.

to the position.⁵⁴ To his dismay Burke later discovered that he had made a poor choice.

In June, 1780, Burke left Congress and went to his home in Hillsboro, North Carolina, where General Gates planned to establish his military headquarters. Burke and the General arrived there about the same time, only to discover that the British army had consumed most of the food in the Hillsboro vicinity when they marched through that area in May. The two men found the Continental troops in dire need of supplies and most disgruntled.⁵⁵ Burke's property had fallen prey to the pillaging of the Continental troops, and he informed Gates and the Continental Congress that "the citizenry would defend their property by force of arms if necessary."⁵⁶ Burke later received a letter of apology from John Lynn, a soldier, who admitted insulting Burke's overseer at Tyaquin. He explained that he had been ordered into the field to get corn tops for shelters.⁵⁷

The quartermasters were causing much of the discontent among both civilians and military personnel because of their

⁵⁴S. R. XV, 334-335; Journals, XVI, 239-240; ibid., XVII, 508.

⁵⁵Hugh T. Lefler and Paul Wager, editors, Orange County, 1752-1952 (Chapel Hill, 1953), p. 49; S. R. XV, 770-771; Nash, Hillsboro, p. 75.

⁵⁶Lefler and Wager, Orange County, p. 49; Burke to General Horatio Gates, July, 1780, S. R. XV, 769-770.

⁵⁷Ibid., p. 120.

abuse of the power to impress supplies and their failure to keep proper records. Burke attempted to correct this situation by requesting voluntary supplies from the local residents. He hoped to be able to promise payment with interest and protection from violence for those people who gave supplies willingly. In July, Burke wrote to Governor Abner Nash urging him to call a meeting of the Council to get an estimate of provisions available in the state, and to provide the executive authority necessary for obtaining the supplies.⁵⁸

Burke's letter to the Governor remained unanswered when, in August, General Gates' army was defeated by the British forces of General Cornwallis at Camden, South Carolina. This battle paved the way for Cornwallis' invasion of North Carolina. Gates' conduct was considered disgraceful because he returned to Hillsboro long before any of the remaining survivors of his army. Burke wrote to the Continental Congress, criticizing the General's behavior in the battle and, in mid-October, Gates was replaced by General Nathaniel Greene. After the battle at Camden, Burke learned that the state was practically without an executive. The Governor, who was too ill to help

⁵⁸Burke to Gates, July, 1780, ibid., p. 769; Burke to President of the Continental Congress, July, 1780, ibid., p. 771; Burke to Governor Abner Nash, July 19, 1780, ibid., pp. 774-775.

reorganize the state's forces, had asked the General Assembly to create a Board of War to help him carry on the war effort.⁵⁹

Due to the neglect of his legal practice, Burke was no longer able to remain a delegate to the Continental Congress and also support himself. He applied to the North Carolina Board of War for money to support him in Congress, and the Board members indicated that Burke's presence in that position was urgently needed. However, they were unable to meet Burke's needs and appealed to Governor Nash to intervene.⁶⁰ Apparently, either Nash or the state was able to work something out, for Burke did return to Congress for the last time in January, 1781.

Burke now felt that taxing power and regulation of commerce by the central government was absolutely essential if the new government was to succeed. In 1780, he had urged, without success, the passage of a one per cent levy on all foreign imports and exports to provide funds for supporting the Continental Army. In 1781, he proposed a five per cent levy on all foreign imports, but recommended that it be a direct levy by Congress, thus by-passing the states. This

⁵⁹Ibid., pp. 93, 114, 776; Lefler and Wager, Orange County, p. 50; Hugh T. Lefler, editor, North Carolina History Told by Contemporaries (Chapel Hill, 1934), p. 231.

⁶⁰"Records of the Board of War," October 25, 1780, S. R., XIV, 435.

impost was approved by Congress and submitted to the states for their consent, but unanimous agreement was not forthcoming.⁶¹

On March 5, 1781, four days after the Articles of Confederation went into effect, the issue arose in Congress over how many states constituted a majority for voting purposes under the new constitution. The Articles of Confederation stated "a majority in Congress assembled . . ." Assembled was the key word in the dispute. Since nine states constituted a quorum, some argued that business which required only a majority vote must mean a majority of nine, or five states. Thomas Burke argued successfully that five states were a minority and that seven states were necessary to determine every question of importance. It is "contrary to all compacts of Sivil [sic] Society," he declared, "for the minority to rule the Majority." Perhaps he failed to remember how many times he had exercised his minority right of one to obstruct the business of Congress.⁶²

Obviously Burke's philosophy of governmental power was changing, but in what direction is uncertain for he warned Congress that "if they attempted so early to claim powers that were not expressly given by that charter . . . they would give a dreadful alarm to their constituents who are so

⁶¹Rhode Island refused to ratify the amendment. Journals, XIX, x, 102, 105, 112, 124-125.

⁶²Burnett, Letters, VI, 8.

jealous of their liberty."⁶³ This argument sounded more like the old Burke who had continually battled the encroaching central authority during the first two years he served in Congress. Even though Burke's ideas were changing, historians have not generally recognized any perceptible change in his philosophy. One twentieth century historian, Merrill Jensen, called Thomas Burke one of the ablest exponents of the radical views in Congress, while another historian, Lynn Montrose, called him the states-rights champion.⁶⁴

Thomas Rodney wrote a candid and hopefully honest description of Thomas Burke in his diary in 1781, which gives a contemporary view of the delegate from North Carolina.

Doct'r Burk of North Carolina, tho not equal to many who have been in Congress, may justly be stiled the ablest and most useful member there at present. He . . . is very attentive and well acquainted with business, is nervous tho not Eloquent in his language, he is Correct and pointed in his debates, possesses the Honest integrity of a republican and is for preserving inviolable the rights of the people He uses dictatorial language at times and becomes too enmeshed in a particular object but has no desire for power.⁶⁵

Burke remained in Philadelphia only four months of his last term in Congress. In April he asked for a leave of absence and returned home to North Carolina. In June Burke was elected governor of his state and began the final phase of his short, illustrious, and somewhat tragic career.

⁶³Ibid., p. 8.

⁶⁴Jensen, Articles, p. 171; Montrose, Reluctant Rebels, p. 202.

⁶⁵Burnett, Letters, VI, 20.

CHAPTER III

GOVERNOR THOMAS BURKE

"Chaos" is the word that best describes the condition of North Carolina when Thomas Burke was elected governor in 1781. There was much dissatisfaction due to the inefficiency of the government. Heavy taxes had been imposed, but the treasury was empty. Impressment of supplies by the quartermasters was causing much distress to the populace. The currency was almost worthless, and law and order were held in contempt. Governor Abner Nash, who claimed health and financial reasons for declining renomination, was also disenchanted with the Board of War, which had been created at his request in 1780. He had envisioned it as an advisory body to help carry the responsibility for military matters when the Assembly was not in session. However, from its inception in September, 1780, its powers exceeded those of the governor and it virtually stripped him of his executive authority. Nash had threatened to resign if his rightful powers were not restored, and the Board was abolished in January, 1781. Nevertheless,

the governor continued to feel that the erosion of executive power had made his position untenable.¹

The Board of War, although arbitrary, had been effective, and after it was abolished disorders multiplied. Public stores disappeared, and no records were kept of losses. There were no returns available to show the strength of the militia, and the executive's orders were no longer obeyed. A stinging indictment against the government was made by William Hooper, a delegate to the Assembly which met at Halifax in February, 1781. He described North Carolina as "a country on the verge of ruin; a corrupt, or what is worse, an idiot Assembly; an indolent Executive; a Treasury without money; a Military without exertion" ² North Carolina was in need of strong leadership to subdue the enemy and restore order to the state, and Thomas Burke undertook the task. It became the most difficult and frustrating job of his career.

