Chapter 10

From a Difficult War to an Uneasy Peace

THE ARTICLES OF CONFEDERATION, WHICH GOVERNED THE UNITED States from 1781 to 1789, are regarded nowadays as an oddity, a misfired contraption. One single-house legislature, the U.S. Congress, was responsible for running the federal government, but it lacked the power to raise money, except by requesting the states to send it. It was not really a national government, but rather more like the European Union is today, a weak body unable to compel member states.

But from the point of view of the time, the Articles might be regarded as an extraordinary success in that when they were in effect, the infant nation survived and grew. Indeed, one modern view is that the Articles really deserve a bit more credit. Under them, the new United States became an alliance of republics. As such, the new confederation was "as strong as any similar republican confederation in history," concludes Gordon Wood.

As a permanent structure, the Articles of Confederation did not work. But as a means of transition, a bridge into the future, it served a purpose and, arguably, succeeded brilliantly. Edmund Morgan, another giant in the field, writes: "If the American Revolution was in any sense a civil war"—which in part it was—"the Confederation did a much faster and better job of reconstruction than the United States did after Appomattox." That is, the American Revolution did not turn on itself, with the victors shattering into warring factions and a government that maintains power only by the exercise of violence against citizens, as has happened

so often after other successful rebellions, as in France in the eighteenth century and Russia in the twentieth.

A peaceful outcome was not a given. The Revolutionary generation would have had in mind Montesquieu's warning that the great first hurdle of nationhood was surviving the shift from war to peace. In his analysis of what ruined Rome, he stressed the difficulties victorious soldiers had in becoming compromise-oriented politicians: "Warriors who were so proud, so audacious, so terrible abroad could not be very moderate at home. To ask for men in a free state who are bold in war and timid in peace is to wish the impossible."

In the same work, Montesquieu made a striking observation: "At the birth of societies, the leaders of republics create the institutions; thereafter, it is the institutions that form the leaders of republics." So the real issue facing the victors of the American Revolution was to create a structure solid enough to survive and begin to develop institutions that would sustain it in the long term. The question was, how to get to the point where American institutions could develop leaders?

Paine's Impatience with Classicism . . .

IN APRIL 1783, AS THE WAR WAS ENDING, THOMAS PAINE QUESTIONED whether Americans needed to abandon the classical approach to public life. As usual, he was ahead of the wave.

Paine himself is an interesting problem. He is probably the most unfairly neglected of the founders. He played a huge role in the Revolution but is seen, both then and now, as an outsider. Unlike the first four presidents, Paine was not building a society he planned to run. Rather, he was offering a running critique of events, from a point of view skeptical of power and authority.

His stance made him a natural critic of classical republicanism. "I cannot help being sometimes surprised at the complimentary references which I have seen and heard made to ancient histories

and transactions," he wrote in *The American Crisis*. "The wisdom of civil governments, and the sense of honour of the states of Greece and Rome, are frequently held up as objects of excellence and imitation." But, he continued, we "do dishonorary injustice to ourselves" if we must "go two or three thousand years back for lessons and examples." At any rate, he said, Rome's founders were thugs when compared to those leading the American Revolution. "Rome . . . was originally a band of ruffians. Plunder and rapine made her rich, and her oppression of millions made her great. But America needs never be ashamed to tell her birth." (Paine does not address here what is to us the obvious issue that the people running America also oppressed hundreds of thousands of enslaved people.) His book mentions neither Cato nor Cicero, which makes it unusual among American political books published around the time of the Revolution.

Paine's impatience with "the mist of antiquity" was not shared by the people who ran the early United States. But he was articulating a feeling that was out there, among other people, especially those not privileged to attend college. It was a feeling that would only grow.

. . . And Hamilton's

AT THE OTHER END OF THE POLITICAL SPECTRUM, ALEXANDER HAMILton also was sensing the limits of both the Confederation and the classical republican model. "The confederation itself is defective and requires to be altered; it is neither fit for war, nor peace," he had written in a letter in September 1780. "The fundamental defect is a want of power in Congress." The states were too powerful, and the central government lacked authority to maintain the union. "The leagues among the old Grecian republics are a proof of this. They were continually at war with each other, and for want of union fell a prey to their neighbours."

