

THE FEDERAL CONCEPT OF EMPIRE DURING
THE COLONIAL PERIOD

by

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A THESIS

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THE FEDERAL CONCEPT OF EMPIRE DURING
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ABSTRACT

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Purpose

The purpose of this study was to determine whether there was a major movement within the British Empire, particularly in the American Colonies, toward the development of a federal system of government in the period immediately before and during the American revolutionary crisis, and to determine what, if any, were the changes in the attitudes of the people toward the concept of sovereignty during the era covered.

Methods

A study was made using (1) biographies of colonial leaders such as Benjamin Franklin, John Adams, George Washington, James Otis, and others; (2) collections of writings and letters by the most important colonial and British statesmen; (3) histories of the political attitudes of the period covered; and (4) a close scrutiny of the general histories of the period. Particular attention was paid to developments which indicated changes in the concept of sovereignty. The study of American attitudes is in much

greater detail than those of the British due to the greater availability of American reference materials.

Findings

From the evidence presented in this study the following conclusions appear to be in order:

1. There did exist, in fact if not in statute, a division of sovereignty during the period which extended from the founding of the colonies until the end of the French and Indian War.

2. The Colonists rejected first, the right of the British Parliament to fix taxes within America, second, the right of the British Parliament to collect a tariff on items imported into the colonies, and finally the right of the Parliament to legislate for the colonies.

3. The idea of complete sovereignty within one governmental unit was too strongly implanted. Federal proposals which might have partially satisfied both British and Americans had little chance of success.

4. Following the pamphlet "Common Sense" the Americans renounced their loyalty to the King and declared their independence.

5. Federalism, which might have delayed the separation, was not really accepted by most Americans as basis for their own government until after adoption of the Constitution.

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CHAPTER I

INTRODUCTION

During the century before the American Revolution, the structure of British government was considered to be unitary, with sovereignty virtually residing in Parliament; however, the structure of the British Empire, particularly as it pertained to the colonies in America, was much nearer a federal system. All of the American colonies had established assemblies of elected representatives to provide the necessary legislation for internal affairs. The British Parliament provided for imperial defense and trade regulations, but only on rare occasions did it pass legislation affecting the internal affairs of the several colonies. Within the various colonies the local governments provided for the immediate needs of the people and those public services which were considered necessary.

The laws which Parliament passed affecting the internal affairs of the colonies were considered by the colonists either to be necessary services (the Post Office Act and the Calender Act), or they were largely ignored (the Hatters Act and the Iron Act). Parliament's role in colonial affairs was minimal, and most of the attention of the King's council was directed toward more pressing needs within England or on the European continent. The

enforcement of the few acts which Parliament had passed concerning internal affairs of the colonies was left to the King's ministers and governors. The Secretary of State for the Southern Department, the responsible cabinet minister for colonial affairs, was often more immediately concerned with the problems of southern Europe. He usually left colonial affairs to the Board of Trade and Plantations; this body, acting only in an advisory capacity, "told the Secretary what to do; he told the royal governors; the governors told the colonists; and the colonists did what they pleased."¹

This neglect of the colonies had existed for three quarters of a century prior to the end of the French and Indian War in 1763. During this time the colonists had come to regard their rights as equal to those of citizens born in the realm, their assemblies as paralleling Parliament, and the King as the major unifying force existing between the colonies and Great Britain.²

As a result of the Glorious Revolution, William and Mary were called to the throne of Great Britain to reign with the consent of Parliament; they were to be restrained

¹Edmund S. Morgan, The Birth of the Republic, 1763-1789. (Chicago: The University of Chicago Press, 1956), 11.

²Ibid., 12.

by the desires of the Lords and the representatives of the few Englishmen who enjoyed the franchise. But did the acceptance by William and Mary of the greater role for Parliament in the Kingdom place the colonies under similar controls of Parliament? The assumption is questionable that an act passed by the representatives of one area of an empire can bind another area of that empire, especially if the second area had no voice or representatives present, and possibly no knowledge or understanding of the act.³ Many of the colonists rejected Parliament's assumption of any more sovereignty in the governing of the colonies while accepting the newly limited role of the monarchs. Edmund S. Morgan explains that:

. . . while Parliament was winning control in England, the colonial assemblies were winning it overseas and had tamed the royal governors almost as effectively as Parliament tamed the King. Indeed, the one had assisted the other, for when Parliament got rid of James II in the Revolution of 1688, New England and New York threw off the government James had established and restored the assemblies he had temporarily suspended. The supremacy of Parliament had thus become associated in the colonial mind with the supremacy of the assemblies. Both stood for English liberty, for laws made by consent of the people. Both meant that Englishmen were freer than all the rest of the world.⁴

³Charles Howard McIlwain, The American Revolution: A Constitutional Interpretation, (Ithaca, New York: Great Seal Books, 1923), 13-16.

⁴E. S. Morgan, The Birth of the Republic, 12.

In 1763 the new Chancellor of the Exchequer, George Grenville, discovered that there was a larger sum being spent to maintain the American customs service than was being received from the duties collected. At the time, even though England was the most powerful and prosperous nation in the world, and even though the people were enjoying a high standard of living and relatively low taxes, compared with other nations, there were British objections to the taxes the government was demanding. The national debt had been increased by the Seven Years' War, and many Britons thought the war had been fought primarily for the benefit of the Americans. Parliament had never levied taxes on the colonies, and the customs duties which would provide some revenue were largely ignored or ineffective. In an effort to have the colonists assume a proportionate share of the imperial debt and cost of defense, the Chancellor introduced into Parliament revenue legislation, which was to have a tremendous impact upon the colonies.⁵

The period of parliamentary neglect of the colonies had come to an abrupt end. The old customs laws were altered, and the Revenue Act of 1764 was passed. For the first time, Parliament imposed duties on colonial trade for the express purpose of raising revenue. Although the

⁵Ibid., 14-15.

primary duties to affect the Americans were taxes on foreign molasses, reduced from sixpence to threepence per gallon, and an increase of one pound two shillings per hundred weight on sugar, the tightening of customs procedures made their collection more effective. The customary bribes of between one, and one and a half pence per gallon were no longer possible, and since the expressed purpose of the duty was to raise money to defray military expenses, the reason for the act was obviously to raise a revenue rather than to control trade. The enforcement of duties to regulate trade had been the responsibility of the King's representatives in the colonies. This arrangement had been acceptable to the colonists; the new arrangement was not. The colonists felt that they were equal to Britons at home, and that only their representative assemblies had the right to impose taxes. The Americans believed that this revenue measure was not justified. The arguments which led to a break with the mother country developed from this point.⁶

The Americans started looking for flaws in the position which Parliament maintained in its assertion of sovereignty over the dominions. They were keenly aware that the power to tax included the power to destroy. Soon their objections were being channeled into constitutional and

⁶Carl Van Doren, Benjamin Franklin, (New York: The Viking Press, 1938), 319.

legal arguments, which ultimately denied the existence of parliamentary sovereignty.

The colonial constitutional argument maintained that a part of the liberty that had been won over the years by Englishmen was the right to property. The historian Edmund S. Morgan places much importance on this right:

. . . And it was this principle that John Locke, the philosopher, had insisted upon in justifying that revolution: men's property must not be taken away without their consent, given either in person or by their representatives. For Locke, as for other Englishmen and for the colonists, property was not merely a possession to be hoarded and admired; it was rather the source of life and liberty.⁷

The British argued that the colonists were receiving the same virtual representation as citizens of the realm, where only one in twenty voted for their representatives. The majority of the Americans agreed with James Otis when he said:

So a small minority rules and governs the majority. This may for those in the saddle be clever enough, but it can never be in theory. What ab initio could give an absolute unlimited right to one twentieth of a community, to govern the other nineteen by their sovereign will and pleasure?⁸

⁷E. S. Morgan, The Birth of the Republic, 16.

⁸Charles F. Mullett, (ed.), Some Political Writings of James Otis, (Columbia, Mo.: University of Missouri Press, 1929), 109.

With this interpretation of the constitution, it was impossible for Parliament to tax the colonies for revenue.

In 1764 the New York Assembly expressed its opposition to Parliament's assumption of the power to fix taxes in the empire. The assembly claimed that exemption from parliamentary taxation was their right not only as Englishmen but as men, since:

An Exemption from the Burthen of ungranted, involuntary Taxes, must be the grand Principles of every free State.--Without such a Right vested in themselves, exclusive of all others, there can be no Liberty, no Happiness, no Security; it is inseparable from the very idea of Property, for who can call that his own, which may be taken away at the Pleasure of another?⁹

Since the colonies were not represented, the Americans argued that no colonial tax passed by Parliament was constitutional, and after 1774 this argument was extended to reject all parliamentary authority over the colonies. Legislative rights, assumed by Parliament, involved not only colonial taxation, but the very concept of the Revolution of 1688. If Parliament did not have the right to legislate for the colonies, then the contentions of men like Samuel Adams had more meaning.¹⁰

⁹As quoted in E. S. Morgan, The Birth of the Republic, 17-18.

¹⁰Randolph G. Adams, Political Ideas of the American Revolution, (New York: Barnes and Noble, Inc., 1958), 22-23.

It was Adams's primary contention that what was revolutionary in 1688 remained revolutionary until assented to, that it had not been consciously assented to in America, and that therefore it was revolutionary in 1773 for the dominions as it had been in the realm in 1688.¹¹

Charles McIlwain states that the importance of this position has not been sufficiently appreciated by historians of the British Empire or of the United States. The position which Parliament took when it passed the acts taxing the colonies, and which it later expressed in the Declaratory Act of 1766, was based on the oath which Parliament caused William and Mary to take when they accepted the throne after the Glorious Revolution of 1688-1689. The rights of the Crown were placed under the control of Parliament in the kingdom "and the dominions thereunto belonging according to the statutes in Parliament agreed on."¹² Colonial opposition to this interpretation was political in nature as it was popular to oppose any attempt on the part of Parliament to usurp the sovereignty of the colonial assemblies.¹³ This position indicated the extent to which the colonists would go to avoid admitting any possibility of there being justifiable grounds for the actions of Parliament.

¹¹C. H. McIlwain, The American Revolution, 10.

¹²Ibid., 3, 23.

¹³R. G. Adams, Political Ideas, 23.

By the end of 1765 Samuel Adams and some of the more radical colonists were maintaining that there were "co-equal legislatures within the Empire, with the King the sole bond among them."¹⁴ They contended that Parliament had no right to legislate for any area outside the realm. There was much faith placed in the natural laws that were considered a part of the British constitution. Referring to this belief, McIlwain states:

. . . They held that there were certain fundamental rights which were inalienable, and could be neither altered, abridged, nor destroyed by any means whatsoever; They existed by the law of nature, which was a part of the British constitution. With Cicero the Americans considered them a part of that "true law conformable to right reason, shared in by all, constant and eternal . . . to change or detract from which the divine law forbids."¹⁵

The colonists cherished the freedom and self-government they had enjoyed for almost a hundred years. Although their self-government and freedom were the result of an inefficient administration rather than rights that were admitted by the Parliament of Great Britain, they did exist. In the colonial mind these practices had become laws, and the freedoms had become rights that would not be

¹⁴Ibid.

¹⁵C. H. McIlwain, The American Revolution, 19-20.

relinquished.¹⁶ The problem came when Parliament attempted to exert more control over the Americans.

As the attitude of Parliament changed, and as that body began to assert authority over the colonies, resistance became the common reaction in the colonies. In 1765 the Parliament passed the Stamp Act which attempted to raise revenue within the colonies themselves. As a surveyor and circuit lawyer, John Adams had traveled in several colonies and observed colonial reactions to the Act. The stamp distributors and inspectors had been forced to resign their appointments, and anyone who did not speak with hatred when discussing the act in the words of John Adams; "how great so ever his Abilities and Virtues had been esteemed before, or whatever his Fortune, Connection and Influence had been has been seen to slip into Universal Contempt and Ignominy."¹⁷ This concern, Adams stated, had reached all ranks of people, and for the first time, some of those in the lower ranks had become interested in politics and determined to defend their freedoms.¹⁸

¹⁶E. S. Morgan, The Birth of the Republic, 11-12.