¹Samuel A'Court Ashe, History of North Carolina, 2 vols. (Greensboro, 1925), I, 677; Walter Clark, editor, The State Records of North Carolina, 20 vols. (Winston, 1895-1914), XV, vii, viii. (Hereafter cited S. R.); Hugh T. Lefler and Albert Ray Newsome, North Carolina (Chapel Hill, 1954), p. 214; Enoch W. Sikes, "The Transition of North Carolina from Colony to Commonwealth," Anglo American Relations and Southern History, edited by Herbert B. Adams, Johns Hopkins University Studies in Historical and Political Science (Baltimore, 1898), XVI, 547; The Thomas Burke Papers, 5 reels, Southern Historical Collection, University of North Carolina Library (Chapel Hill, 1967), V, 366.

²William Hooper to James Iredell, February 13, 1781, Griffith J. McRee, editor, Life and Correspondence of James Iredell, 2 vols. (New York, 1949), I, 487.

Congratulations, tempered with sympathy, came from Burke's friends. Governor Nelson of Virginia said he was not sure if congratulations were in order for the "government in the Southern states is so deranged that the man who can organize and bring them into order will be Magnus Appollo."³ Whitmill Hill, a delegate to the Continental Congress, expressed similar sentiments. Nothing had been expected of Burke's predecessor, he said, but a man of Burke's reputation would be expected to work wonders. Hill expressed great confidence in Burke's ability, but warned him that the wretched condition of the state would make the task long and difficult.⁴

North Carolina had been invaded by the Earl of Cornwallis in January, 1781, and while Cornwallis pursued General Greene through the state, Major James H. Craig set out to establish a British stronghold on the coast of North Carolina. Cornwallis' campaign was not successful. Bad weather and lack of supplies forced him to retreat to the coast after losing 250 men, quantities of baggage, wagons, heavy cannon and equipment. Furthermore, contrary to his expectations, he had gained no new recruits. Cornwallis was despondent over his lack of success in North Carolina, and in April he decided to move

³S. R. XV, 577.

⁴Burke Papers, III, 102.

into Virginia, leaving Major Craig in command of a British force in the southern coastal section of North Carolina.⁵

The General Assembly was scheduled to meet at Newbern, North Carolina, in April, but the town lay in the path of Cornwallis' movement into Virginia. Consequently, the Assembly convened two months late on June 23, 1781, in Raleigh.⁶ The first order of business was the election of a governor for the state, and Burke learned of his election on June 26. In an official letter to him, the members of the Assembly expressed their pleasure at having as their governor "a gentleman on whose integrity, firmness, and abilities we can rely with confidence" Burke replied that he was honored by this unexpected expression of their confidence and hoped he was equal to the task. He expressed reluctance at taking the office because his private affairs had been badly neglected, but due to the critical circumstances of the times he felt he must accept whatever public duties his country deemed necessary.⁷

Burke was aware of conditions in North Carolina, and he assumed the position of Governor with full assurance of cooperation from the Assembly. In his opening message on June 29 he set the tone of his administration. Calling for

⁵Ibid., p. 49; Lefler, North Carolina, pp. 236, 238; S. R. XXII, 533-534; McRee, James Iredell, I, 503, 530.

⁶Ibid., p. 505; S. R., XVII, vii.

⁷Burke Papers, III, 54-56.

"Internal Peace, order, economy, and security from external enemies," he then set out to fulfill these objectives.⁸ The new governor attacked the method of tax collection, the lack of protection for merchants and loyal citizens, and the negligence of civil and military authorities in carrying out their responsibilities. An entire squadron of Light Horse had mutinied shortly after Burke took office, and he was quick to point out that the defection was caused by lack of discipline and flaws in the militia law. He also expressed the need to remove the incorrigible elements who were carrying on a civil war within the state, and this became the primary objective of his administration.⁹

Burke soon learned that the type of authority he wanted would not easily be established. Governor Nash had left Raleigh before Burke took office, so Burke had to write him asking to be briefed on public affairs.¹⁰ Both the civil and military situations were in dire need of immediate improvement, and Burke found himself restrained by the constitutional limitations on his authority. It is ironic that he felt so hampered by the very restrictions which he had helped to create five years previously. The legislature was cooperative in promoting the governor's civil and economic proposals,

⁸Ibid., p. 56.

⁹S. R. XXII, 1039-1040; ibid., XV, 497-498.

¹⁰June, 28, 1781, Burke Papers, IV, 355-356.

approving his suggestion to create an Office of Public Accounts, and giving him authority to purchase, borrow, or impress exportable produce to be used in obtaining war material. Also, because of the incompetence of the existing county commissioners, he was allowed to set up a new system for collecting provisions. One man from each of nine counties was empowered to purchase tobacco with certificates which were redeemable in December, 1783. The tobacco would then be used to procure supplies.¹¹

Characteristic of his concern for the rights of others, Burke suspended the power of impressment in the hope that the people would cooperate in exchanging supplies for certificates. He continually urged that private citizens should not be exploited, and felt that anyone who was inconvenienced by the needs of the military should be reimbursed.¹²

In the area of military authority, however, the legislature was more reluctant to relinquish its power. The governor was limited to keeping in service not more than 4,000 state militia at one time, a number deemed inadequate by Burke under the existing conditions. He requested authority to send the militia out of state to reinforce General Greene's army. As a result the General Assembly passed "An Act for drafting the Militia to reinforce the Southern Army," which gave Burke permission to send state forces into Virginia and

¹¹Ibid., III, 64; S. R. XXIV, 407; ibid., XVII, 968; ibid., XV, 529, 583.

¹²Burke Papers, V, 326; ibid., III, 65.

South Carolina for a maximum period of three months. But the law also required Burke to seek the advice of the Council before making disposition of the troops.¹³ Although this was in line with the Constitution, which stated that the governor must seek the "advice of the Council of State, to embody the militia for the Public Safety,"¹⁴ Burke interpreted the law as a restriction on his constitutional powers. He felt the requirement that his orders be approved before they were put into motion would be time consuming and inconvenient in the event of an emergency. He argued that under the Constitution the governor was Commander-in-Chief of the militia, that he thus was authorized to act alone, and he insisted that the Assembly be explicit in defining his powers.¹⁵

For nearly two weeks the Assembly was unable to agree on a definition of the executive's military authority. Burke finally lost patience with their arguing about his powers as Governor, and, on July 14, he entered the Assembly hall and reminded the delegates that he had taken the office only because they had chosen him as the best man for the job. He said he had a strong desire to be useful in restoring order, but the Assembly was placing embarrassing obstacles in the way of his constitutional authority. On the pretext that he

¹³Ibid., pp. 64, 68; S. R. XXIV, 404-405.

¹⁴Ibid., XXIII, 982.