Given a chance, he insisted, people would pursue their own

self-interest, and that impulse was what would dominate the new nation. "It is as ridiculous to seek for models in the simple ages of Greece and Rome, as it would be to go in quest of them among the Hottentots and Laplanders." Were we, Hamilton asked, to share goods and wives and eat black broth, as the Spartans did? No, he said, "We may preach till we are tired of the theme, the necessity of disinterestedness in republics, without making a single proselyte."

A few years later, Hamilton again argued for distance from the classical world:

> *Neither the manners nor the genius of Rome are suited to the republic or age we live in. All her maxims and habits were military, her government was constituted for war. Ours is unfit for it, and our situation still less than our constitution, invites us to emulate the conduct of Rome, or to attempt a display of unprofitable heroism.*

George Washington also emerged from the war frustrated by the Articles of Confederation. "No man in the United States is, or can be more deeply impressed with the necessity of a reform in our present Confederation than myself," he wrote to Hamilton as the conflict ended. "No man perhaps has felt the bad efects of it more sensibly; for to the defects thereof, & want of Powers in Congress may justly be ascribed the prolongation of the War, & consequently the Expences occasioned by it. More than half the perplexities I have experienced in the course of my command, and almost the whole of the difficulties & distress of the Army, have there origin here."

Madison Studies and Prepares

JAMES MADISON, TOO, WAS MEDITATING ON THE FUNDAMENTAL TENsion between the high aspirations and the harsh realities of the new country. He began to consider how to reconcile them.

In 1780, he had left Virginia for Philadelphia to take his seat in Congress, bringing along with him as a servant an enslaved man named Billey. Madison did not go home for three full years—perhaps a sign of his emotional and intellectual distance from Virginia or his family or both. For nearly three years in the north, Billey breathed the spirit of liberty.

In 1783, Madison, then thirty-two years old, wrote to his father about Billey's future with a mixture of personal anxiety and political understanding. "I have judged it most prudent not to force Billey back to Va. even if could be done. . . . I am persuaded his mind is too thoroughly tainted to be a fit companion for fellow slaves in Virga." The nature of that "taint" was that Billey had seen freedom, Madison noted. "I . . . cannot think of punishing him by transportation merely for coveting that liberty for which we have paid the price of so much blood, and have proclaimed so often to be the right, & worthy the pursuit, of every human being." Of course it also would be dangerous to have Billey back on the plantation, spreading the word to his family, friends, and coworkers about the free black people he had seen in Philadelphia.

That recognition of the gap between American reality and American aspirations may have been on Madison's mind a few years later when he began working on the Constitution. Billey must have been both talented and trusted. Once freed, he would become Madison's business agent in Philadelphia, under the name William Gardner. A decade later, Madison had him deliver a plow for Thomas Jefferson's farm. After Gardner died, reportedly falling overboard from a ship while ill, his widow, Henrietta, became Jefferson's laundress in Philadelphia.

In 1784, believing that the Articles of Confederation system was doomed, Madison began to contemplate the problems of ancient Greek confederacies. He had several questions on his mind, all relating to the fragile condition of the United States. What had brought down ancient republics? What made them so fragile? Were there gaps between their theory and practice? Did they have inherent flaws that caused them to fail? Were these avoidable? Was Montesquieu correct in thinking that republics had to be small? If

so, could American government be structured in a different way that would make it more sustainable? Here he could begin by revisiting his college readings of Thucydides and Xenophon, but he soon would need more. He embarked upon a multiyear study of these issues.

It was an extraordinary effort, requiring not just persistence but a large leap of the imagination. In this way, Madison resembled the Scottish Enlightenment thinkers such as Hutton, the geologist who had looked at familiar old things in radical new ways. Noah Feldman's biography observes that Madison was doing something novel:

> *Aristotle in his* Politics *had already engaged in comparisons between different sorts of constitutional arrangements, and Montesquieu had tried to offer a general theory of the relationship between the "spirits" of different polities and the way they were organized. But as a systematic effort to identify the core working elements of all the confederacies known to have existed, Madison's document was unprecedented.*

In March 1784, Madison asked Jefferson, then preparing to sail to Europe to help in trade negotiations (and later to succeed Benjamin Franklin as the American envoy to France), to ship to him books on the history of ancient systems of government, especially confederations. "I must leave to your discretion the occasional purchase of rare & valuable books, disregarding the risk of duplicates. You know tolerably well the objects of my curiosity. I will only particularise my wish of whatever may throw light on the general Constitution & droit public of the several confederacies which have existed."