¹⁷L. H. Butterfield, (ed.), Diary and Autobiography of John Adams, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1961), I, 263.

¹⁸Ibid.

Americans, once their ire was roused, began the search for an answer that might prevent parliamentary encroachment on their rights and liberties. With the tightening of customs regulations and the passage of the Sugar Act and Stamp Act, there was an immediate storm of protest, and the colonists began to divide into factions reflecting their beliefs as to the best method of relieving themselves of these burdens.¹⁹

One group of colonists did not wish to question the legality of the taxes but to "simply request with all due humility the repeal of the new duties."²⁰ A larger group denied that Parliament had a right to tax any people that were not represented.²¹ Feelings which had developed even before the Stamp Act went into effect. By May 11, 1765, a writer "who signed himself 'A Plain Yoeman' denied any connection between Great Britain and the colonies except 'that we are all the common subjects of the same King.'"²² As was once suggested by James Otis, colonial representation in Parliament was not desired since this would have made the taxes imposed legal, and the colonies could not

¹⁹E. S. Morgan, The Birth of the Republic, 16-17.

²⁰Ibid., 17.

²¹Ibid., 23.

²²Ibid., 25.

hope for an equal representation.²³

Still another group of Americans attempted to find a solution to the conflict between the position held by Parliament (complete sovereignty) and that advocated by most of the colonists (no taxation without representation). These men believed in the British Empire, but urged that it be reorganized on a federal basis. They considered the colonies fortunate to be a part of the greatest power in Europe, but they could not accept the practices that were being thrust upon them. Among those who advocated some type of federal empire were Benjamin Franklin, Thomas Pownall, Francis Bernard, Francis Massers, Governor Shirley and Samuel Clay Harvey.²⁴

Out of a clash of opinions, this handful of men tried to find some means of holding the empire together. From the resulting expressed differences, the federal concept of empire took form. This concept was suggested as a means of satisfying the demands of both sides and of welding together a strong union that would be second to none. There was no name applied to the system proposed, nor were there any precedents that could be referred to in its discussion; rather the ideas developed to satisfy the

²³Ibid.

²⁴R. G. Adams, Political Ideas, 55-64.

requirements of the situation. This paper intends to explore those ideas.

The following terms are used in a restricted sense in this paper and should be considered only in the manner they are stated here:

1. A "federal concept of government" denotes a government with several levels of authority and responsibility. Each level of a federal structure has definite limitations. Specified powers are allocated to that level or unit most able to fulfill the required functions. A federal system of government may be established by combining some of the duties of several smaller units into one larger central unit responsible for definite aspects of the total governing function, defense, trade, and foreign relations; or a large central unit may relinquish part of its sovereignty to several smaller units to permit the local unit to provide the type of government that is best suited to the particular circumstances.

The different levels of government may extend from the local unit through the county or district, state or colony, to the empire. Each of these levels would be authorized prescribed powers, duties, and responsibilities in return for the services it would provide for the units that comprise the whole. The number of levels that are

necessary depend on the location, size, and complexity of the government.

2. The "federal concept of empire" refers to that system that would have been established had the plans of the compromisers been accepted. A central Parliament composed of representatives of all of the units would have been established with enough authority to control the defenses, foreign affairs and those other particulars that would have been established with enough authority to control the whole. The central unit would be sovereign only in those stipulated areas, and each of the parts (England, Ireland, and the colonies, etc.) would have retained sovereignty for all its internal operations, taxes, and legislative measures.

3. The word "realm" is used to denote Great Britain proper (Scotland and England) and is not intended to include any other parts of the empire.

4. "Dominions" include all parts of the British Empire that are not included in the realm.

5. "Colonies" refer to those colonies located on the mainland of North America with the exception of Florida and Quebec.

6. "American" is used to indicate a person living in one of the colonies.

All quotations in this paper are copied as they appeared in the source with no corrections made in spelling, punctuation or grammar.

CHAPTER II

THE BEGINNING OF THE FEDERAL CONCEPT

The first movement toward a federal-type organization in the colonies occurred in New England. In 1643 the New England Confederation was formed without authority from or consultation with the English government. The Puritan colonies of Plymouth, Massachusetts Bay, New Haven, and Connecticut united to form a union for the purposes of "mutuall help and strength in all our future concerns."¹ This Confederation had all the components of a federal system in that each of the colonies was to "retain its own peculiar jurisdiction,"² and was guaranteed its territorial integrity.³ The functions of the union were the following:

A firm and perpetuall league of friendship and amity, for offence and defence, mutuall advice and succour, upon all occasions, both for preserving and propagating the truth, and liberties of the Gospel and for their own mutuall safety, and wellfare.⁴

¹Oscar Theodore Barck, Jr. and Hugh Talmage Lefler, Colonial America, (New York: The Macmillan Company, 1958), 113.

²Ibid.

³Ibid.

⁴Ibid., 113-114.

Although it was the first federal organization, it was effective in fulfilling some of its stated purposes; it crushed the Narragansett Indians, made a treaty with New Netherland, settled several boundary disputes between the colonies themselves, and was effective in getting religious laws passed in three of the four colonies. However, there were also weaknesses in the organization. The central body had no power to force the member colonies to adhere to its decisions. Each colony, regardless of wealth, population or size, had an equal voice in determining the program of the Confederation; yet the support that was required of the different colonies was based on the ability of the colony to pay. Massachusetts considered the arrangement unfair.⁵ The Confederation's attempt at federalism gradually lost its effectiveness because of internal jealousies and lack of authority. There were few cases in which full support was given on any matter. With the formation of the Dominion of New England and the loss of some of the colonial charters, little of the original Confederation was left, and over a period of time it ceased to exist. Had this Confederation been able to continue the experiment and in time worked out its difficulties, historians Barck and Lefler believe that there could have been a more effective

⁵Ibid., 113-115.

and perhaps larger union developed.⁶

By the middle of the 18th century the actions of the French and the loss of the respect of colonial allies, the Six Indian Nations, caused a very real fear to develop in the colonies. These Indian nations were located in the area that was just being settled, and there was no indication that there would be a unified force to face the Indians if they became hostile. Claude Van Tyne noted the broader danger involved in The Causes of the War of Independence:

Almost until the outbreak of the French and Indian War, The British Government had permitted the colonies, each in its own selfish way, to settle all questions arising in their hinterland. Fur-trade problems, Indian policies, and land company conflicts were all subjects of fierce inter-colonial rivalry, which left the "forest children" at the mercy of the greedy traders and land speculators. The hit-or-miss control of these matters led to deadly feuds between the colonies, and to an abuse of the Indians through land frauds and trade that was mere robbery. The success of the French in getting the support of the Indians in the struggle for the possession of the Ohio Valley was due to their better control of the fur-trade and resultant fairer treatment of the aborigines.⁷

During the 18th century one of the leading proponents of a federal type structure was Benjamin Franklin,

⁶Ibid., 116.

⁷Claud H. Van Tyne, The Causes of the War of Independence, (New York: Peter Smith, 1951), 110-111.

but his federalism took a long time to develop. Franklin had become a clerk in the Pennsylvania Assembly in 1736. In 1737 Postmaster-general Alexander Spotswood appointed Franklin as his deputy. Each of these positions provided information concerning the frontier, soon making Franklin the best informed person in the city. He used his information in his newspaper business and to help him formulate his opinions concerning the dangers to the colony.

The strong influence of the Pennsylvania Quakers had prevented any type of defense preparation, and, in the opinion of Franklin, the area was open for attack by the Spanish from the south, the French from the northwest, and the Indians from the west. To inform the people of the condition, Franklin printed a pamphlet, Plain Truth or Serious Considerations on the Present State of the City of Philadelphia and the Province of Pennsylvania, dated 1747.⁸ In the pamphlet Franklin did his best to show the colonists the dangers which existed and to interest them in erecting a defense which would be effective in case of attack from any direction. Verner W. Crane provided for this explanation of Franklin's success in the endeavor:

⁸John Bigelow, (ed.), The Works of Benjamin Franklin, (New York: G. P. Putnam's Sons, The Knickerbocker Press, 1904), II, 166-168.

Characteristically, he proposed a common-sense way around the difficulty, by a voluntary association of the people for their own defense, and his plea was unexpectedly successful. In public meetings (one of which he addressed), ten thousand subscribers joined the association; they furnished their own arms, drilled, elected officers. Franklin, however, declined the colonelcy of the Philadelphia regiment.

He had also proposed in 1747 the lotteries that raised £6000 currency to purchase guns from Boston for the battery down-river, and with a committee, including Allen, he traveled to New York to borrow other cannon. At the outset Governor Clinton refused, but later, softened by Medeira, relented; he offered first six, then ten, and by the end of the banquet, eighteen fine cannon! Franklin cannily managed all these warlike preparations without alienating the Quakers.⁹

Franklin's efforts had provided a moderate defense system for Pennsylvania. Despite their beliefs, even the Quakers were willing in some instances to assist in the effort. The organization of this association brought Franklin much prestige.¹⁰

While organizing these limited defenses for Pennsylvania, Franklin worked closely with James Logan. For many years Logan had been concerned with the conditions of Indian relations, and in 1732 he had published the pamphlet Of the State of the British Plantations in America. This pamphlet stressed the importance of some type of union to

⁹Verner W. Crane, Benjamin Franklin and a Rising People, (Boston: Little, Brown, and Company, 1954), 67.

¹⁰J. Bigelow, (ed.), Works of Franklin, II, 166-168.

combat the unity of the French in America. There is little doubt that Franklin had read and copied Logan's article.¹¹ The pamphlet, together with the information obtained from his other sources, caused Franklin to turn his attention to the need for a united colonial defense. The dangers that faced the other colonies were as great as those facing Pennsylvania. Yet most of the colonies had made no effort to protect themselves, and because of his broader knowledge of the situation, Franklin was concerned for the safety of these Americans.

By 1751 Franklin's efforts to establish defenses, his work in the assembly of Pennsylvania, his service as postmaster, his newspaper articles, and Poor Richard's Almanac had made him one of the best known and respected of the colonists. His prestige and his knowledge of conditions in the colonies caused his printing partner, James Parker of New York, to send him many articles to be reviewed before they were printed. One of these articles was Archibald Kennedy's pamphlet The Importance of Gaining and Preserving the Friendship of the Indians to the British Interest, Considered.¹²

¹¹Gerald Stourzh, Benjamin Franklin and American Foreign Policy, (Chicago: The University of Chicago Press, 1954), 50, and fn. 74, 273.

¹²Leonard W. Labaree, (ed.), The Papers of Benjamin Franklin, (New Haven: Yale University Press, 1961), IV, 116-117.

The pamphlet reinforced the opinions which Franklin had already formed. On March 20, 1751, Franklin organized the pamphlet into outline form, which provided the first draft of the plan that was later submitted at the Albany Congress in 1754. There were some major changes made to the plan after the first writing, but these changes reflected the increased knowledge that Franklin had acquired and were concerned more with the method of implementation than with the plan itself.¹³

The plan as Franklin first envisioned it called for a governor, appointed and paid by the crown, who would preside over a council elected by the assemblies of the colonies. The duties of the council would be to care for all Indian affairs, defend the colonies, and maintain forts along the area of the frontier where scouts would be trained for use in case of war. It was felt that the union would gain respect from the Indians and offset the advantages that the French had gained with their unified system, controlled trade, and better treatment of the savages.