¹⁵Burke Papers, III, 68; ibid., I, 736.

had evidently lost their confidence, he threatened to resign if his powers were not expanded. Burke immediately received a vote of confidence, together with assurance that his constitutional powers remained intact.¹⁶ This apparently pacified him, but his powers remained undefined.

It is difficult to imagine how Burke could have interpreted the Constitution to give him more power than that granted by the Assembly. He was aware that the executive was totally dependent on legislative consent for he had helped formulate the document which limited the executive's power. Apparently his argument was a subterfuge to obtain the authority necessary to do the job that needed to be done.

According to the state constitution, the governor must have the advice of the Council of State before he could take any action. The General Assembly had elected seven men to serve as Burke's Council,¹⁷ but by mid-July, 1781, the Council had not met and Burke was becoming impatient to get on with his work. He could not understand their neglecting to meet and remarked that "they seem to be utterly regardless of their country."¹⁸ John Penn notified Burke on July 21 that his bad health and family situation forced him to decline his seat on the Council. Burke replied that his presence was

¹⁶Ibid., p. 742; ibid., III, 250.

¹⁷S. R. XV, 557; Burke Papers, V, 57.

¹⁸S. R. XV, 556.

essential to make a quorum, and he hoped Penn would make the effort to attend. The Council finally met on July 24, approved most of Burke's program, and gave him the authority necessary to restore order.¹⁹

The Governor's program called for improvement and protection of the court system, improvement of military discipline and supplies, an accounting of the public assets and debts, and a census to determine the population and types of employment. The Quartermaster Corps would be required to submit monthly reports to the governor to reduce abuses and inefficiency in that area. The Council agreed that the county jails needed repair and that law enforcement must be improved. Prisons frequently had been neglected and some prisoners had been held without trial. To remedy this situation, Courts of Oyer and Terminer were to be held in each county to handle criminal cases. Letters were sent to the sheriffs, judges, and justices, urging them to discharge their duties and threatening punishment to those officials who neglected their responsibilities.²⁰

Burke was particularly concerned about the violence, plunder, and assassination taking place between the Whigs and Tories throughout the state. In June, the General Assembly had granted Burke permission to raise troops for twelve months'

¹⁹Ibid., pp. 560, 563; Burke Papers III, 73.

²⁰S. R. XIX, 857, 862; ibid., XV, 579, 580; Burke Papers, III, 105.

service to subdue the disaffected elements within the state. The Act called for the troops to rendezvous at specified points on September 20, 1781. This would allow the governor three months to put the state in readiness for an all out offensive which he planned to lead. Burke told the Council of his plans to put this force in the field to subjugate the enemy troops and remove them from the state, if they refused to lay down their arms and request pardons.²¹ Burke, of course, had no way of knowing that he would be in no position to keep this date.

The governor was also aware of acts of violence and barbarity committed by the state militia, and he recommended a rigorous enforcement of laws against the offenders. Several officers captured by the Tories wrote to Burke that many of the Highlanders who had joined the enemy did so because the militia had plundered and burned their homes, and cruelly murdered some of their people. Major Craig had written to Governor Nash in June, shortly before Burke took office, stating that if the atrocities against his men were not stopped he would retaliate by turning his prisoners of war over to the vengeance of the Tories. Craig mentioned in particular the barbarity of General William Caswell, who had murdered five of his men. Burke answered that although he knew nothing of the incident such activities should be stopped;

²¹S. R. XXIV, 384; ibid., XIX, 861.

but he warned Craig that he would be forced to retaliate against British prisoners if Craig carried out his threat. The matter was not pursued further, and, in fact, direct communication between the two men ceased when Burke informed Craig that he would read only the correspondence addressed to him in his official capacity. Later Craig did acknowledge that Burke held a position of importance in the state government, but for the present he refused to recognize Burke's position as governor, and subsequent communication between the two men was carried on through intermediaries.²²

The military situation continued to grow worse after Burke became Governor. On July 6, he learned that Wilmington was about to fall to Major Craig. During July, the Governor received appeals for help from Duplin, Onslow, and Cumberland counties in southeastern North Carolina. The militia was out of supplies and ammunition, and were going to be forced to surrender. By July 20, Craig had succeeded in gaining complete control in the southern and coastal sections of the state.²³

While Burke was losing territory to the British, he was also having to reprimand his militia for inhuman acts against the enemy. There was no excuse for barbarity, but much of the plundering was motivated by inadequate food supplies. Hence,

²²Ibid., pp. 861-862; Burke Papers, III, 58-59, 259; S. R., XXII, 1028; ibid., XV, 553-554.

²³Burke Papers, III, 240, 257; S. R. XV, 514.

Burke wrote to the military commanders rebuking them for their indiscreet violence, and he also put in motion his plans for improving the quartermaster department.²⁴

In answer to the officers who were appealing to him for immediate aid, Burke replied that temporarily they would have to shift for themselves. They were not to engage in aggressive warfare unless they held a vastly superior force, and they were to conserve ammunition. Without being specific, he assured them that a major offensive was in the making.²⁵ On July 30, he wrote: "[A]s soon as they become sufficiently ripe the disaffected shall hear from me, and I do not mean to be deficient either in clemency or vigor." The officers were obviously impatient with this delay for Burke continually reminded them that they must be patient. "No impatience," he declared, "shall divert me from the prosecution of my settled plans."²⁶ The state was so feeble and disordered that it would require time to put an effective force in the field, "and when I act I mean to act with some effect."²⁷

During the months of July and August, 1781, Burke went into several areas of the state to put his plans into motion. He had to reprimand General William Caswell and Colonel Francis

²⁴Burke Papers, V, 305-307.

²⁵Ibid., III, 85-86.

²⁶Ibid., p. 75.

²⁷Ibid., p. 83.

Locke for disobeying orders. Locke eventually had to be replaced for refusing to go to the aid of General Greene. Other officers were court martialed for various breaches of conduct.²⁸ The military in North Carolina was almost beyond control.

Supplying an army was a formidable task in 1781, after five years of warfare, and Burke made a concerted effort to collect what was needed for his campaign against the enemy. He requested a list of all taxables in the state so that each family could be assessed equitably. Private citizens were to provide clothing, cloth for tents, thread, and other necessities. Certificates were to be given for all goods, and these would be applied against individual taxes. Clear accounts of all transactions were to be made available for inspection. When objections were raised that the people had nothing left to give, Burke replied that the people were the only available resource.²⁹

Burke felt compelled to turn to the people because the commercial element had been devastated by the circumstances of the war. In 1780, the General Assembly had passed laws to retard speculation which had contributed to the scarcity of commodities in North Carolina. These laws prevented the export of any articles originally imported into North Carolina,

²⁸Ibid., pp. 74, 76, 86, 119.

²⁹Ibid., pp. 97, 124, 172.

and prevented the resale of most imported products not originally consigned to the retailer, unless he was licensed by the state. Profits were not to exceed twenty-five per cent for those retailers who were able to obtain a license. These restrictions, together with repeated impressments, prevented the natural flow of trade and commerce into the inland sections, and commerce was at a virtual standstill by 1781.³⁰ Samuel Johnston, the former provisional governor and a delegate to the Continental Congress, wrote Burke in August that he feared further impressments would cause the merchants to leave the state in search of more favorable circumstances. Burke went to Edenton to survey the commercial situation, and promised that impressments would be terminated. In return, the merchants agreed to furnish supplies, whenever payment was assured, and to give preference to army needs.³¹

Several weeks before the anticipated September 20 rendezvous of the states' forces, Burke established a system of communications between the various military posts and decided to concentrate his attack on Wilmington, where the trouble was most serious. Volunteers were difficult to obtain and Burke told his officers to draft troops, if necessary, because draftees could be more easily controlled. Burke wrote Caswell that he would not tolerate volunteers taking leave

³⁰S. R. XXIV, 318-319; ibid., XV, 771-772.