A year later, he added to that request, asking for "treatises on the antient or modern fœderal republics—on the law of Nations—and the history natural & political of the New World; to which I will add such of the Greek & Roman authors where they can be got very cheap, as are worth having and are not on the Common list of School classics." There also was a new book about travels in

China that he wanted to see. He also desired a good compass and a telescope, perhaps built into a cane, explaining that "in my walks for exercise or amusements, objects frequently present themselves, which it might be matter of curiosity to inspect, but which it is difficult or impossible to approach." In a sign of the wide range of interests of the two men, he concluded with a freestanding postscript question: "What has become of the subterraneous City discovered in Siberia?"

Jefferson responded with trunks full of books for Madison's "course of reading," shipping a total of about two hundred volumes to his younger friend and also inviting Madison to "make free use" of the extensive library he had left behind in Monticello.

Madison reported happily plunging into this "literary cargo." In the same letter, he worried about "the danger of having the same game played on our confederacy" that Philip of Macedon used against the Greeks to undermine their alliance. In his notes on confederacies, he concluded that "Greece was the victim of Philip. If her confederation had been stricter, & been persevered in, she would never have yielded to Macedon."

Madison sat in the library at his father's house near Orange, Virginia, its three tall windows looking west across a long descending pasture toward a beautiful vista of the Blue Ridge. And he stayed in that room and read for months and months. It may be just an accident that Jefferson's Monticello and Madison's Montpelier, for all their similarities, such as Doric columns, bricks, and fine views, have a fundamental difference in orientation: Jefferson's creation faces east, toward the flatter part of Virginia, while Madison's inherited house looks westward, toward the mountains and, beyond them, the future of the nation. After all, buildings can convey messages their designers may not have intended. Most famously, Jefferson in creating Monticello sought to conceal the face of slavery as much as possible, placing it underground. His house sat atop a tunnel that held the kitchen, the smokehouse, and other areas where his enslaved people worked. A dumbwaiter and a revolving shelved door further minimized their presence around his dining table.

Adams' Own Effort

IN LONDON, MEANWHILE, JOHN ADAMS COMPOSED HIS BEST-KNOWN work, *A Defence of the Constitutions of Government of the United States of America*, the sole piece of writing he finished that is longer than an essay. This was not for lack of trying—in his post-presidential years, he would take up an autobiographical manuscript and put it down several times, finally leaving it a fragmentary tangle of resentment, bitterness, and frustration.

In this rambling constitutional study, Adams surveyed all sorts of governments in the ancient and modern worlds, and concluded, as others did, that the most effective and sustainable form is one that is "a mixture of monarchy, aristocracy, and democracy, extolled by Polybius." That ancient Greek historian had tried in his work to explain the rapid rise of the Roman Republic. Polybius wrote that he intended to analyze how "it came about that nearly the whole world fell under the power of Rome in somewhat less than fifty-three years."

Polybius was a Peloponnesian Greek aristocrat born in about 208 BC who witnessed Roman ways firsthand as a semi-hostage living for seventeen years in a noble family's house in Rome. When he was at last told he was free to go home to Greece, he had grown so close to them that he chose instead to accompany one of them, Scipio Aemilianus, on a military expedition against Carthage.

In his history of the rise of Rome, Polybius attributes the power of the city in part to its culture of loyalty and virtue, but also to the mixture of powers within the Republic. He saw the consuls bringing an element of monarchy and the Senate an aspect of aristocracy, but the people also holding power in the form of tribunes who could veto acts of the consuls and Senate. "The best constitution," he wrote, is "that which partakes of all these three elements." This view deeply influenced Adams and many other Americans of the Revolutionary generation.

Adams in turn wrote that "there can be no government of laws, without a balance, and there can be no balance without the three

orders." He further recommended an independent judiciary and legislature, with no mixture of the executive and legislature (as, for example, is the case in Britain, with members of Parliament becoming cabinet members). Moreover, he applauded having more than one legislative body, in order to hamper the passage of laws in the heat of the moment. As he put it in a letter at about the same time, "Human Passions are all unlimited and insatiable." He also advocated having a strong executive with the power to constrain the other two branches of government.