In the plan that was subsequently proposed, the colonies were to be represented in proportion to the amount of support they contributed to the union. The money for this purpose was to be collected as a tax on "strong liquors in

¹³Ibid., 119.

all the Colonies, the Produce never to be apply'd to the private Use of any Colony, but to the general Service."¹⁴

In further considering the mode of operation, Franklin suggested that the meeting place of the council alternate between the various colonies taking part in the union. This would give the members a chance to see the circumstances, interests, strengths, or weaknesses of the various colonies, and in that way it would provide the council with a better idea of what they could count on from each.¹⁵

Franklin recognized the need for an imperial tie, and the King appointed Governor-General was to form this connection. His veto power over the acts and decisions of the council would place some control of this new body indirectly under the King; yet this union would not be dependent on the Crown or Parliament for legislation. In an effort to forestall any misunderstanding on the part of the colonies and to dispell any misgivings concerning the powers of the union, Franklin was careful to stipulate the exact authority the union would be given and to insure the jurisdiction of the colonial assemblies in all other internal matters.

¹⁴J. Bigelow, (ed.), Works of Franklin, II, 119.

¹⁵Ibid., 120.

The elements of a federal system of government were present in Franklin's proposal. The King, as head of the empire, would delegate the authority and sanction the organization. The separate colonies would relinquish stipulated powers to the new unit in keeping with the stated purposes of the organization. The King in Parliament would control major imperial defenses, trade, and foreign relations; the union of the colonies would provide for local or continental defenses, the regulation of Indian trade, and the protection of coastal shipping; the separate colonies would have jurisdiction over their own internal affairs.¹⁶

Franklin went into detail as to the procedure that should be followed in the presentation of the plan to the different colonies. The reasons that Franklin gave for his desire to handle the adoption of the plan in such a way are as follows:

This union of the Colonies, however necessary, I apprehend is not to be brought about by the Means that have hitherto been used for that Purpose. A Governor of one Colony, who happens from some Circumstance in his own Government, to see the Necessity of such an Union, writes his Sentiments of the Matter to the other Governors, and desires them to recommend it to their respective Assemblies. They accordingly lay the Letters before those Assemblies, and perhaps recommend the Proposal in general Words. But Governors are often on ill Terms

¹⁶L. W. Labaree, (ed.), Papers of Franklin, IV, 115-116.

with their Assemblies, and seldom are the Men that have the most Influence among them. And perhaps some Governors, tho' they openly recommend the Scheme, may privately throw cold water on it, as thinking additional public Charges will make their People less able, or less willing to give to them. Or perhaps they do not clearly see the Necessity of it, and therefore do not very earnestly press the Consideration of it: And no one being present that has the Affair at Heart, to back it, to answer and remove Objections, &c. 'tis easily dropt, and nothing is done. Such an Union is certainly necessary to us all, but more immediately so to your Government. Now, if you were to pick out half a Dozen Men of good Understanding and Address, and furnish them with a reasonable Scheme and proper Instructions, and send them in the nature of Ambassadors to the other Colonies, where they might apply particularly to all the leading Men, and by Proper Management get them to engage in promoting the Scheme; where, by being present, they would have the Opportunity of pressing the Affair both in public and private, obviating Difficulties as they arise, answering Objections as soon as they are made, before they spread and gather Strength in the Minds of the People, &c. &c. I imagine such an Union might thereby be made and established; For reasonable sensible Men, can always make a reasonable Scheme appear such to other reasonable Men, if they take Pains, and have Time and Opportunity for it; unless from some Circumstance their Honesty and good Intentions are suspected. A voluntary Union entered into by the Colonies themselves, I think, would be preferable to one impos'd by Parliament; for it would be perhaps not much more difficult to procure and more easy to alter and improve, as Circumstances should require and Experience direct. . . .¹⁷

Few colonists read or considered this proposed plan of union as there was no reason for a change at the time. There was little interference from the King and Parliament;

¹⁷Ibid., 117-118.

the protection of the Crown was necessary as a means of offsetting the French advance in the west, and the internal affairs in the colonies were controlled by their assemblies.

CHAPTER III

THE ALBANY CONGRESS

For years Franklin watched as conditions became more tense on the frontier. The advance of the French and their encouragement of the Indians to resist colonial expansion excited fear in the settlers. Franklin expressed his desire for a colonial union in the opinion that he wrote to James Parker concerning Kennedy's pamphlet, The Importance of Gaining and Preserving the Friendship of the Indians. Franklin's essay "Observations Concerning the Increase of Mankind," written about the same time as the letter to Parker, supported the goal of colonial union. This essay was primarily a protest against the Iron Act, passed in 1750. These two writings became the basis for Franklin's Plan of Union, presented at the Albany Congress in 1754.¹

In his "Observations," Franklin maintained that the area of the colonies and the land to the west was so great that it was inconceivable that there would ever be a time when there would not be a ready market for the manufactured products of England. The population of England had been rendered static by the limited ability of the worker to provide for his family, but this condition did not exist in

¹J. Bigelow, (ed.), Works of Franklin, II, 225-234.

America. There was ample land for expansion, and as long as land was available, a man would take a wife while very young and acquire a place for himself. Since there would be earlier marriages and no problems connected with feeding a family, the population of the colonies would increase much faster than the population in England. This increase in the colonies would outpace the capacity of the manufacturers in England to supply the needs. Franklin contended that Britain should do nothing to discourage this growth:

But in Proportion to the Increase of the Colonies, a vast Demand is growing for British manufactures, a glorious Market wholly in the Power of Britain, in which Foreigners cannot interfere, which will increase in a short Time even beyond her power of supplying, tho' her whole Trade should be to her Colonies: Therefore Britain should not too much restrain Manufactures in her Colonies. A wise and good mother will not do it. To distress, is to weaken, and weakening the Children, weakens the whole Family.²

Franklin was trying to point out the effect that such restrictions on colonial growth and manufacturing would have on the colonies and the empire.

Expanding the colonies to the west would create an additional barrier between the established settlements and the Indians, and once the English had settled in the west, there would be less danger from the French. Expansion

²Ibid., 229.

would make the colonies stronger, and it would offer additional markets for the manufacturers of Great Britain. If the colonies were not permitted to grow and supplement the products of the realm, expansion could not be realized. According to Carl Van Doren, the problem provided Franklin with one of his best reasons for the union of the colonies:

Here is the earliest clear statement of the function of the American frontier. By giving room enough, Franklin thought, it would furnish opportunity for many ages of unchecked human increase and prosperity. Thanks to it, life in America had an enormous future--the life of the whole country, not merely of this or that colony. It could not be regulated from London, because static England would not understand dynamic America. Americans who knew their own natures must make their own rules. But Franklin had still no notion of American independence except for local rights and responsibilities within the frame of empire. The American frontier was the British frontier, and rising America a part of widening Britain.³

The local administration of an expansion this large would require new governmental units. The local problems would have to be controlled by people who had a first hand knowledge of the situation and who were available for a quick decision when a problem arose. This local unit, however, would not be capable of acting in a larger sphere where problems of a national or international nature were considered.

³C. Van Doren, Benjamin Franklin, 217-218.

From 1751, when he expressed these ideas, until 1754, Franklin carried on correspondence with several of his friends advocating a union of the colonies which would provide a new governmental unit. The new government was not intended to provoke a move toward independence, but rather to provide an addition to the governmental structures that existed. There was always the expressed desire that this additional unit would be of limited power and function only in those areas that required the combined efforts of the colonies.

In 1754 the colonies were at war with the French in the Ohio Valley. For three years the French had been moving south from Canada, attempting to persuade the Indians to renounce their treaties with Britain. Virginia and Pennsylvania had been requested by the Crown to drive the French out. Virginia built a fort at the confluence of the Monongahela and Allegheny Rivers and raised her militia under command of Col. George Washington. The assembly and governor of Pennsylvania could not agree; therefore, nothing was done by the colony to comply with the Crown's request.⁴

In the Pennsylvania Gazette for May 9, 1754, to which Leonard W. Labaree believes Franklin wrote at least

⁴Ibid., 219.

the editorial passage at the end, an account appeared of the capture of Captain Trent and his party, who were erecting a fort at the fork of the Ohio.⁵ One statement in this article emphasized the need for some type of united action among the colonies:

The confidence of the French in this undertaking seems well-grounded in the present disunited state of the British colonies, and the extreme difficulty of bringing so many different governments and assemblies to agree in any speedy and effectual measures for our common defence and security; while our enemies have the very great advantage of being under one direction, with one council, and one purse.⁶

At the direction of the Board of Trade, twenty-five commissioners from the seven northern colonies met with the representatives of the six Indian nations at the Albany Congress. These commissioners had been instructed to find a way to more closely bind the Indians to Britain. The conflict between the French and English in the back-country was sure to develop into a full scale war if hostilities broke out between the mother countries. If this happened, it would be necessary to have the assistance of the six Indian nations. At the time the assembled delegates

⁵L. W. Labaree, (ed.), Papers of Franklin, V, 272.

⁶J. Bigelow, (ed.), Works of Franklin, III, 13.

realized that some type of cooperation was necessary.⁷

One of the first indications of this concern was the action taken on the 24th of June:

A motion was made that the commissioners deliver their opinion whether a union of all the colonies is not at present absolutely necessary for their security and defence. The question was accordingly put, and passed in the affirmative unanimously.⁸

During the first months of 1754 Franklin expanded the earlier work which he had done in connection with the pamphlet Importance of Gaining and Preserving the Friendship of the Indians and included some of the thoughts he had expressed in his essay "Observations Concerning the Increase of Mankind" in an effort to make the people see the importance of a union and the benefits that could be derived from the organization. His plan, "Short Hints Towards a Scheme for Uniting the Northern Colonies," had been developed over a long period of years. According to this scheme, the governing body of the central unit would be headed by a Governor-General, who would be a military man appointed and paid by the King, would have a veto power over all acts of the Grand Council, and would act as the administrative officer of the union, seeing that all acts

⁷Ibid., 12.

⁸Ibid.

approved by the Grand Council were carried out. The Governor-General was placed under the King so that the Crown would have a voice in all operations of the union.⁹

The Grand Council was to be composed of members of each of the colonies, one from the smaller colonies and two or more from the larger ones, with the number to be determined by the amount of money paid yearly into the general treasury. The members were to be elected by the assemblies of the colonies; in this way they would be representatives of the people.¹⁰

Franklin included a provision for each of the members to be paid during the time he was meeting and to receive a mileage allowance to cover his travel expenses. The plan required scheduled meetings with special sessions called by the Governor-General when he considered it necessary.¹¹

The funds for the support of the union were to come from "an excise on strong liquors, pretty equally drunk in the colonies, or duty on liquor Imported, or ____ Shillings on each license of a public house, or superfluities, &c.,

⁹Ibid., 14.

¹⁰J. Bigelow, (ed.), Works of Franklin, III, 14-15.

¹¹Ibid., 15.

&c."¹² It was felt that this type of tax would distribute the cost in proportion to the colonies' ability to pay. The money was to be collected by the treasurers of the colonies and was to be paid on "orders issuing from the Governor-General and Grand Council Jointly."¹³

The duties and powers of the projected union were stated to include only specific functions, such as to "Order all Indian treaties, make purchases from the Indians not within proprietary grants. Make and support new settlements by building forts, defend the frontiers and annoy the enemy."¹⁴ This section of the "Scheme" also included provisions for grand vessels to prevent privateers during war "and protect the trade, and everything that shall be found necessary for the defense and support of the colonies in general. . . ."¹⁵ The "Scheme" also provided that the cost of any emergency action taken by one of the colonies was to be paid by drawing from the treasury of any colony whose funds that had been collected for this purpose after approval of the Governor-General and Grand Council.¹⁶

¹²Ibid.

¹³Ibid.

¹⁴J. Bigelow, (ed.), Works of Franklin, III, 15.

¹⁵Ibid., 16.

¹⁶Ibid.