³¹Ibid., p. 602; Burke Papers, III, 120, 144, 163.

when they pleased and obeying orders only when it suited them.³² When Colonel Robert Burton, the Quartermaster, questioned Burke's power to impress horses, Burke retorted angrily that he had been granted that power by the Assembly. Lack of cooperation by the quartermaster corps hampered Burke's plans and he became arbitrary. If unwillingness to obey executive orders continued, Burke informed Burton, it would necessitate his "executing acts of power which are very disagreeable to one."³³

Thomas Burke's short temper was further shortened by the hard work and privation that characterized his efforts in behalf of his state--a state that later would not remember his sacrifices. His financial losses were heavy. Despite advice to the contrary, Burke sold his Hillsboro farm in 1780. His law practice, and consequently his income, suffered greatly. He told the Assembly that he would keep an accurate expense account, but that his financial situation prevented him from paying any of his own expenses.³⁴ Regardless of the sacrifice, Burke was determined to make a name for himself in the new world, one about which he could boast in Ireland. He was determined to prove to his family that he could make it on his own.

³²S. R. XV, 595; Burke Papers, III, 194.

³³Ibid., p. 101.

³⁴Ibid., I, 796; S. R. XV, 180, 186, 416; Burke Papers III, 71.

A marvelous opportunity presented itself when Burke learned, on August 31, that Cornwallis was planning to retreat from Virginia back through North Carolina. Excited at the prospect of an encounter with this formidable foe, Burke said, "We have at present a glorious opportunity for crushing the British."³⁵ Orders were sent out to the commanders to be ready to move on a moment's notice. The Quartermaster was notified to have all facilities in readiness for transporting supplies, and all boats and canoes were to be placed under guard to prevent the enemy's using them to cross the river. Burke's plan was to prevent Cornwallis' passage over the Roanoke River until the Marquis de La Fayette could overtake him. Burke wanted to be present wherever the principal engagement took place, and he was anxiously awaiting word of the enemy's movement. Evidently Burke had a secret desire to become a military hero. As early as 1776 he had expressed the desire to see action, and in July, 1781, he had been refused permission to join General Greene's force.³⁶

It was not Thomas Burke's destiny, however, to lead a military expedition, and he was disappointed when he learned a few days later that his force would not be needed to deter Cornwallis. The British general had been effectively cut off

³⁵Ibid., pp. 167, 182.

³⁶Ibid., pp. 73, 165-166, 168, 177, 264; ibid., I, 799; Peter Force, editor, American Archives, 5th Series, 3 vols. (Washington, 1848-1853), I, 98-99.

from a retreat southward by the French, and North Carolina's services were no longer needed.³⁷

Undaunted in his efforts, Burke returned his attention to his original plan of ridding the state of her disaffected element. On September 6, 1781, he wrote to General Caswell that he was going to Hillsboro to collect the forces there, and then he would proceed with plans for an assault on Wilmington where Major Craig had his headquarters. The British, in Wilmington, were supplying marauding bands of Tories, who were burning homes and abusing families in the surrounding area. General Caswell warned Burke that the whole section would be lost if assistance did not arrive soon.³⁸

While the southern area of the state was under seige, the western section, particularly in the vicinity of Hillsboro, was having problems of its own. David Fanning,³⁹ a Tory guerilla fighter, kept that area in a continual state of terror. In August, General John Butler issued orders for fifty volunteers to hunt the man down, but it was impossible to capture the elusive Fanning. By the middle of August

³⁷Burke Papers, IV, 591.

³⁸Ibid., III, 133, 191, 193; McRee, James Iredell, I, 531-532; S. R. XV, 589, 593.

³⁹For a brief biographical sketch of David Fanning, see S. R. XVI, vii-x.

many of the people in Hillsboro were so disturbed that they were taking their possessions and moving out of Orange County.⁴⁰

Accompanied only by a small escort, the governor made his way westward toward Hillsboro where he intended to set up his headquarters. Burke's spirits were low. He had just learned that his home in Hillsboro was in poor condition. The furniture was shattered, there were no locks for the doors, and no supplies were available. In February, Mary Burke had again been forced to flee from their home, when the British occupied the town, and she now wanted to return to meet her husband. The house would provide a poor reception for her arrival.⁴¹ Burke's temper was on edge, and he became irritated as he proceeded across the country and discovered that his postal expresses were not stationed where they were supposed to be, and that his orders had not been obeyed. Complaining that the field officers were lazy, he said: "I am afraid [the systematic misbehavior in every department] will provoke me to such arbitrary acts as may give my administration an air of tyranny, though no man living is more averse to it."⁴²

Two days after his arrival in Hillsboro, Burke wrote to General Caswell again. Plans for the offensive were proceeding

⁴⁰Burke Papers, III, 109, 130.

⁴¹Ibid., pp. 93, 195; ibid., I, 838.

⁴²Ibid., III, 191.

as scheduled and when preparations were completed, he said, "I will organize the whole machine and take the field."⁴³ Burke was still determined to get into the fracas, and he was to do just that the next day, though not in the way he had intended.

Burke's refusal of the offer of additional protection for his journey to Hillsboro indicates that he put no credence in the rumor that David Fanning was planning to capture him. He knew the infamous Tory was in the area, but the governor assumed that Fanning planned to ambush General John Butler, and he ordered Butler to move to safety. Burke's miscalculation fell in with Fanning's plans exactly. He and Major Craig had planned Burke's capture for some time, and the opportunity now presented itself. Fanning kept his real destination a secret until the last possible minute, allowing his men to believe that Butler was their target. After verifying the fact that Burke was in Hillsboro without sufficient protection, Fanning informed his men of their real mission and made a forced march to the town to utilize the element of surprise.⁴⁴

It was about 7:00 a.m. on a foggy morning, September 12, when several hundred Tories, led by Fanning, surrounded the town of Hillsboro and commenced firing. It quickly became

⁴³Ibid., IV, 596-597.

⁴⁴S. R. XV, 612; Burke Papers, III, 205; S. R. XXII, 206; Ashe, North Carolina, I, 694.

obvious that Burke's house was the target of the raid, and that escape was impossible. The appearance and fury of his assailants gave Burke little hope for his life, but after his safety was assured, Burke surrendered. After he had left the relative safety of his home, however, some members of the enemy force jumped him and would have killed him had some Highlanders in the group not come to his aid. The Highlanders had been Burke's prisoners at one time, and they remembered his humanity.⁴⁵

After they had spent several hours plundering and rioting, Fanning finally got his men under control and left Hillsboro in mid-afternoon with approximately two hundred prisoners, including the governor, his council, and several army officers. Fanning's retreat was challenged by General Butler the following day, and a serious battle ensued. Since Butler had a superior force it was much to his discredit that Fanning, who was wounded, was able to make good his escape.⁴⁶

The prisoners were taken 160 miles south to Major Craig's headquarters in the Cape Fear region.⁴⁷ According to Burke's own account, they were subjected to extremes of hunger, thirst, and fatigue, while being marched through sand and swamps to prevent their being followed. Burke refused to degrade himself

⁴⁵S. R. XVI, 13.