Why is the form of government so crucial? Because, Adams reminds us, "Pythagoras, as well as Socrates, Plato, and Xenophon, were persuaded that the happiness of nations depended chiefly on the form of their government."

At about the same time, a pamphlet appeared in London that challenged Montesquieu's notion that republics must stand on a foundation of virtue. "The truth is, Montesquieu had never study'd a free Democracy," argued William Vans Murray, a London-educated Maryland lawyer and later a member of Congress and a diplomat, in explaining what he saw as the Frenchman's error. No such foundation was needed in a truly free system, he thought. But the young man himself was no great predictor of the trends of American political life. "Faction, which in Rome was ever written in bloody inscriptions, is unknown" in the United States, he asserted. "It is unknown, because the American democracies are governments of laws and not of parties." Just how wrong Vans Murray was about the state of American politics would soon became evident. Violence and faction lurked around the corner.

Shays' Rebellion Shakes Americans

EVEN AS VANS MURRAY WAS WRITING, THE FARMERS OF WESTERN MASsachusetts were gathering to challenge the postwar distribution of power in the United States. Daniel Shays, the leader of the insurgents, was a veteran who had fought at Lexington, Bunker

Hill, and Saratoga. He was, wrote another veteran of Lexington, "A Man without Education—But not without Abilities." When he came home from the war, he remained unpaid for his service and so was unable to pay his debts. Many of his neighbors were in similar straits: By one count, nearly a third of the adult males in Hampshire County, in western Massachusetts, carried debts they could not repay.

The insurrection expanded steadily through the summer and fall of 1786. In December, it prevented the holding of courts, stopping seizures of forfeit land and freezing the collection of debts. The following month, three columns of men, one of them led by Shays, marched on the federal arsenal at Springfield, Massachusetts, which held more than a thousand barrels of gunpowder, as well as thousands of muskets with bayonets.

The Confederation government proved unable to respond to the crisis. In October the Confederation Congress authorized recruiting soldiers to counter the insurgents, but provided no money with which to do so, instead asking the states to provide the funds, which they did not.

The government of Massachusetts itself did even worse. When it first mustered units of the militia in the western part of the state, hundreds of its members sided with the insurgents. In response, Governor James Bowdoin (Harvard, 1745), bypassed his legislature and created a new militia force, funded largely by wealthy Boston merchants. This temporary state force, numbering some four thousand men, occupied the federal arsenal, where it took possession of some artillery pieces.

The new state militia purposely fired its first cannon shots over the heads of the besieging insurgents. But when the rebels failed to turn back, the militia commander ordered the barrels lowered. A volley of grapeshot left four men dead and many more wounded. The rebels dispersed, and some of their leaders fled the state. The crisis was over, but the entire affair had made the federal government look like an inept bystander.

Shays' Rebellion would provide the backdrop for the great event

of the next two years—the convening of a meeting that, exceeding its mandate, would write a new fundamental law for the nation. That would be followed by an intense nationwide debate over approving that law. In one such discussion, Pennsylvania's James Wilson would argue that people did not really grasp how fragile the political situation was at the time of the Shays uprising and how many people in other states were inclined to follow suit. "The flames of internal insurrection were ready to burst out in every quarter, . . . and from one end to the other of the continent, we walked on ashes, concealing fire beneath our feet." Many of those listening to Wilson could have caught, in his last phrase, the allusion to the lines of Horace lamenting civil war and warning of the dangers of "stepping over fires smouldering/ under the treacherous ash."

In a letter to his father, James Madison summarized his view of the situation:

> *We learn that great commotions are prevailing in Massts. An appeal to the Sword is exceedingly dreaded. The discontented it is said are as numerous as the friends of Govt. and more decided in their measures. Should they get uppermost, it is uncertain what may be the effect. They profess to aim only at a reform of their Constition and of certain abuses in the public administration, but an abolition of debts public & private, and a new division of property are strongly suspected to be in contemplation.*

One can almost see Madison rubbing his hands in quiet glee. Given his quick political instincts, he may have sensed that the insurrection would strengthen those who, with him, backed a stronger national government.