The provision for the union to "make and support new settlements by building forts"¹⁷ was an addition to the "Scheme" that had not been included in the plan of union proposed by Franklin in 1751. This part of the "Scheme" was taken from his essay "Increase of Mankind." Franklin intended to provide a buffer zone between the established settlements and the Indians and French by continually moving westward as the areas became settled. To Franklin, the frontier of the colonies amounted to the frontier of the empire. Strengthening and extending that frontier would provide space for expansion, resulting in an increase in population and thus strengthen Great Britain. As the British strength in the western area was increased it would definitely reduce the possibility of the French connecting their colonies in Canada with those in New Orleans, thus forming a hostile western boundary for British America.¹⁸

The last item in Franklin's "Scheme" of 1754 provided the procedure that would have to be followed to place the union in effect. In the plan of union which Franklin had proposed in 1751, he had recommended that the union be formed without the involvement of the Parliament of Great Britain. In the "Scheme" presented to the Albany Congress,

¹⁷Ibid.

¹⁸Ibid.

he reversed his position and recommended that the British Parliament approve the organization of the union of the colonies. The steps in approval would be the acceptance of the plan by the commissioners at the Congress, approval by the assemblies of the various colonies, and then submission to the King in Parliament for concurrence. Following this procedure, the union, in effect, would be a contract formed by the individual colonies. The approval of the British Parliament and Crown would be nothing more than a recording of the contract. The approval of the British government was just a means of insuring that the colonies observed the contract once it had been established. The dependence on Britain for the authority to make the union a permanent organization indicated Franklin's lack of faith in the ability of the colonies to reach an agreeable solution on any matter without force that was inherent in an order or directive from the King in Parliament.

On the way to the Congress, Franklin showed the "Scheme" to several of his friends and received comments from at least two. James Alexander, a member of the American Philosophical Society at Philadelphia, felt that the plan was good, but he felt that it would be difficult to get enough men with military experience to sit on the Grand Council. He also stated that there would be difficulty unless the Governor-General had the right to increase the

debt of the union when it was necessary in time of emergency while the Grand Council was not in session.¹⁹

Cadwallader Colden's remarks showed that he had a much deeper understanding of the problem than did Alexander. Among the points that Colden raised was whether or not Parliament should be requested to act on the establishment of the union, whether the union should have legislative powers or be restricted to an administrative capacity, what position the Crown would take in relation to the support of the Governor-General, and whether or not a legislative power in the central government would require a change in the constitution. Colden felt that this proposal would be refused by the King and Parliament for two reasons: (a) Parliament would fear that permitting a united colonial assembly the right to legislate would make the colonies too strong and (b) the King would not be willing to assume the additional cost of the Governor-General to administer the union. There was no indication that Colden considered the lack of cooperation between the colonies a major factor in keeping them from forming a union without the authority and consent of Parliament. Colden felt as Franklin had felt when he wrote his first plan of union. Colden's and Alexander's observations

¹⁹J. Bigelow, (ed.), Works of Franklin, III, 17-18.

helped Franklin while he was working as a member of the committee.²⁰

The delegates to the Albany Congress had a much clearer understanding of the problems existing in America than did their respective colonial assemblies. The charges that had been made by the Indians and the opinions and conditions related by the delegates from other areas provided the delegates with a knowledge of the overall problem that could not have been understood by those who were not present. This knowledge caused the delegates to recommend the formation of a union of the colonies that was close to the "Scheme" that had been brought to the congress by Franklin. The changes that were made in the "Scheme" were those offered in committee and from the floor of the congress. Franklin was given the job of rewriting the Plan of Union and incorporating the changes; this he did.²¹

After the Plan of Union had been accepted by the Albany Congress, it was prepared into sections for transmittal to the colonial assemblies. The first section was the plan as it was proposed, and the second section was devoted to a detailed account of the reason for each of the articles which appeared in the plan. The second part, or

²⁰ Ibid.

²¹ C. Van Doren, Benjamin Franklin, 220-223.

explanation of the Plan of Union, provides a much clearer understanding of the feelings of the delegates at the time they approved the plan. The representative's comprehension of the problems that existed is shown in the examination of some of the reasons that the delegates gave for including the various parts of the plan.

"That the Union of the Colonies is Absolutely necessary for their preservation"²² were the words that prefaced the Act of Union that was finally presented to the colonial assemblies. By uniting, the colonies would have one central agency that would take the necessary action when any area needed protection. Unity was necessary, as the failure of New York and Massachusetts to assist each other to repel Indian attacks had shown.²³ The need for a central control was also dramatized by the failure of the other colonies to respond to Virginia's appeal for aid during the French invasion; only one of the seven colonies appealed to had responded.²⁴

The delegate's understanding of the jealousies that existed, the lack of a feeling of colonial unity, and the dislike of any type of lateral dependences were shown in

²²J. Bigelow, (ed.), Works of Franklin, III, 21.

²³E. S. Morgan, Birth of the Republic, 5.

²⁴J. Bigelow, (ed.), Works of Franklin, III, 21.

the statement in the preface: "That it was necessary the Union should be established by act of Parliament."²⁵ Affording the union the initiating sanction of Parliament would give it a permanence that could not have been hoped for if the acceptance had been by the choice of the provincial assemblies alone. Without approval or sanction from a higher authority, the colonies could have withdrawn from the union. The union could not support itself if it were left to the whim of the various colonial assemblies to contribute to it voluntarily. There had to be some authority higher than the colonies to put an act of union in force.²⁶

The Plan of Union, as it was finally adopted, was changed in some measure from the "Scheme" which Franklin had presented. The final draft of the plan was greatly expanded, and the introduction stated that there was to be a central government established that would be what has later been referred to as a federal system.

It is proposed that humble application be made for an act of Parliament of Great Britain, by virtue of which one general government may be formed in America, including all the said colonies, within and under which government each colony may retain its present constitution, except in the particulars

²⁵Ibid., 22-24.

²⁶Ibid.

wherein a change may be directed by the said act, as hereafter follows.²⁷

The above statement indicates that there was no intention of reducing the authority of the colonies to control their own internal affairs, but it did provide for the power that would be necessary to insure the permanence of the Union. The accepted plan, however, reflects the thought and desires of Franklin and the delegates that were at the Congress, and were probably not indicative of the opinions of most Americans who were not as well informed of existing conditions.

The methods of selecting the President-General (Governor-General in Franklin's plan) and Grand Council, and the duties of each, were essentially as Franklin had proposed.

That the government or constitution, proposed to be formed by the plan, consist of two branches; a President-General appointed by the crown, and a council chosen by the people or by the people's representatives, which is the same thing.

That by a subsequent article, the council chosen by the people can effect nothing without the consent of the President-General appointed by the crown: the crown possesses therefore full one half of the power of this constitution.

The power proposed to be given by the plan to the Grand Council is only a concentration of the

²⁷Ibid., 25.

powers of the several Assemblies in certain points for the general welfare; as the power of the President-General is, of the powers of the several governors in the same points.²⁸

The inclusion of these provisions was an effort to dispel any misgivings that the British might have concerning the proposed general government and to show the position of the new council in relation to the rest of the empire.

The reasons listed for establishing the general government indicated the desire of the congress to establish a central control located in the colonies. There was no provision for parliamentary control after the union of the colonies was established: yet the request for a parliamentary act to establish the union was, in a sense, recognition of a place for Parliament in the empire.

The Plan of Union provided for a division of power which would be in keeping with the conditions that existed at the time. The King would be the head of the government on defense matters and matters that concerned all of the colonies, the central government would act in the same manner that Parliament acted on matters that concerned the realm and the colonies would retain control of their internal affairs.²⁹ The reason that the power to make

²⁸J. Bigelow, (ed.), Works of Franklin, III, 27.

²⁹Ibid., 28.

"treaties of peace and war" had been placed with the central government is given as an example of the assignment of responsibilities.

The power of making peace or war with Indian nations is at present supposed to be in every colony, and is expressly granted to some by charter, so that no new power is hereby intended to be granted to the colonies. But as, in consequence of this power, one colony might make peace with a nation that another was justly engaged in war with, or make war on slight occasion without the concurrence or approbation of neighboring colonies greatly endangered by it, or make particular treaties of neutrality, in case of a general war, to their own private advantage in trade, by supplying the common enemy,--of all which there have been instances, it was thought better to have all treaties of a general nature under a general direction, so that the good of the whole may be consented and provided for.³⁰

As indicated, the responsibility for the safety of the whole was placed on the central government, which prevented the actions of individual colonies from endangering the others. This was a division of power and duty in keeping with the principle that the allocation of responsibility should be determined by the ability of a particular level of government to most adequately accomplish the function involved.

The next three articles, entitled "the rising of soldiers and equipping vessels," "the selection of officers

³⁰ Ibid., 35-36.

and the method of appointment" and "the provisions for each colony only to take emergency defensive measures," all pertain to the defense of the colonies. The reasons that are given for their inclusion are similar to those given for the authority to make treaties of peace and war. Each article divided the authority between the President-General and the Grand Council in a manner that would protect the territorial integrity of the individual colony.³¹

The other articles in the Plan of Union, which concerned the financing of the organization, the place and time of meetings, the pay for the members of the general government, and the general mechanics, showed that the same care had been given to every part of the plan by the members of the congress. The reasons given for the inclusion of each part showed that an effort had been made to consider each problem and find the most feasible solution under the conditions that existed. The plan was well-designed to perform the functions of a federal system of government.

The Albany Plan of Union did not receive the support it might have received at a later time. Jealousy extended to all phases of colonial life. Within the various

³¹J. Bigelow, (ed.), Works of Franklin, III, 40, 44, 46.

colonies the people argued, wrote indignant letters to the editors, and kept the local courts busy with their law suits. The same attitude existed between areas and colonies.

Within every colony there were quarrels between different sections. Eastern Connecticut despised western Connecticut. Newport, Rhode Island, was at odds with Providence, and the rest of New England looked upon the whole of Rhode Island with undisguised contempt. Western North Carolina was so irritated by eastern North Carolina that civil war broke out in 1771. Not only did the different sections of every colony quarrel with each other, but every colony engaged in perennial boundary disputes with its neighbors. Even when faced with Indian uprisings, neighboring colonies could seldom be brought to assist each other. When New York was attacked, Massachusetts found that her budget would not allow her to send aid. When Massachusetts was attacked the New Yorkers in turn twiddled their thumbs.³²

The federal concept of government was foreign in such a setting, and there was little chance of its acceptance without a complete change in the colonists attitudes and the gradual development of those revolutionary steps that would make this type of government conceivable.

Since the plan had been refused in America, there was little consideration given to it in England, but the opinion expressed by the British ministry was that the plan would "weaken central control and make America too

³²E. S. Morgan, The Birth of the Republic, 4-5.

strong."³³ The plan "only irritated and disgusted" the Lords of Trade.³⁴ Franklin shrewdly observed that "The Assemblies all thought there was too much Prerogative in it, and in England it was thought to have too much of the Democratic."³⁵

³³C. H. Van Tyne, War of Independence, 73.

³⁴John Fiske, The American Revolution, (New York: Houghton, Mifflin and Company, 1898), 11.

³⁵J. Bigelow, (ed.), Works of Franklin, III, 14.

CHAPTER IV

CRITICISM OF GOVERNOR SHIRLEY'S PROPOSAL

Governor Shirley of Massachusetts was perhaps the best qualified and most influential governor in the colonies in the 1750's.¹ During the late 1740's Shirley was primarily concerned about colonial defenses. There were continuous Indian outbreaks along the frontier, and the French were steadily improving their position and moving toward closer harmony with the Indians.²

In 1745 Shirley organized an attack on the French fortress, Louisburg. Though supported primarily by Massachusetts, this attack was a joint effort by several of the colonies, and its success added to Governor Shirley's prestige. However, the victory and the limited defenses that were established did not satisfy Shirley. His interest in expanding New England to include all of French Canada was to him just a means of expanding the British Empire. The victory of the joint operation against Louisburg caused Shirley to believe that there could never be any type of satisfactory improvement in the situation

¹John A. Schutz, William Shirley, King's Governor of Massachusetts, (Chappel Hill: The University of North Carolina Press, 1961), 221.