⁴⁶Ibid., XXII, 207; Francis Nash, Hillsboro, Colonial and Revolutionary (Raleigh, 1903), p. 86.

⁴⁷S. R. XXII, 208; ibid., XV, 651.

"by giving parole [a promise not to attempt an escape] to a traitorous banditti," although it would have decreased his hardship. The other continental officers also refused a parole in deference to their governor, and Burke repeatedly referred to the kind consideration he received from his men.⁴⁸

On September 23 Burke was delivered to Major Craig. In contrast to his captors, the British officers were polite and respectful. The following day Burke was taken to Wilmington and confined in one bare and drafty room of a small house. A Colonel Reid, Burke's aide-de-campe, who had also been captured in Hillsboro, was the only man permitted to see the governor. Reid was given a parole and allowed the freedom to secure furniture and other necessities from their friends in the area. Major Craig apologized for the treatment Burke was receiving, but explained that there was some question as to Burke's status. Much later, Burke was to learn that the British had decided he was a prisoner of state instead of a prisoner of war, and that he was being held for retaliation in the event Fanning was captured and executed.⁴⁹

From Wilmington, Burke was moved to Fort Arbuthnot on Sullivan's Island, where he was held under close confinement. From October through December, Burke appealed to friends in the Continental army to help him get a parole or an exchange

⁴⁸Ibid., XVI, 13.

⁴⁹Ibid., XV, 651, 652; ibid., XVI, 13, 14; Burke Papers, V, 379; Ashe, North Carolina, I, 696.

to return home, but to no avail. In November, however, Major Craig did offer Burke a parole on James Island, off the coast of Charleston, South Carolina. The parole, in return for his promise not to attempt to escape, would give the governor relative freedom of movement within the confines of the island. Burke agreed, and was moved to that location on November 6, 1781.⁵⁰ Burke's situation was very frustrating to him. He considered himself a capable man, and he took pride in the fact that the British considered his movements so dangerous; but he regretted the "restraint which prevents me from employing such talents as nature has given me, . . . for the bringing to a complete and happy Issue, the cause in which our country is engaged."⁵¹

During Thomas Burke's captivity, Alexander Martin, Speaker of the state Senate, acted as Governor. The historian, Hugh Lefler, claims that after Burke's capture the state government in North Carolina collapsed into a condition of virtual anarchy. It is certainly true that depredations by the state militia continued, and that Tory bands, including Fanning's group in particular, continued murdering and plundering in the western sections. The General Assembly convened in November, 1781, but adjourned after three days, having accomplished nothing. In spite of this evidence, however,

⁵⁰S. R. XVI, 13, 14; Burke Papers, III, 285, 289; S. R. XV, 650.

⁵¹Ibid., p. 653.

Lefler's statement may be too harsh, for conditions differed little from what they had been prior to Burke's capture. Martin's effectiveness was hampered by lack of knowledge of Burke's plans and uncertainty as to the extent of his authority as Acting Governor. The most serious error Martin committed was his allotment of clothing to the militia. The soldiers felt their share was inequitable, and Burke had to soothe their wounded pride upon his return.⁵² But apparently the General Assembly was satisfied with Martin's conduct of the office, for he was elected to a term of his own the following April.

In addition to his frustration at having been forcibly removed from the scene of activity, Burke soon learned that he was in an extremely perilous situation on James Island. His accommodations were satisfactory, and the people in charge were considerate of him, but he was continually threatened by a band of lawless refugees who were camped on the island. They moved around in large groups plundering and murdering at will. Some of the men were North Carolinians who would have enjoyed venting their wrath on the person of Thomas Burke. One evening in December Burke's quarters were fired upon; one man standing next to Burke was killed and another wounded. After this incident Burke wrote to General Alexander

⁵²Ibid., XIX, 869, 870; Lefler, North Carolina, p. 215; Burke Papers, III, 231, 360, 372; ibid., II, 112; S. R. XVI, 527-528; Ashe, North Carolina, I, 703-704.

Leslie, who had recently taken command in Charleston, asking the British officer for a parole within American lines or removal to a safe place. Burke offered to return home on parole as an "inoffensive private man" and not to resume his former position of authority.⁵³

Burke waited sixteen days for an answer to his request. During that time he was afraid to go out alone and frequently changed the place where he slept at night. Finally, on January 13, 1782, Burke received word that his request for parole had been denied. It was at this time that he also learned he was being held for the purpose of retaliation in the event Fanning was harmed. Burke became very despondent. He felt that he might never return home again to see his wife and their expected child. On January 13 he wrote to Willie Jones, asking that no suspension of the state's treason laws be made on his account for he was equal to whatever the enemy might inflict upon him, including death. He was also hurt that many of his friends had neglected or forgotten him. However, Burke's attitude changed as he began to rationalize his situation. After all, was not a parole given in order to save one's life? Since Burke's life was in jeopardy it was obvious that his captors had not lived up to their obligations to protect him. Consequently, Burke reasoned, he was now

⁵³McRee, James Iredell, I, 539; S. R. XVI, 14; Ashe, North Carolina, I, 706; S. H. XIX, 888; ibid., XV, 668.

released from his own obligations under the parole.⁵⁴ But an affair of honor was involved, and Burke was an extremely proud man. It was a hard decision for him to justify to his own conscience, but within three days after he learned that he was not to be moved to safety, he decided he would be justified in breaking his parole and making his escape. Since he was not under guard, he left James Island without difficulty and arrived at General Greene's headquarters at Camden, South Carolina, on January 16.

The day he arrived in Greene's camp, the Governor wrote to General Leslie, giving as his reason for breaking parole a lack of adequate protection. He also wrote that he felt no further obligation to the British and that he planned to avoid further contact with them. But Greene evidently caused Burke to have second thoughts on the subject. Greene felt there were very few reasons sufficient for breaking parole; he thought Burke should write Leslie and offer to negotiate an exchange of prisoners for Burke's release.⁵⁵ Consequently, two days after he had written his previous letter to Leslie, Burke wrote again in a much subdued tone. "But though I carried this resolution into effect, I do not thereby intend

⁵⁴Ibid., XVI, 15, 16; Burke Papers, III, 290.

⁵⁵S. R. XXII, 606-607; Nathaniel Greene to Thomas Burke, January 21, 1782, Nathaniel Greene Papers, Correspondence and Letterbooks, 2 reels, Microfilm collection in the North Texas State University Library, Denton, Texas. (Hereafter cited Greene Papers.)

to deprive you of the advantages which my capture, by the rights of War, entitle you to." He offered Leslie an equivalent exchange or to return to his parole if he would be guaranteed the same protection as other prisoners of war.⁵⁶ Leslie ignored the request, however, his only reply being a demand to Greene that Burke be returned to his captivity.⁵⁷

After the threat of danger was behind him, Burke began to evaluate his situation of the past few months. He came to the conclusion that he had received better treatment from the British than from his own state. Although many friends had expressed a desire to help in any way possible during his captivity, Burke remembered others who had remained silent. He felt the government had made no effort to get him exchanged or to assure him better treatment; he considered this inexcusable in view of the recent success at Yorktown. Burke evidently was unaware of, or dismissed Martin's attempt to secure his release from Craig shortly after Burke's capture. Craig had replied at that time that a parole was very unlikely in Burke's case. He also may not have known that the Continental Congress attempted to secure Burke's exchange for non-military British subjects taken at Yorktown.