The Shays affair effectively set the table for the Constitutional Convention by highlighting the ineffectiveness and fragility of the existing system. "It may, in fact, be difficult to overemphasize the degree to which this rebellion jolted American political reflections," writes the historian John Agresto. Shays and his comrades

ultimately would be given a silent memorial in the Constitution's Article IV, Section 4, which among other things guarantees the states protection against both foreign invasion and "domestic Violence."

At Mount Vernon, George Washington also was watching the situation with deepening concern. Responding to a letter from John Jay, then secretary for foreign affairs in the Articles of Confederation government, he concluded that "we have probably had too good an opinion of human nature in forming our confederation. . . . We must take human nature as we find it. Perfection falls not to the share of mortals." He later would write of this period that "it was for a long time doubtful whether we were to survive as an independent Republic, or decline from our fœderal dignity into insignificant & wretched fragments of Empire."

John Adams, as usual, was even more pessimistic. "Our Country men have never merited the Character of very exalted Virtue," he wrote from London at about the same time. "If it is indeed true, that there is a general Degeneracy, it is an allarming Consideration."

Even those running the government were growing impatient with the inept functioning of the American system. Early in 1787, Jay reported to Jefferson in Paris that "our Governments want Energy, and there is Reason to fear that too much has been expected from the Virtue and good Sense of the People." He told John Adams that "our Government is unequal to the Task assigned it, and the People begin also to perceive its Inefficiency."

Internal divisions only invited foreign intervention, Jefferson worried. He later wrote that, under the Articles of Confederation, "it could not but occur to every one that these separate independancies, like the petty states of Greece, would be eternally at war with each other, & would become at length the mere partisans & satellites of the leading powers of Europe."

As the historian Daniel Howe puts it, the founding generation was "fed up with the Articles of Confederation and their reliance on uncoerced public virtue." The moment had come, he continues, to consider whether "the vices could, through wise contrivance,

be made to do the work of virtues." Thinking through this apparent paradox would become the specialty of James Madison. He began pulling the strings that might lead to change.

In September 1786, several states had dispatched representatives to Annapolis, Maryland, to discuss commercial relations between the states. Hamilton and Madison had different ideas. As Richard Brookhiser puts it, they "hijacked it [the meeting] to write a report calling for a national convention a year later" at which a new blueprint for American government would be drafted. The Confederation Congress—following a bill introduced by Madison—agreed to call such a meeting. "Political foes who underrated James Madison did so at their peril," observes the biographer Ron Chernow.

Madison Emerges

THE TIME WAS RIPE. IN FEBRUARY 1787, MADISON WORRIED THAT THE Confederation government was nearing collapse:

> *the present System neither has nor deserves advocates; and if some very strong props are not applied will quickly tumble to the ground. No money is paid into the public Treasury; no respect is paid to the federal authority. Not a single State complies with the requisitions, several pass them over in silence, and some positively reject them. The payments ever since the peace have been decreasing, and of late fall short even of the pittance necessary for the Civil list of the Confederacy. It is not possible that a Government can last long under these circumstances.*

In April, he wrote notes to himself that questioned the intellectual underpinning of the system. He never seems to have finished or published it, but his draft began to circulate. The system shaped by classical republicanism was not working, he asserted. "Republican Theory" was one thing, he wrote, but "fact and experience" have proven another.

Not only was the structure of the United States flawed, but so was the classical conception behind it, he argued. The time had come to accept that "all civilized societies are divided into different interests and factions, as they happen to be creditors or debtors—Rich or poor—husbandmen, merchants or manufacturers—members of different religious sects—followers of different political leaders—inhabitants of different districts—owners of different kinds of property &c &c." But if "different interests and factions" were inevitable, then faction would have to be accepted and interest would have to be seen not as sinful but as natural. What would a government designed to accommodate them look like?

Madison had some ideas, and began to shape the discussion. "My ideas of a reform strike . . . deeply at the old Confederation, and lead to . . . systematic change," he informed Edmund Randolph, the governor of Virginia, who would become a key ally at the Constitutional Convention. Madison also told George Washington that "to give a new System its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures." In these letters he laid out the basic elements of what would become known as the Virginia plan, which in turn would be the core of the eventual Constitution. In the following year he would perform a series of tasks that would earn what Gordon Wood calls "the now widely accepted view that Madison was the most astute, profound, and original political theorist among the founding fathers."