²Ibid., 105-108.

without a union of the colonies.³

In Massachusetts Shirley was able to secure from his assembly a pledge of full cooperation to offset the French encroachments and to capture Crown Point "if neighboring colonies would send assurances of help and if an inter-colonial conference would set quotas of men for each participating colony."⁴ These conditions could not be met.

Governor Shirley was interested in the plan that had been proposed by the Albany Congress. When that plan failed, he proposed an alternate plan of union. In his new proposal Shirley suggested that all the governors and one or two others from their respective councils assemble and plan for the defense of the colonies, authorize the building of forts, and raise the troops that they considered necessary. The expenses were to be met by drawing on the treasury of England. The funds were to be replaced by parliamentary taxation of the colonies. Governor Shirley's proposal was not as comprehensive as the Albany Plan, and by its organization, was intended to be directive in nature rather than democratic.⁵

³Ibid.

⁴Ibid., 133-134.

⁵J. Bigelow, (ed.), Works of Franklin, III, 46-47.

Upon completion of the draft proposal, Governor Shirley conferred with Benjamin Franklin on the plan. Since Franklin was well-known and respected, Governor Shirley felt that his approval would give the plan a great amount of prestige when it was sent to the other colonies for approval. After Franklin had visited Governor Shirley and read the proposal, he wrote three letters to Shirley expressing his opinion of it.

In the first letter Franklin expressed this view:

I apprehend, that excluding the people of the colonies from all share in the choice of the grand council will give extreme dissatisfaction, as well as the taxing them by act of Parliament, where they have no representation. It is very possible that this general government might be as well and faithfully administered without the people as with them; but where heavy burthens are to be laid upon them, it has been found useful to make it as much as possible their own act: for they bear better, when they have, or think they have, some share in the direction; and when any public measures are generally grievous, or even distasteful, to the people, the wheels of government move more heavily.⁶

The fundamental argument that was later to be used so strongly in the question of parliamentary taxation of the colonies was stated in this first letter. The principle of no taxation without representation was a right that Franklin held to be inviolate.

⁶Ibid., 47-48.

In the second letter, Franklin reiterated and expanded his first thoughts. He advanced his estimate of what the people would think of Shirley's proposed plan: first, Franklin expected popular resentment at being refused a voice in the council as this implied a lack of loyalty; second, he believed that the colonists would be better able to determine what was needed and how to supply these needs than Parliament; third, he noted that the governors often had no fixed interest in the colonies, and this might cause them to raise and keep a larger force than necessary in order to gain in prestige and provide positions for their family and friends; and fourth, Franklin believed that the councilors were too much dominated by the governors to be considered as representatives of the people.⁷

Franklin further stated that the governor's power to raise money, "by draft on the Lords of the Treasury,"⁸ which would later be taken from the colonies by taxes imposed by Parliament--in some instances for the governor's benefit--could cause jealousies. The Parliament could be misinformed by the governor and council for selfish

⁷J. Bigelow, (ed.), Works of Franklin, III, 48-54.

⁸Ibid., 49.

reasons.⁹ Franklin also observed "that no Englishman should be taxed without representation, that the colonies have no representation in Parliament,"¹⁰ and that a tax by Parliament without a representative council in the colonies to consider and judge that tax, shows a question of the colonists' loyalty, regard for country, "or of their common sense and understanding which they have not deserved."¹¹ It was Franklin's opinion that the colonies would be treated like a conquered people if Parliament had the right to compel them to pay taxes.¹² Franklin was of the belief that the taxes would not be lessened as the requirement was reduced unless they were controlled by representatives of the people, that colonial growth would be prevented, and that the governor could bring ruin to the colonies by excessive use of the military.¹³ The fear was expressed that once the procedure of taxing the general government was established, it would be applied to the individual colonies. To Franklin, the colonies were the frontier of the British Empire and should not be charged a special tax for

⁹Ibid., 50.

¹⁰Ibid.

¹¹Ibid., 50.

¹²Ibid.

¹³Ibid., 50-51.

their protection any more than should the coastal cities of England.¹⁴

In his arguments against any tax being placed on the colonies by Britain, Franklin used six examples of ways that the colonies were already paying a considerable indirect tax to Britain: first, the taxes that were paid by the manufacturers of British goods were collected from the purchaser, and the colonies were paying a great share of the taxes in Britain by their purchases; second, by restricting the trade of the colonies and forcing them to purchase British products, the colonies were paying a greater price for their purchases, and this difference in price was really a tax on the colonies; third, the forced export of many colonial products to Britain where a tariff was levied or where the colonists received a lower price for their products, was another form of tax the colonies paid; fourth, the restrictions on manufacturing in the colonies caused a greater sale of British manufactured products which helped the mother country; fifth, by increasing the demand for British products, the prices of the products were increased, thus increasing the profits of the manufacturers and permitting them to pay higher taxes; and sixth, the colonies were not permitted to control their

¹⁴Ibid., 51.

trade and restrain the "importation and consumption of British superfluities."¹⁵ Because of these imports, the wealth of the colonies provided for a substantial benefit to Britain.¹⁶

The trade regulations of Great Britain were considered secondary taxes, and as such they were not objected to, but any direct tax would be resisted unless it was passed by representatives of the colonists. Franklin's final comment summarized the reaction which he thought the people would have:

Then the administration of the board of governors and council so appointed, not having the representative body of the people to approve and unite in its measures, and conciliate the minds of the people to them, will probably become suspected and odious, dangerous animosities and feuds will arise between the governors and governed, and every thing go into confusion.¹⁷

In his second letter Franklin anticipated the argument that the colonists adopted when the question of taxation by Parliament was again raised. The responses were the same as those given throughout history by any people who are taxed without a voice in the government taxing them.

¹⁵J. Bigelow, (ed.), Works of Franklin, III, 51.

¹⁶Ibid., 51-53.

¹⁷Ibid., 54.

In the third letter Franklin approached the question of colonial representation in Parliament. He took the position that the colonies were nothing more than an extension of England and that the colonists were equal in every respect to the citizens of the realm. Colonial representation in Parliament was approved by Franklin, provided there was an adequate number of representatives, and provided the acts that had previously been passed by Parliament be repealed and new acts considered and passed after the representatives of the colonies were seated.

This third letter deviated from Franklin's former position in that he now attempted to unify the two parts of the empire with one legislature. This would have accomplished colonial representation and was a move toward a unitary rather than a federal empire.¹⁸

In his third letter Franklin also clearly stated his position concerning the empire and the reason he felt that the colonies and England should be considered as one unit.

Should the Goodwin Sands be laid dry by banks, and land equal to a large country thereby gained to England, and presently filled with English inhabitants, would it be right to deprive such inhabitants of the common privileges enjoyed by other Englishmen,--the right of vending their shoes, because a merchant or a shoemaker living on the old land might fancy it more for his advantage to trade

¹⁸C. Van Doren, Benjamin Franklin, 223-224.

or make shoes for them? Would this be right even if the land were gained at the expense of the state? And would it not seem less right if the charge and labor of gaining the additional territory to Britain had been borne by the settlers themselves? And would not the hardship appear yet greater if the people of the new country should be allowed no representatives in the Parliament enacting such impositions?

Now, I look on the colonies as so many countries gained to Great Britain, and more advantageous to it than if they had been gained out of the seas around its coasts and joined to its lands: for, being in different climates, they afford greater variety of product and materials for more manufactures, and being separated by the ocean, they increase much more its shipping and seamen; and since they are all included in the British empire, which has only extended itself by their means, and the strength and wealth of the parts are the strength and wealth of the whole, what imports it to the general state whether a merchant, a smith, or a hatter grows rich in Old or New England? And if, through increase of people, two smith are wanted for one employed before, why may not the new smith be allowed to live and thrive in the new country, as well as the old one in the old? In fine, why should the countenance of a state be partially afforded to its people, unless it be most in favor of those who have most merit? And if there be any difference, those who have most contributed to enlarge Britain's empire and commerce, increase her strength, her wealth, and the numbers of her people, at the risk of their own lives and private fortunes in new and strange countries, methinks ought rather to expect some preference.¹⁹

Thus Franklin justified his position for a unitary government that would be composed of representatives of all parts of the empire. The four years that Franklin had worked for some type of federal government had been filled with

¹⁹J. Bigelow, (ed.), Works of Franklin, III, 57-58.

disappointment, and he realized that the interest of the colonies was in maintaining the status quo, which it was felt would provide them the greatest amount of individual control.

Governor Shirley's proposal for a union of the colonies represented the position the English held regarding control of the colonies. Too great a gap existed in these views for Franklin to hope to bring them together in a federal system of government. Due to his change in attitude, Franklin, for a number of years, worked to have a supreme legislature established that would provide a greater voice for the colonists in the affairs of the British empire as did men like James Otis and Governor Thomas Pownall.²⁰

²⁰ Charles F. Mullett, (ed.), Some Political Writings of James Otis, (Columbia, Mo.: University of Missouri Press, 1929), 132, and Adams, Political Ideas, 57.

CHAPTER V

THE IDEA OF SOVEREIGNTY

A troublesome issue which plagued imperial statesmen between 1763 and 1776 involved the concept of sovereignty. Britons considered the empire as a unicellular state with sovereignty residing in Parliament.¹ Americans believed that "the supreme limitations upon human action are found resident in a set of rules, which, for want of a better term, we denominate as law."² By 1776, the Americans, following the writings of John Locke, John Adams and James Wilson, had lost their enchantment with the idea that a government, monarchical or legislative, could be above the people it governed. Only a government acting with consent of the people could legislate for those people. With such a limitation there was little opportunity to accept a compromise that would permit the citizens on both sides of the Atlantic to maintain the sovereignty to which each felt entitled.

The Early British trading companies benefited from a division of sovereignty. Randolph G. Adams states that:

¹R. G. Adams, Political Ideas, 175.

²Ibid., 191.

These companies did in fact constitute little "imperia in imperio," little states within a state, which the orthodox political scientists so abhor, but which persist, nevertheless. These companies existed by virtue of the charters which conditioned the exercise of jurisdiction on their part and delegated to them certain of the powers which otherwise belonged to the King in Parliament. Authority was thus divided, and the measure of that division was the charter, a set of rules which limited the power of both grantor and grantee.³

Even though this example of a division of authority to rule existed, the majority of the people were either unaware of the precedent or failed to recognize it as such. In their attempts to find a compromise to the imperial dilemma, statesmen clung to the concept that sovereignty was absolute.

Some imperial plans suggested colonial representation in Parliament. Although some men in America and Great Britain advocated this as a solution to the problem, the majority on both sides of the Atlantic felt that it would not be feasible. A Parliament in which Americans were represented would facilitate the imposition of definite limitations on the colonists, but it would also give them some voice in the governing of the empire to which the majority of the British steadfastly maintained the colonists were not entitled.⁴

³Ibid., 169.

⁴E. S. Morgan, The Birth of the Republic, 63.

The variety of proposals ranged the spectrum from Governor Francis Bernard's suggestion that there be a reorganization of the American colonies into three or four large provinces having internal control, but being subordinate to Parliament as it existed at the time, to the counter-proposals suggested by John Adams.⁵ Adams maintained that there existed in law and in fact separate and equal legislative bodies in Great Britain and in the colonies, which had no ties other than their loyalty to the King. Adams did not suggest that the colonies separate from the British Empire. He did suggest that unity should be completed by agreements between the colonies and Great Britain following the example of the Acts of Trade and Navigation, which the colonies had agreed to observe. Using the pen name Novanglus, Adams stated that:

Parliament has no authority over the colonies except to regulate their trade, and this not by any principle of common law, but merely by the consent of the colonies, founded on the obvious necessities of the case.⁶

These agreements would resolve any differences existing between the various parts of the empire, binding the units

⁵R. G. Adams, Political Ideas, 58.

⁶Ibid., 57.

together. Adams's proposal would have reduced the British Empire to a Commonwealth of Nations.