⁵⁶S. R. XVI, 178.

⁵⁷Ibid., p. 17.

However, this effort was not made until December 20, after Burke had been in captivity for three months.⁵⁸

It is impossible to determine the magnitude of Burke's persecution complex in January, 1782, for he expressed these thoughts a few months later. It is certain that he returned to his position as Governor, and that he once again vigorously attempted to put the state back in order. The only feelings he expressed at that time were written to General Greene on January 31, 1782: "I perceive the state is in a very great derangement and to reform it is an herculean task. I tremble to undertake it and yet I cannot reconcile it to my Republican principles to decline it."⁵⁹ Burke's justification for resuming his position, when his status as a captive was in question, was on the grounds that Martin would no longer be eligible to act as Governor when his term as Speaker expired in March. This would leave the state without an executive until the General Assembly met in the middle of April.⁶⁰

Burke resumed his position on January 31, and was immediately besieged with appeals for help. Again, supplying the military was his biggest problem. The quartermasters were not keeping accurate records, and Burke demanded an accounting of

⁵⁸Ibid., p. 18; Burke Papers, V, 379; Worthington C. Ford and Gaillard Hunt, editors, Journals of the Continental Congress, 34 vols. (Washington, 1907-1937), XXI, 1181.

⁵⁹Burke Papers, II, 30; see also S. R. XVI, 492.

⁶⁰Ibid., XIX, 877.

all receipts and expenditures, as well as clear and accurate requisitions.⁶¹ "This," he wrote, "is an indispensable rule which I have laid down for my own conduct, in dispensing the resources of the state."⁶² In February Burke sent arms and ammunition to Randolph and Orange counties, and forty wagons and horses to Greene. Greene, who later said that the needs of the military did not justify Burke's jeopardizing his honor by resuming office, certainly took advantage of the fact that Burke was back in authority. Greene requested food supplies in March, and wrote again in April that his situation was critical.⁶³

Burke abhorred the disgraceful behavior of the militia toward the inhabitants of the state, and he ordered swift punishment to be meted out where it was warranted. In the area of retaliation against the enemy, however, Burke was influenced by Greene to abate the harsh punishment of the state's treason laws. Greene urged Burke to reconsider the status of the Tories convicted of treason and suggested they be made prisoners of war available for exchange. Greene felt this would better the position of North Carolina citizens in British custody. Burke agreed that this would be more humane and would eliminate the need for so many treason trials

⁶¹Burke Papers, III, 328; S. R. XVI, 221, 222, 536, 561; Ashe, North Carolina, I, 707.

⁶²S. R. XVI, 542.

⁶³Burke Papers, III, 299.

and executions. Consequently, Burke reprieved a number of prisoners sentenced to die, including four of Fanning's men who were scheduled to hang for treason. The reprieves were granted on condition that the men would serve one year in the Continental forces. This became the guiding principle behind Burke's plans to restore order in 1782. A force would take the field and make prisoners of all who opposed the state. Pardons were then to be offered to all who would agree to serve in the militia. Only those who had committed atrocious crimes would be exempted from pardon.⁶⁴

The plan to rid the state of its enemies had been cut short by Burke's capture in 1781, and after he resumed office, it became the focus of his attention once again. He called his Council of State to meet at Halifax on February 11 to discuss the situation, and on February 15, the Council gave him sufficient power to provide supplies and restore order.⁶⁵

David Fanning had never been subdued and was continuing to disrupt civil and military authority. Fanning had offered to come to terms in January if all loyalists would be allowed to return home unmolested and without restrictions because of

⁶⁴Burke to General Lillington, February 27, 1782, Burke Papers, II, 112. See also S. R., XVI, 527-528, and ibid., p. 182. Burke to Major James Hogg, March 13, 1782, ibid., pp. 230-231; Nathaniel Greene to Thomas Burke, February 24, 1782, Greene Papers, I; Burke Papers, I, 1052; S. R., XIX, 914; Hugh T. Lefler and Paul Wager, Orange County, 1752-1952 (Chapel Hill, 1953), p. 61.

⁶⁵S. R. XVI, 181, 510.

previous conduct. Also, they were not to be compelled to take up arms against the British. These conditions were too stringent for consideration, but Fanning wrote to Burke again in February requesting a truce zone in the area of Cumberland. This time he asked only for permission to trade with other areas, and promised, in return, to police his own men. The government took no action, however, and during the next few months Fanning continued to rob and burn homes and to commit atrocities in the interior counties. Finally, in April, Burke met with Fanning and agreed to a truce on the basis of the terms requested in February. Burke felt that this was the best answer to the problem. However, when the Assembly convened later in April, they objected to the truce agreement. Since Fanning left North Carolina in May, it was probably obvious to the Assembly that Fanning was facing defeat and that compromise was not necessary.⁶⁶

A number of factors caused Burke to come to terms with Fanning: fear of Tory retaliation in the event Fanning was killed, Burke's own personal problems, and the fact that the pockets of resistance were decreasing as more and more of the disaffected element offered themselves up for pardons and service in the militia. Probably the most important

⁶⁶Colonel John Collier to Burke, Randolph Co., February 25, 1782, Burke Papers, III, 326. See also S. R. XVI, 203-204; David Fanning to Burke, February 25, 1782, Burke Papers, III, 330; Matthew Ramsey to Burke, Chatham Co., March 18, 1782, *ibid.*, p. 352; S. R., XXII, 218-219, 222, 224; Fanning to Burke, January 7, 1782, *ibid.*, p. 214; *ibid.*, XVI, x.

reason, however, was Burke's lack of success in getting a force into the field. Major James Hogg, a close friend of Burke's, was placed in command of the state's force in March. Major Bennett Crofton, who was the state militia's senior officer, objected to his being passed over and refused to obey orders sent by the Governor. Burke threatened to have him arrested, and the expedition was thus disrupted.⁶⁷

To a man like Thomas Burke, whose pride meant almost as much to him as life itself, his decision to resume the executive office was a disaster. For breaking his parole, his honor was immediately called into question, and his resumption of office made his position indefensible. His actions became the subject of gossip and discussion throughout the remaining three months of his administration. Colonel William R. Davie wrote Burke that he had heard Burke's actions had become a question of serious importance, and offered his services if he could be of help.⁶⁸ Most of Burke's friends stood behind him. Lieutenant Andrew Armstrong wrote that Burke was the best man for the job, "as he is now calling our over-grown fellows in the Public Departments to an Account with a very becoming

⁶⁷William O'Neal to Burke, March 17, 1782, Burke Papers, III, 351; S. R. XVI, 233, 541; Burke to Hogg, March 24, 1782, ibid., p. 559; Burke to General John Butler, March 25, 1782, ibid., p. 560; Burke to Crofton, March 26, 1782, ibid., pp. 561-562.

⁶⁸Ibid., p. 202.

Severity, and is really making some Surprising discoveries."⁶⁹ But the enemies Burke had made by exposing their speculation and dishonesty now put on a show of virtue and looked askance at their governor. A Colonel Williams spread the rumor that Burke had been censored by the army for leaving Greene's headquarters in January against the general's advice. Deeply affected by this smear campaign from one of his officers, Burke wrote to Williams suggesting that he exercise more discretion in the future.⁷⁰

Because of his deep respect for Greene's opinion, Burke wrote the general asking if he had misunderstood Greene's advice in January, and requesting his thoughts on the action Burke had taken. He told Greene he was "exceedingly anxious that all my actions should be approved by men of honor and understanding."⁷¹ Over a period of the next several months, correspondence passed back and forth between the two men. In each instance Burke attempted further to justify his actions. Greene admitted there was no doubt Burke's life was in danger while he was on James Island; but Greene, a military man, felt that he would have given up his life rather than break a parole. The General also told Burke that the Governor had opened himself to criticism both at

⁶⁹Ibid., p. 538.

⁷⁰Nash, Hillsboro, p. 87; Burke Papers, III, 294, 296.

⁷¹S. R. XVI, 186.

home and in England by resuming his office while his status as a captive was still unsettled.⁷² Hence, Burke did not receive the approval he ardently desired.

The seriousness of the situation was augmented by the fact that the British refused to make an exchange. In January Burke had offered to return to captivity if the British would guarantee him protection; but by March he had changed his mind and told Greene, who was negotiating his exchange, that he would not return to captivity under any circumstances. Greene said the British were being obstinant because they realized how embarrassing the situation was to Burke. Burke suffered through it all. He felt he had "laboured much for the public to his own irretrievable disadvantage," and said that the affair had given him more uneasiness than any incident in his life.⁷³

Burke was now thoroughly disenchanted with the people of North Carolina. He was deeply hurt that the state had not come to his aid while he was a captive, and that its people apparently held him in little regard after his escape. He felt he had given his all to public service, and it had not been appreciated. On April 12, 1782, Burke wrote a lengthy

⁷²Greene to Burke, May 31, 1782, Burke Papers III, 304; Greene to Burke, March 18, 1782, ibid., IV, 299. See also Greene Papers, I.

⁷³S. R. XVI, 215; Burke to William Savage, March 4, 1782, ibid., p. 521; Burke Papers, IV, 299; Burke to Greene, April 12, 1782, ibid., III, 300.

letter to General Greene claiming he had never intended to take his job back in January, that on the contrary, he had gone to Salem to submit his resignation to a special session of the Assembly which had previously been called. The Assembly did not meet, however, and to prevent the state from being without an executive, he had resumed his position. He further stated that he was now planning to retire from public service as soon as the Assembly met.⁷⁴

According to the historian, Samuel Ashe, Burke wanted to be re-elected to another term when the General Assembly convened in April, but withdrew his name from nomination because sentiment was against him.⁷⁵ In the face of Burke's many statements to the contrary, there is one extant letter which tends to substantiate Ashe's evaluation. On April 14, Major William McCauley, a member of the Assembly, wrote to Burke that he heard much talk among the assembled legislators about the next governor. Burke's conduct was the subject of discussion, but "Your friends are very stadfast [sic], and with a little of your assistance . . . I doubt not but to have success. If any other thing should turn up worthy your Notice you shall know it all."⁷⁶ It appears from this letter that Burke had asked McCauley to feel out his chances for

⁷⁴Ibid., p. 300.

⁷⁵Ashe, North Carolina, I, 713.

⁷⁶S. R. XVI, 593, 596.

re-election. Unfortunately, there is no further correspondence available between these two men, and McCauley's support may have been entirely unsolicited by Burke.

On Saturday, April 20, 1782, both houses of the legislature placed Thomas Burke's name in nomination for governor, along with those of Alexander Martin, Samuel Johnston, William Sharpe and John Williams. The date and time for the election was set for the following Monday at 4:00 p.m.⁷⁷ In a rather lengthy message to the Assembly on Monday, Burke withdrew his name from nomination, stating that the job had been repugnant to him the year before and that he had accepted it only because he feared his "declining might be construed into a Doubt of Our success." Since this condition no longer existed, he felt no further need to sacrifice his time, in addition to which he was heavily in debt as a result of having neglected his private affairs.⁷⁸

After declining the nomination, Burke made two requests of the Assembly. He asked for pardons for several men who had gone out of their way to be kind to him while he was in captivity. Even though he realized he had the authority to grant these pardons himself, they were of a personal nature, and he felt his power was to be used only for public reasons. He also wished to know if he would be repaid for his personal

⁷⁷Ibid., XIX, 15-16.

⁷⁸Ibid., XVI, 40.

expenditures to aid other prisoners while he was governor. Due to the destruction of his property by the enemy, many vouchers were missing and he could not substantiate his claims. But, Burke made it clear that he "had rather suffer the loss of the sums they may be for than leave unsettled accounts and give the least color for ranking me in the number of public defaulters."⁷⁹

The afternoon of April 22 the election was held and Alexander Martin, who had served during Burke's captivity, was chosen as the next governor of North Carolina. The following day Burke received an expression of gratitude from both Houses of the Assembly for his efforts in behalf of the state; Burke, in turn, thanked them for their vote of confidence. He said he valued the esteem of good and wise men, and was happy at the prospect of returning to private life.⁸⁰

Thomas Burke was unwilling to forget the past, however, and he continued to dwell upon the ill treatment to which his reputation had been subjected. A few weeks after the election he wrote General Greene that he had resolved to stay out of public life as long as he remained in North Carolina. Greene sympathized with Burke's feelings and said he was sorry that the people were so ungrateful of Burke's

⁷⁹Burke Papers, III, 377, 378-379.

⁸⁰S. R. XVI, 48, 54.

efforts; he also urged Burke to reconsider his decision to refuse future service because experienced men were needed to improve the confederation, and there were so few men available who had both ability and experience.⁸¹

Greene's letter was written in May, 1782, and along with the sympathy, Greene also restated his position that to give up one's life was better than to break a parole. It must have made Burke feel he had to defend himself again. He wrote a very long letter to Greene in July, going into detail once more to explain the reasons for all of his actions. He said he would never have attempted to save his life if he had known his honor would be brought into question, but he had felt his danger would embarrass his country. This opinion, he had since discovered, was certainly a mistaken one. Burke doubted the civil authorities "would have given up the pleasure of hanging one poor wretched Tory to save me and all their countrymen who were prisoners."⁸²

There is no doubt that Thomas Burke was a bitter and disillusioned man in 1782. An undated copy of a letter in his journal vividly describes Burke's feelings after April, 1782.

⁸¹Burke Papers, III, 300; Greene to Burke, May 31, 1782, *ibid.*, II, 412; Greene to Burke, October 29, 1782, *S. R.* XVI, 445.

⁸²Burke Papers, V, 252.

I never in my life was so utterly indifferent as to the great affairs of mankind. . . . It was a species of madness with which I had been long infested which was too powerful for my reason . . . to cure - but to which the ingratitude of republican society has applied, I hope, a radical remedy.⁸³

Although he was still in his thirties, Thomas Burke had nearly reached the end of his life. He was no longer the ambitious and patriotic individual that he had been in his earlier years. His career in public service over, he returned to his home and to the practice of law, hoping to recoup the fortune and the respect which he had lost while fighting for both.