Although Adams and Bernard are representative of the extreme proposals which were presented, there were other suggestions that attempted to divide sovereignty between Great Britain and the American Colonies. Thomas Pownall suggested a plan that would have divided sovereignty in keeping with the conditions that existed rather than according to the fixed ideas that sovereignty was supreme in all cases.

Pownall based his arguments for the establishment of a federal type governmental structure within the British Empire on the desired relationship of the different parts of the kingdom. To Pownall it was not feasible that "a small island off the coast of Europe should send its pro-consuls to the ends of the earth and expect the ends of the earth to yield submissive obedience."⁷ Pownall tried to answer the imperial problem by maintaining that the possessions should be treated as one grand marine union and that they should be governed as one grand empire, with each part having a voice in the government. Though Pownall offered no set plan for the operation of the government, he

⁷Ibid., 57.

proposed that "one person of consequence"⁸ be sent to the various parts of the empire to recommend a procedure which would permit the colonies a greater degree of self government and insure the continued unity of the separate dominions. There was to be a centralized government based on the recommendations of the study. Provisions would be made for dominion "knights and burgesses"⁹ in each house of the supreme Parliament, and all laws that affected the whole of the empire would be enacted by that body. The legislative bodies of each of the dominions would provide for the internal laws.¹⁰

Pownall maintained that the procedure he suggested had been used previously and that the union of the colonies and Great Britain could be accomplished under the same type plan used by England and Scotland by their Act of Union in 1707. Pownall's plan provided for the colonial legislatures to have a subordinate position to the Parliament of the combined dominions. But it was stated that:

. . . the co-equality of all the dominions with the kingdom of Great Britain would be secured by some contractual act of union which could not,

⁸R. G. Adams, Political Ideas, 57.

⁹Ibid.

¹⁰Ibid., 57-58.

"according to the law of nations, of justice and policy be altered without the consent of the parties."¹¹

The only alternative to this procedure, as far as Pownall was concerned, was complete military occupation of the colonies in a state of siege. The alternative was not considered advisable and would in time cause the ruin of both the colonies and the mother country.¹²

Francis Massers (sometimes spelled "Mesers"), who had served as attorney general of Quebec from 1766 to 1769, proposed a more comprehensive plan for uniting the various domains of the British Empire into a federal government. His plan provided for a parliament consisting of members from all of the dominions. Eighty were to be admitted from the American colonies and the West Indies. No property qualifications for the representatives would be required. By having yearly elections, vulnerability of the representatives to the King's bribes would decrease; they would be more responsive to the desires of the electors. The dominion parliament would restrict itself to:

. . . matters of general concern, such as taxation for the prosecution of war, regulations of trade, and issuance of money. There was to be no effort

¹¹Ibid., 58.

¹²Ibid.

to create a civil list--royal government in America would continue to be dependent upon taxes levied and paid by the people.¹³

The colonial assemblies were to have full control of internal matters in each of the dominions. The Parliament of Great Britain would sit in separate capacities:

. . . in one, with only members from Great Britain present it would act as a local legislature for that country. In the other, with the "Commissioners of the Colonies of America" present, parliament should be the imperial and federal parliament of the British Empire. No imperial act could be passed without giving the colonial commissioners time to know that parliament was changing from one capacity to the other.¹⁴

Another move toward a division of sovereignty was made in Thomas Crowley's (pen name, "Amor Patriae") "Plan for Union by admitting Representatives from the American Colonies and Ireland into the British Parliament."¹⁵ Crowley's was a plan that provided for an additional one hundred members in the Parliament to be apportioned according to the population of the various dominions. There was to be a total of fifty members admitted to the

¹³John C. Miller, Origins of the American Revolution, (Stanford, California: Stanford University Press, 1943), 222.

¹⁴R. G. Adams, Political Ideas, 59.

¹⁵Ibid., 60.

House of Commons from the Western Hemisphere and thirty from Ireland. Later, the King was to establish a nobility in the provinces and islands. Ten of these were to be selected for the House of Lords, and ten selected from the nobility of Ireland. The combined parliament was to be the supreme legislative body of the Empire:

. . . the body thus constructed of overseas lords and commons was made independent of all the ordinary dissolutions of Parliament, six months being allowed for the members to assemble after any given election. This project distinctly reveals the idea of a supreme legislature limited by the instrument that created it. In other words the idea of a limited supreme legislature was here emerging, an idea which the Englishman with his concept of an unlimited power of Parliament found it so hard to grasp.¹⁶

Among the limitations placed on the above supreme legislature was a stipulation that revenue arising from any control legislation, i.e., tariffs to regulate trade, would be set aside to be used for the benefit of the colony that was taxed. There was also a stipulation that no tax for protection of the colonies or Ireland could be levied separately from a tax on all parts of the British dominions and the realm.¹⁷

¹⁶Ibid., 61.

¹⁷J. Bigelow, (ed.), Works of Franklin, IV, fn., 281, and R. G. Adams, Political Ideas, 61.

There is no way of determining the exact date that Crowley's proposal was written; however, it is possible that Benjamin Franklin was referring to that plan when, on January 6, 1766, he wrote to an unknown person of a plan of imperial federation that had been submitted to him.¹⁸

There was a printed copy of Crowley's proposal, circulated in the colonies in 1770, indicating that more effort had been expended to have the plan implemented than mere correspondence between interested persons.¹⁹

Franklin had desired some type of union which would permit the colonies to manage their own affairs for many years, but by January 6, 1766, when he wrote "Letter Concerning the Gratitude of America and the Probability and Effect of Union with Great Britain: and Concerning the Repeal or Suspension of the Stamp Act," Franklin doubted that a union between the colonies and Great Britain could be realized even though it would probably be enduring if it occurred. "This people, however, is too proud and too much despises the Americans, to bear the thought of admitting them to such an equitable participation in the government of the Whole."²⁰ To Franklin, the next best thing would be

¹⁸Ibid.

¹⁹R. G. Adams, Political Ideas, fn., 61.

²⁰J. Bigelow, (ed.), Works of Franklin, IV, 168.

for Parliament to permit the colonies to continue as they had prior to 1763 when their local legislation had been controlled by their assemblies and when the King had made requisitions on the colonies for any monetary need which arose.²¹

Although Franklin had expressed his belief a year before that there could never be a unified Parliament, he was not above expressing a desire for such a union when he was corresponding with members of the British Parliament. In a letter written to Lord Kames, April 11, 1767, Franklin requested that Kames use what power he had to bring about "that clear idea . . . both in Britain and America, of the true political relations between them, and the mutual duties belonging to that relation."²² To Franklin, an understanding was necessary if frequent conflicts were to be prevented. In referring to a method by which this could be accomplished, Franklin stated that:

I am fully persuaded with you, that a consolidating union by fair and equal representation of all the parts of this empire in Parliament, is the only firm basis on which its political grandeur and prosperity can be founded.

However, following this statement, Franklin continued:

²¹Ibid., 166-169.

²²Ibid., 280.

Ireland once wished it, but now rejects it. The time has been, when the colonies might have been pleased with it; they are now indifferent about it; and if it is much longer delayed, they too will refuse it. . . . The Parliament cannot well and wisely make laws suited to the colonies, without being properly and truly informed of their circumstances, abilities, temper, &c. This it cannot be without representatives from thence; and yet it is fond of this power, and averse to the only means of acquiring the necessary knowledge for exercising it; which is desiring to be omnipotent, without being omniscient.²³

Again referring to the idea of union and the plan that is believed to have been submitted by Thomas Crowley, Franklin wrote to John Ross on December 13, 1767. In this letter it seems that Franklin was trying to reassure an American who was opposed to any thought of a union with England by representation of the colonies in Parliament. Franklin indicated that he was opposed to any union at that time, noting that "It will be time enough to show dislike to the coalition when it is proposed to us."²⁴ A lack of colonial representation was used by Franklin as a means of objecting to "the argument of taxation, which our not being represented will continue to give us."²⁵ Franklin felt free to repeat his request for representation in Parliament,

²³Ibid., 280-281.

²⁴Ibid., 337.

²⁵J. Bigelow, (ed.), Works of Franklin, IV, 337.

for his knowledge of the British made him feel "that such an event is very remote."²⁶ He further stated that:

This nation is indeed too proud to propose admitting American representatives into their Parliament, and America is not so humble or so fond of the honor as to petition for it.²⁷

Thomas Crowley's plan of union was printed, and according to Joseph Sabin in Bibliotheca America, it was circulated in the colonies in 1770. Apparently there was a wide knowledge of this proposal, which was considered over a period of several years.

"The Alarm, or a Plan for Pacification with America," which was printed and distributed sometime between the signing of the French Alliance and the year 1781, suggested yet another type of government that would have the limitations on sovereignty that are necessary in a federal system.

In this proposal the British Parliament and the Continental Congress were to continue to provide the necessary legislation for their respective areas. There was to be a House of Lords added to the Continental Congress, the members to be Americans appointed by the King. There would be

²⁶Ibid.

²⁷Ibid.

a resident Viceroy with a veto power. The proposal provided for a:

National Parliament composed of the Lords and Commons of Great Britain, Ireland and America, with an authority to manage and regulate the general affairs and interest of the empire, leaving to the distinct legislature of each of these great component parts of the state, the power of taxation, and the regulation of its own internal polity.²⁸

During the period of conflict between Great Britain and America, there were those on both sides of the Atlantic who were not willing to admit that the cause was lost. They continued to work for some type of arrangement which would provide a union to answer the demands of all while forfeiting the principles of none. These searchers after compromise had visions that the others of that day did not have, and had they been more effective in their search, they might have been able to postpone the breakup of Empire.

Other plans and schemes, similar to the ones which have been briefly discussed here, had been formulated. However, the proponents of these efforts at compromise were too few in number to be effective in persuading the Parliament of England, which had developed its ideas of the mercantile system to the point that it felt that the only

²⁸R. G. Adams, Political Ideas, fn., 62.

purpose of a colony was to provide a profit for the mother country. Meanwhile, the colonies were so filled with the ideas of legislative independence that they were not willing to cooperate with even their neighboring colonies to accomplish some mutually beneficial task as protecting their frontier.

Each proposal contained elements of compromise and suggested a division of power between the national government and the legislative bodies of the component units. However, for these proposals to be workable, a widespread acceptance of the concept of a divided sovereignty would have had to take place, and this could not be brought about with the differences that existed within the Empire.

CHAPTER VI

JOSEPH GALLOWAY'S PLAN OF UNION

Joseph Galloway submitted a plan of union to the First Continental Congress on September 28, 1774. His plan is important because it represents the last major effort to bind the colonies to the mother country through federalism. The plan was submitted to a congress composed of delegates from twelve of the colonies. Each colony had prepared different instructions for its delegation. The instructions varied from orders to attempt to secure harmony and a union with Great Britain to instructions to work for a "two-edged plan of commercial war on England." The religious, commercial and political differences which existed among the colonies were present when the delegates met in Philadelphia. These differences, and the feelings of discord which had been present in all intercolonial affairs, had to be reconciled before any worthwhile action could be taken.¹

Joseph Galloway was the major champion for the conciliationists at the September congress. When he presented his federal plan of union some twenty-five days after the Congress had convened on the 3rd of September, he prefixed

¹C. H. Van Tyne, The War of Independence, 435-439.

the plan with a resolve in which he attempted to state the reasons for the plan and to draw support for his program from other colonists. In his resolve, Galloway first professed the loyalty with which the colonists regarded the King and their lack of desire for independence. He then stated that the colonies:

. . . most ardently desire the establishment of a political union, not only among themselves, but with the mother state, upon whose principles of safety and freedom which are essential in the constitution of all free governments, and particularly that of the British Legislature. And as the colonies from their local circumstances cannot be represented in the Parliament of Great Britain, they will humbly propose to His Majesty, and his two Houses of Parliament, the following plan, under which the strength of the whole Empire may be drawn together on any emergency; the interest of both countries advanced; and the rights and liberties of America secured.²

This statement of purpose was direct and to the point. The colonists realized that they did not have the strength and economic independence necessary to be considered a significant force; yet none of the colonial representatives was willing to accept the unlimited authority Parliament was maintaining over the colonies. Galloway's introduction was

²Samuel E. Morison, (ed.), Sources and Documents Illustrating the American Revolution, (Oxford: The Clarendon Press, 1929), 116-117.

an appeal to those who supported and to those who opposed a closer union with Great Britain.

Galloway's provisions for a President-General and a Grand Council to manage the affairs of the central government of the colonies was much the same as Franklin had proposed in the Albany Plan. The members of the Grand Council were to serve a period of three years, and the position of the council was more clearly stated in:

That the Grand Council shall have power to choose their Speaker, and shall hold and exercise all the like rights, liberties, and privileges as are held and exercised by and in the House of Commons of Great Britain.³

The duties of the President-General were much more definite in Galloway's plan than in any previous plan that had been suggested. It provided:

That the President-General, by and with the advice and consent of the Grand Council, hold and exercise all the legislative rights, powers, and authorities, necessary for regulating and administering all the general police and affairs of the colonies in general, or more than one colony, or in any manner concerned, as well civil and criminal as commercial.⁴

The subordinate position of the American unit was clearly stated in the plan although it was also stated that

³Ibid., 117.

⁴Ibid., 118.

the American organization was to be a component part of the whole. The approval of the council was to be required before any law was to be considered binding on the colonies. The plan provided:

That the said President-General and Grand Council be an inferior and distinct branch of the British Legislature, united and incorporated with it for the aforesaid general purposes; and that any of the said general purposes; and that any of the said general regulations may originate, and be formed and digested, either in the Parliament of Great Britain or in the said Grand Council; and being prepared, transmitted to the other for their approbation or dissent; and that the assent of both shall be requisite to their validity of all such general Acts and Statutes.⁵

A means for bypassing Parliament on aids to the Crown in time of war was also included by the provision:

That in time of war, all bills for granting aids to the Crown, prepared by the Grand Council and approved by the President-General, shall be valid and passed into law, without the assent of the British Parliament.⁶

As it was presented to the Continental Congress, the plan followed closely that of Franklin's Albany scheme of twenty years before. There were changes, but the changes were meant to meet time-altered conditions of the

⁵Ibid.

⁶Ibid.

intervening generation. It was largely an updating of the earlier plan. The delegates discussed the plan, but it was defeated by a single vote.⁷

Franklin, who had been among the first to suggest a union of the colonies and who had worked toward this goal for many years, had by 1766, reached the conclusion that it could not be accomplished. When he was asked for his opinion on Galloway's plan, he again stated his belief that a union of this nature could never take place. In a letter to Joseph Galloway on February 25, 1775, Franklin reported on the response with which the plan was received in England. Lord Gower disapproved the plan, and before the House of Lords he had "censured the Congress severely as first resolving to receive a plan for uniting the colonies to the mother country, and afterwards for rejecting it, . . ."⁸

Franklin, by this time, had become disgusted with the Parliament of Great Britain and felt that any closer connection between the colonies and the mother country would only hurt the colonies. The reason which Franklin gave for his feeling indicates his frustration resulting from his close connection with the British legislature.

⁷Ibid., fn. 116. Each colony had one vote.

⁸Ibid., 137.

Franklin wrote:

I fear they will drag us after them in all the plundering wars which their desperate circumstances, injustice, and rapacity may prompt them to undertake; and their wide-wasting prodigality and profusion is a gulf that will swallow up every aid we may distress ourselves to afford them.

Here numberless and needless places, enormous salaries, pensions, perquisites, bribes, groundless quarrels, foolish expeditions, false accounts or no accounts, contracts and jobs, devour all revenue, and produce continual necessity in the mist of natural plenty. I apprehend, therefore, that to unite us intimately will only be to corrupt and poison us also.⁹

However, further on in that same letter, Franklin stated that he would be willing to go to any length short of sacrificing colonial safety and just liberty to prevent a war between relations as close as the colonies and Great Britain.

Referring to Galloway's plan, Franklin wrote that if it should be revived at a later time there were certain stipulations which should be made before it be put into effect. These were the following:

1. The Declaratory Act of Parliament to be repealed.
2. All acts of Parliament, or parts of acts, lying duties on the colonies to be repealed.

⁹Ibid.

3. All acts of Parliament altering the charters, or constitutions, or laws of any colony, to be repealed.

4. All acts of Parliament restraining manufactures to be repealed.

5. Those parts of the navigation acts, which are for the good of the whole empire, such as require that ships in the trade should be British or Plantation built, and navigated by three-fourths British subjects, with the duties necessary for regulating commerce, to be reenacted by both Parliaments.

6. Then, to induce the Americans to see the regulating acts faithfully executed, it would be well to give the duties collected in each colony, and let the governor and Assembly appoint the officers to collect them, and proportion their salaries. Thus the business will be cheaper and better done, and the misunderstandings between the two countries, now created and fomented by the unprincipled wretches, generally appointed from England, be entirely prevented.¹⁰

Another indication of the adverse British reaction to the Galloway plan is indicated in a letter written to Franklin by Samuel Wharton, dated April 17, 1775. In his letter Wharton notes the members of both houses were:

. . . exceedingly angry at it, while the courtiers rejoiced at that part of the pamphlet which represents our divisions and controversies as to boundaries and modes of religion, our incompetency to resist the power of this country, and the undecided state of Congress for several weeks as to what really were the rights of America. Yet the courtiers, at the same time, treat with ineffable contempt the plan of union proposed, and which, they

¹⁰J. Bigelow, (ed.), Works of Franklin, VI, 432-433.

say, by not being adopted, offended the author's pride, and has been the happy means of their being satisfactorily confirmed in their ideas of the weakness and division of the colonies, and that, by perseverance, they shall unquestionably obtain a perfect submission.¹¹

Though this plan had been presented in an effort to prevent a permanent break between the colonies and Great Britain, the conditions had deteriorated to the point that little could be done to bring order out of the chaos. The colonies had advanced their thinking to a position requiring full parliamentary capitulation to their demands on all matters, while Parliament was just as determined that the colonies submit to the superiority of that body. The opposing views left little ground for any compromise. With the failure of Galloway's Plan of Union, the last major effort at the formation of a federal empire was concluded.

¹¹Ibid., fn. 431.

CHAPTER VII

FRANKLIN'S PLAN FOR COLONIAL ORGANIZATION

Franklin had long worked to achieve a union between the colonies and Great Britain. While he was serving as a colonial agent in England, he enlisted the support of several important people there to assist him in this work, but he had been unsuccessful. As he worked to further an understanding between the parts of the empire which could lead to union, he was faced with the problem of dealing with different members of Parliament who were interested in the colonies. While associating with these men, Franklin gradually came to the conclusion that there was no benefit to be gained from a union which would include all the various parts of the empire. From this time on, Franklin worked for a federal commonwealth of nations concept, and finally for complete independence.

On July 21, 1775, Mr. Franklin presented "Articles of Confederation and Perpetual Union, Proposed in General Congress," to the Second Continental Congress.¹ The Articles preceded the Declaration of Independence by a year, and the Articles of Confederation by over two years. The proposal could not be instituted as it was written

¹J. Bigelow, (ed.), Works of Franklin, VII, 94.

without the establishment of a commonwealth of nations or the complete independence of the colonies. Franklin assumed the initiative in writing this plan. There is no indication that he was asked or instructed to undertake this task. His thoughts in this case were in advance of his time--just as they had been in all phases of the developing breach between Britain and the colonies.

In the "Articles," Franklin again reverted to the position which he had taken twenty years earlier when he had suggested a union of the colonies for the purpose of defense. The structure of confederation government was to be federal, and the duties, responsibilities, and authority of each level was to be stipulated and made a component part of the document which was to establish the governmental body.

The first article of Franklin's "Articles" proposed the name which would be applied to the suggested governmental body after it was established, "The United Colonies of North America."² This title would not prevent the establishment of a union under a commonwealth system, but would require a system of federal government within the colonies.

²Ibid.

The second article outlined the purposes of the confederation and stated that the league was to be formed by the colonies freely and for:

. . . their common defence against their enemies;
for the security of their liberties and properties;
the safety of their persons and families, and their
mutual and general welfare.³

This statement lists the primary complaints which the colonies had with the British position of parliamentary sovereignty. There were no indications that Franklin was willing to compromise with the British, nor was he willing to recognize any sovereignty other than that of the elected representatives of the people.

The desire to establish for the colonies a federal system of government is evident in the third article of the plan, which specifically outlined those functions of government which would be exercised by each of the colonies. The wording of this article indicated the intention of the writer to see that the prime sovereignty of the union rested with the individual states which comprised the whole:

That each colony shall enjoy and retain as much
as it may think fit of its own present laws,
customs, rights, privileges, and peculiar

³Ibid., 95.

jurisdictions within its own limits: and may amend its own constitution as shall seem best to its own constitution as shall seem best to its own Assembly or Convention.⁴

The fourth article provided for the election of delegates and the place and time of meetings. The fifth article, however, concerned itself with the specific duties for which the congress would be responsible. This article, though general in nature, did limit the general government to those specific areas that could be most adequately handled as a combined effort:

That the power and duty of the Congress shall extend to the determining on war and peace; the entering into alliances and sending and receiving ambassadors; the reconciliation with Great Britain; the settling of all disputes and differences between colony and colony, about limits or any other cause, if such should arise; and the planting of new colonies when proper. The Congress shall also make such general ordinances as, thought necessary to the general welfare, particular Assemblies cannot be competent to, viz., those that may relate to our general commerce or general currency, to the establishment of post, and the regulation of our common forces. The Congress shall also have the appointment of all general officers, civil and military, appertaining to the general Confederacy, such as general treasurer, secretary, etc.⁵

The sixth article provided for the financing of the union. Here, appears a marked difference in the approach

⁴Ibid.

⁵Ibid., 95-96.

which Franklin proposed for the confederation of the colonies in 1775 and the one which he had presented to the Albany Congress. In the latter plan, the body which was to set the taxes was the colonial assembly within each colony, and in turn the money was to be sent to the union. The amount of revenue, which each colony was to contribute, would be determined by the number of voters in the colony, thus eliminating the charges of unequal taxation. In the Albany Plan, there had been provision for a tax to be levied on certain articles (strong liquors, superfluities, etc.), and the revenue from the tax was to be held in the treasury of the several colonies for the use of the central government. The Albany plan eliminated the colony from initiative in the determination of the tax which would be collected. Possibly events during the intervening years caused Franklin to change his opinions on taxation. He now felt that any attempt to take the right of taxation out of the hands of the local legislative bodies would probably cause the plan to be disapproved. The article which Franklin included in his new plan stated that:

All charges of wars, and all other general expenses to be incurred for the common welfare, shall be defrayed out of the common treasury, which is to be supplied by each colony in proportion to its number of male polls between sixteen and sixty years of age. The taxes for paying that proportion

are to be laid and levied by the laws of each colony.⁶

Articles seven and eight pertained to the appointment of representatives from the colonies and the number of representatives necessary for a quorum. The ninth article is devoted to the appointment of an executive council and to its duties. The functions of the council were to be limited to those items which were of a general nature and applicable to all the colonies. They were to carry out the orders of the congress, manage general business, manage international affairs, prepare matters for the congress, fill vacancies in office, and draw on the treasury of the general government for necessary expense which had been approved by the congress.⁷

The tenth article was designed to limit the actions of the colonies in Indian wars. The eleventh was intended to encourage the development of lasting agreements with the Indians in an effort to provide a stability on the frontier which would permit harmonious relations between the two peoples to the mutual benefit of both. The protection of the Indians would fall under the jurisdiction of the general government as would the trade agreements and

⁶J. Bigelow, (ed.), Works of Franklin, VII, 96.