⁸³Ibid., p. 251.

EPILOGUE

The final two years of Thomas Burke's life were filled with unhappiness and tragedy, although he seems to have made some effort to forget the past and begin life anew. His wife had given birth to a daughter in January or February, 1782, and some months later Burke described in his journal the very pleasant life he and his family now had. He mentioned his fine little girl, their home, and the good health they all enjoyed. Once they had recovered from the derangements of war, he wrote, they would lack for none of the comforts of life.¹

Burke had been demoralized by the attack on his reputation and he vowed to stay out of public life as long as he remained in the state.² Perhaps this explains why he seriously considered leaving North Carolina during the summer of 1782. He went so far as to have a plantation purchased for him in Georgia.³ During the fall, however, Burke changed his mind. He wrote Thomas Bourke, who had purchased the Georgia land

¹The Thomas Burke Papers, 5 reels, Southern Historical Collection, University of North Carolina Library, (Chapel Hill, 1967), II, 101. (Hereafter cited Burke Papers.) Ibid., V, 251.

²Ibid., III, 382.

³Walter Clark, editor, The State Records of North Carolina, 20 vols. (Winston, 1895-1914), XVI, 629, 646. (Hereafter cited S. R.)

for him, that he had decided not to move because of the unhealthy Georgia climate and the unsettled conditions of society.⁴

Something happened during the summer or early fall which caused Burke to change his mind about beginning a new life in Georgia. It most likely was his personal problems. Burke's extreme financial difficulty was public knowledge and must have been a factor in his decision. Also, in October, 1782, the British finally agreed to a prisoner exchange,⁵ and perhaps Burke now felt he could re-enter politics in North Carolina. Burke also began to experience serious marital difficulties. His wife had been unfaithful during his long absences and Burke was deeply hurt when he learned of this situation. Since the Burke Papers contain no personal correspondence between himself and his wife, the possibility exists that Burke may have destroyed Mary's letters after learning of her infidelity. In November, 1782, shortly after Burke decided not to move to Georgia, James Iredell noted that Burke was "wife-hungry" when he last saw him in Newbern, and other friends of Burke remarked about how deeply affected he was by Mary's conduct.⁶

⁴Thomas Burke to Thomas Bourke, October 12, 1782, Burke Papers, II, 446; see also, S. R., XVI, 658.

⁵Ibid., p. 956; Burke Papers, I, 639, 649; ibid., III, 389.

⁶Griffith J. McHee, editor, Life and Correspondence of James Iredell, 2 vols. (New York, 1949), II, 26; Alexander Maclaine to George Hooper, January 17, 1784, S. R., XVII, 125.

He moved out of the house and remained alone until his death more than a year later.

During the final two years of his life Burke was very active in his legal practice. Apparently due to his heavy work schedule, he failed to attend the Assembly in April, 1783, even though he had again been elected a delegate from Orange County.⁷ Burke's name was mentioned for governor in 1783, and one of his old friends, Archibald Maclain, wished Burke, "with all his foibles," was back in office. "He would keep villains within proper bounds, and call scoundrels to a strict account; but probably these are the very reasons they make against his election."⁸ Burke's name was not placed in nomination, however, and Alexander Martin was elected to a second term.⁹

During the summer Burke became ill with what was described as a blood disease. He suffered great pain and was unable to work. He nearly died before making out his will in November, and he died shortly thereafter in December, 1783. He was alone, without family or friends to comfort him, a disappointed man to whom death may have been a friend.¹⁰

⁷Ibid., XVI, 956; ibid., XIX, 235, 269.

⁸Ibid., XVI, 949.

⁹Ibid., XIX, 269.

¹⁰Burke Papers, II, 525, 529; S. R. XVI, 999; George Hooper to James Iredell, January 4, 1784, McRee, James Iredell, II, 83; Samuel A'Court Ashe, History of North Carolina, 2 vols. (Greensboro, 1925), II, 16.

Burke left one-half of his estate to his wife until she remarried, at which time her inheritance would be decreased by one-half. If his daughter died before age twenty-one, or her own marriage, the entire estate was to go to the children of the executors, James Hogg and Willie Jones.¹¹ George Hooper put it aptly when he said, "[Burke] has carried his indifference to his wife to the grave with him."¹² The ex-governor died in debt, and with his affairs in great disorder. His plantation was later sold to defray expenses, and as late as 1790 the State Comptroller's books still showed a balance due the state from Thomas Burke.¹³ In spite of his wishes to the contrary, Burke did turn out to be one of the state's public defaulters.

Thomas Burke was a product of his time and a victim of circumstances. His whole philosophy of government was undergoing dramatic changes during the revolutionary period. He was a man of strong convictions, but his character is difficult to place in any given category. His efforts to help himself and his country did more harm than good, but this was not in evidence during his first years of public life. The state of North Carolina placed great respect and trust in their representative to the Continental Congress. The Assembly named a

¹¹Maclaine to Hooper, January 17, 1784, S. R. XVII, 125.

¹²Hooper to Iredell, January 4, 1784, McRee, James Iredell, II, 83.

¹³Burke Papers, II, 532, 565; S. R. XXI, 1070.

county after Burke in 1777;¹⁴ in 1778 they gave him a unanimous vote of confidence when he was censured by the Continental Congress. In 1781, the Assembly expressed confidence in his ability to bring the state out of virtual anarchy by choosing him as governor of North Carolina. Burke wanted a powerless state executive in 1776, but he cursed these restrictions in 1781 when he found himself bound by them. In 1777, he believed that state sovereignty and individual rights were superior to any form of centralized power, and this belief caused him to emasculate the Articles of Confederation. But this same man proposed by-passing the states with a federal tariff in 1781, when he observed that lack of power hurt the prestige of the nation he had helped to build. Burke's choice of General Horatio Gates for Commander of the Southern Army in 1780 was a disaster which the Continental Congress quickly remedied, but Burke's destruction of his own honor and reputation was more than he was able to overcome. Everything he touched seemed to go wrong.

Burke's influence at the state level is more difficult to determine. He was an important member of the General Assembly, serving on committees which wrote the Halifax Resolves and organized a temporary form of government. The permanent constitution, drawn up in December, 1776, generally corresponded to Burke's "Orange Instructions," which he wrote

¹⁴Ibid., XI, 453.

to the delegates to the state's constitutional convention. He was a leader in the statehood movement, his ideas reflected the views of the majority of the patriots in North Carolina, and his ability as an orator may have been more persuasive than is evident from the available facts. But there is no concrete evidence which indicates that Burke was primarily responsible for the structure and views of the government of North Carolina.

Thomas Burke was proud of his achievements in America, but he had no desire to forget his childhood home. His plantation in Hillsboro was named "Tyaquin," after the family estate in Ireland. Burke never achieved his ultimate goal in life, which was to return to Ireland as a man of wealth and prominence, highly respected for his abilities and his service to a new land. He must have realized this fact in 1782, for it explains why he was so deeply affected by the slur on his reputation after his escape from the British. The subsequent unfaithfulness of his wife was the final blow to his ego. The eighteenth century code of noblesse oblige destroyed this proud Irishman's will to live, and he died, still in his thirties, a sacrifice to honor and false pride, a man whose capabilities might eventually have brought him the honor and prestige which he so ardently desired.

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