⁷Ibid., 97-98.

treaties which were made. A provision for agents to live among the Indians was included and became a component part of the scheme.⁸

The twelfth article provided for changes in the plan which time might find it necessary to make, and the thirteenth offered membership to other colonies or provinces of Great Britain which might desire to become a part of the union at a later date. This last article left the door open for the greater part of the British Empire to join with the American colonies in protest against the actions and policies of the mother country at a time when tempers were short on both sides of the Atlantic and when little was being conceded on either side to bring about a compromise. The efforts of those who were working to find an answer to the differences were too weak to be noticed above the impassioned statements of the British and Americans who would see or agree to no plan other than the ones they were proposing.⁹

Following the plan itself there was a procedure to be followed when the colonies desired to adopt the plan:

These articles shall be proposed to the several provincial Conventions or Assemblies, to be by them

⁸Ibid.

⁹Ibid.

considered; and, if approved, they are advised to empower their delegates to agree to and ratify the same in the ensuing Congress.¹⁰

The union was to remain in force until a reconciliation could be gained between the colonies and the King. The terms of reconciliation were those that had been proposed by the First Continental Congress, and they requested repeal of "injury done to Boston by shutting its port, for the burning of Charleston, and for the expense of this unjust war," and demanded the removal of the British troops.¹¹ The procedure then proposed that the colonies return to their former connections with Britain under the new system of control; i.e., with the British Parliament and the Colonial Congress acting separately and each legislating for their respective dominions, leaving loyalty to the King the only bond between them. If the conditions were not met, Franklin proposed that the union become perpetual.

Two years after this proposal was made by Franklin, a very similar plan was accepted as the first government of the United States. A comparison between "The Articles of Confederation," adopted by Congress in November, 1777, and

¹⁰Ibid., 98.

¹¹Ibid.

Franklin's plan shows that the governmental organizations were much the same.¹² In places the wording is identical, but the Articles of Confederation were much more detailed and specific in the treatment of each function of the central government.

Franklin, in the preparation of his plan, used general, positive terms to outline the responsibilities of the central government under the confederation of the colonies. Considering the situations that would arise as conditions changed, there was provision in Franklin's plan for a change in the government to meet these requirements. The lack of specific instructions for the treatment of various functions left a degree of latitude which would have permitted the plan to be adopted to different situations as they arose. This was not acceptable to the writers of the Articles of Confederation which supplemented Franklin's plan.

In the Articles of Confederation the fear of a strong central government can be seen in almost every change which was made. The sovereignty of the states was stressed in the Articles and by specific statements as to how the various functions of government would be accomplished. These changes, made in Franklin's "Colonial

¹²S. E. Morison, (ed.), Sources and Documents, 178.

Organization," resulted in a weak and ineffective document.

Another comparison, indicating the change in the thinking of the American leaders, can be made between the Plan of Union adopted by the Albany Congress and the Articles of Confederation. The earlier proposal provided for a central government with the authority which was necessary. It provided for a means of financing the operation, for maintaining the forces necessary, and for demanding the respect of the subordinate units to make a central government of value. This was not true in the Articles of Confederation.

The Articles of Confederation was the weakest of all the various plans which had been proposed. The intervening years and the actions of the British had caused an even greater distrust of any type of central government. At the time of the adoption of the Articles of Confederation, the Americans were not even willing to have the states stipulate a particular tax to be set aside for the sole use of the central government. No provision was made for the central government to demand that it be supported, that it settle disputes, or that it control the commerce between the states that composed it. The Confederation was a weak infant that was required to look to its many mothers for its subsistence. The ideas and plans which so many had

worked on and attempted to advance in order to provide a government, which would be of value, ended in a compromise, soon found to be of dubious value.

CHAPTER VIII

BRITISH PEACE PROPOSALS

The attitude of the British concerning sovereignty over the colonies changed by 1777. The use of British arms to force the Americans into a subordinate position had failed. An alliance between the French and the rebellious colonies seemed imminent. An expanded conflict would require more taxes and an increased cost of living. Continuation of the fighting was sharply criticized by merchants, traders and manufacturers in the cities. As a result of these conditions, it was necessary that a change be made in the policies of the King in Parliament. The change took the form of peace proposals advanced to the Americans.

Benjamin Franklin, while serving as an American representative in Paris in 1778, was approached by William Johnstone Pulteny, a member of Parliament, with a peace proposal from the King. The proposal provided:

(1) The Present Governments to remain. But the King to name a Governor out of these.

(2) Judges and all civil officers to be named by them, care being taken to the rights of patent officers. Courts of Admiralty for prizes only.

(3) No negative on acts of Assembly, except such as affect the trade with Great Britain, or the trade of any other colony. But no negative as to

acts for prohibition of negroes, or for establishing paper currency, if not made a legal tender in private payments. All acts to be transmitted for due notification. Acts prohibiting luxuries affecting all country as equally to pass without negative.

(4) No appeals to Privy Council except in prize cases from Courts of Admiralty in time of war.

(5) Congress to subsist--its powers to be defined. The King to name a President.

(6) No taxes to be imposed, nor any military force kept up without consent of Assemblys. Officers to have commissions from his Majesty subject to being removed on address of Assembly.

(7) The ungranted lands and quit rents to be given to the Colonies upon an equivalent.

(8) To have a free trade from and to all places but not to interfere with the grants to exclusive companys now subsisting. No officers of Customs to subsist.

(9) To have representatives to Parliament.

(10) Mutual amnesty--mutual restitution. Mutual compensation for wanton damages.

(11) Immediate cessation of hostilities by sea and land.

(12) The King is and shall be the only supreme Governor, and to have power of war and peace, and alliances after the present general pacification.

(13) All judicial proceedings and other legal instruments to run as formerly in his name.

(14) Forces to be annually voted for defence of Colonies, and paid by them. Officers to have commissions from the King, and removable as above by address.

(15) A contribution to be settled as to increase with their growth.

(16) All bounties, drawbacks, and prohibitions in their favour to cease.

(17) The expense of their own civil government to be paid by them.

(18) All hostile resolutions of theirs to be annulled.¹

The proposed peace plan included every demand formerly made by the Americans, short of independence. Franklin wrote to Pulteny on March 30, 1778, and stressed that, in his opinion, the colonies would never agree to a peace that would place them in a position of dependence on Britain. Franklin believed that a peace on equal terms could be made. Even though he had no specific authority to act for the colonies in arranging a peace, Franklin was willing to discuss the plans with Britain, "who, if sincerely disposed to peace, might save time and much bloodshed by so treating directly."²

The proposal as presented led Franklin to believe:

. . . that the ministers cannot yet divest themselves of the idea, that the power of Parliament over us is constitutionally absolute and unlimited; and that the limitations they may be willing now to put to it by treaty are so many favours, or so many

¹Eric Robson, The American Revolution in its Political and Military Aspects, 1763-1783, (London: The Batchworth Press, 1955), 180-181.

²Ibid.

benefits, for which we are to make compensation.

As our opinions in America are totally different, a Treaty on the terms proposed appears to be utterly impracticable, either here or there. Here we certainly cannot make, having not the smallest authority to make even the Declaration specified in the proposed letter, without which, if I understand you right, treating with us cannot be commenced . . . Such a treaty we might probably now make with the approbation of our friends, but, if you go to war with them on account of their friendship for us, we are bound by ties, stronger than can be formed by any treaty, to fight against you with them.³

Franklin did not accept the peace feeler though he admitted to a friend on April 1, 1778, that the propositions "would probably have been accepted if they had been made two years ago. I have answered that they have come too late."⁴

A similar proposal was submitted to the Continental Congress by Lord Carlisle, head of the Royal Peace Commission on June 9, 1778. This proposal was studied by the Congress and rejected. W. H. Dryton stated in a letter written June 17, 1778, that the Americans feared that their representatives would fare no better than the Scottish representatives had fared following the Act of Union of 1707. The colonists did not believe they would be

³Ibid., 201-202.

⁴Ibid., 203.

benefitted by representatives in Parliament, and they feared that the British representatives in the assemblies would be acting as spies for Great Britain.⁵ England had offered everything but independence.⁶ Dryton stated that the short period of independence had created a desire for freedom in America:

Having tasted of it, she will ever be anxious to possess it again; having by arms acquired a power, but short of independence, she will increase in reputation and ability to become independent, and this will increase her desire to be so; her former success will possess her with confidence and hope; experience will make her ever suspicious of the intentions of Britain.⁷

The offer to the Americans to share in the governing of the empire, self-government in the colonies, and freedom from all taxes levied by Parliament had come too late. The colonies had lost their desire to be a part of the British Empire; they also had lost their loyalty to the King. The inability of the statesmen of the time to recognize the need for a division of sovereignty prevented any lasting unity between America and Great Britain. The time required for those in Britain to reach their peace proposal was

⁵Ibid., 202-203.

⁶O. T. Barck and H. T. Lefler, Colonial America, 659.

⁷E. Robson, The American Revolution, 203.

greater than the time required for the Americans to reach the point of no return when they had no desire for such an accommodation.

CHAPTER IX

SUMMARY AND CONCLUSIONS

During the years between the submission of Franklin's Albany Plan of Union and the adoption of the Articles of Confederation, a complete change developed in the attitudes of the American people toward Great Britain. The change was brought about by the altered position of the British Parliament toward legislation in and for the American colonies. The contentment which existed in the colonies during the 1750's, interrupted by occasional grumblings about the Molasses Act, Hat Act and other minor irritants largely ignored, changed to demands for complete independence.

The early British trading companies and the New England Confederation were established on the federal concept of a divided sovereignty for reasons of expediency rather than principle. The size of these organizations was small and their governing accomplishments were so minor that they were not considered as examples of a governing procedure by colonial assemblies searching for more effective devices to combat the French.

The Americans would not listen to the more moderate statesmen, like Benjamin Franklin, who realized the importance of a unified colonial government ten years before the

start of the major conflict with Great Britain. The union suggested by the Albany Congress which would have provided a federal colonial government was refused by the colonial assemblies and by the King. The idea of relinquishing any of the sovereignty that each of the legislative bodies considered their right was thought to be unnecessary. To the colonial mind the control of legislative power was as important as the protection a union would provide. The separatist principle within the colonies was strong and colonial loyalty belonged to colony and King. Few economic, political, or social ties which would serve as cohesive factors existed. There was little hope for a union without a major reason for colonial unity.

A reason for colonial cooperation was supplied by Parliament as the traditional position of the American assemblies was challenged. The imposition of taxes by the British gave the colonies a common complaint. Although the Americans cooperated in their actions against the British they were not willing to relinquish colonial powers to establish a strong central legislature. The fixed idea that sovereignty was indivisible prevented acceptance of many suggestions that would have provided the British Empire with a federal structure.

Even though the basic ideas of a federal type government were first proposed in the American colonies,

there were not enough people who could see the advantages of federalism. The Articles of Confederation, when they were ratified in 1781, were little more than an agreement between the colonies to live amicably. Colonial statesmen feared creating a governmental tyrant similar to the King in Parliament. They insisted that the sovereignty they had acquired be kept within the state governments.

The weakness of the Articles had to be proven over a period of six years before the state legislatures and the people indicated a willingness to consider a change. When a stronger system of federal government was incorporated into the United States Constitution, it was done in secret behind locked doors. Ratification was sometimes accomplished by force (such as in Pennsylvania) by veiled promises of office or support in an election (such as in Massachusetts) and by pledging amendments demanded by several states. The states were still not ready to relinquish their sovereignty to a central government even after it seemed that the nation could not survive without a stronger and independent government.¹

There was little chance of establishing a federal government during the revolutionary period since the people were not ready or willing to accept an arrangement of

¹E. S. Morgan, Birth of the Republic, 153-155.

divided sovereignty. There was no precedent for a government that did not have complete power. The statesmen who attempted to work out an answer to the problems facing the empire at the time did not look for, nor could they recognize, the advantages of divided sovereignty. The few men who suggested a plan of federal government for the British Dominions were not strong enough in number, nor influential enough in position, to have their suggestions followed. Therefore, all such hopes had to be postponed until the states adopted a federal system of government in the Constitution.

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