

XII AN IMPERFECT UNION

themselves, though there are some of them protestants, and some of them papists, by public establishment. Not only so, but these confederacies are seldom engaged in a war with other nations. Wars are generally between monarchs, or single states that are large. A confederation of itself keeps war at a distance from the bodies of which it is composed.

For all these reasons, Sir, I humbly apprehend, that every argument from honour, interest, safety and necessity, conspire in pressing us to a confederacy; and if it be seriously attempted, I hope, by the blessing of God upon our endeavours, it will be happily accomplished.

1. According to the *Journals of the Continental Congress* (6:1079) this undated speech was given on July 30.
2. Helots were the state slaves of Sparta (ca. seventh century B.C.) whose servile status fell somewhere between privately owned slaves and free men.
3. The Roman Republic.
4. John Hancock, president of the Congress, May 1775-October 1777.
5. The Republic of the United Provinces, or the Netherlands.

2 New Jersey Legislature, Proposed Amendments to the Articles of Confederation

[*Votes and Proceedings, October 28, 1777-October 8, 1778* (Trenton, 1779),
pp. 144-46, 148.]

On March 25, 1778, a joint legislative committee was appointed to review the Articles of Confederation. Its report to the legislature on June 15 recommended not ratification but revision of the proposed constitution. The individual objections reflect the special needs and interests of New Jersey, but collectively they represent the position of a group of states that were relatively small in size and population and conventional in resources. (New Jersey was the tenth largest state with 7,836 square miles, ranked ninth in population with fewer than 140,000 inhabitants, and had neither a special cash commodity such as timber or tobacco nor a major urban center like Boston or Charleston that functioned as the economic center of a region.) As a "small" state New Jersey looked to the Confederation for security and the resolution of problems that were beyond her capacity to solve, but at the same time saw in the union the threat of domination by an alliance of "large" states. The "Representation" which follows outlines the position on basic economic and political issues that New Jersey would persistently advocate in the Confederation Congress and in the Constitutional Convention of 1787.

NEW JERSEY IN THE AMERICAN REVOLUTION

[June 15-16, 1778]¹

To the United States in Congress Assembled.

The Representation of the Legislative-Council and General Assembly of the State of New Jersey,
Sheweth,

That the Articles of Confederation and Perpetual Union between the States of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia, proposed by Congress to the said States severally for their Confirmation, have been by us fully and attentively considered; upon which we beg Leave to make the following Remarks.

1st. In the fifth Article, where, among other Things, the Qualifications of the Delegates from the several States are described, there is no Mention of any Oath, Test or Declaration to be taken or made by them previous to their Admission to Seats in Congress. It is indeed to be presumed the respective States will be careful that the Delegates they send to assist in managing the general Interests of the Union take the Oaths to the Government from which they derive their Authority; but as the United States, collectively considered, have Interests as well as each particular State, we are of opinion that some Test or Obligation binding each Delegate, while he continues in the Trust, to consult and pursue the former as well as the latter, and particularly to assent to no Vote or Proceeding which may violate the general Confederation, is necessary. The Laws and Usages of all civilized Nations evince the Propriety of an Oath on such Occasions; and the more solemn and important the Deposit, the more strong and explicit ought the Obligation to be.²

2d. By the sixth and ninth Articles the Regulation of Trade seems to be committed to the several States within their separate Jurisdictions, in such a Degree as may involve many Difficulties and Embarrassments, and be attended with Injustice to some States in the Union. The Committee are of Opinion, that the sole and exclusive Power of regulating the Trade of the United States with foreign Nations ought to be clearly vested in the Congress, and that the Revenue arising from all Duties and Customs imposed thereon ought to be appropriated to the Building, Equipping and Manning of a Navy for the Protection of the Trade and Defense of the Coasts, and to such other public and general Purposes as to the Congress shall seem proper and for the common Benefit of the States. This Principle appears to us to be just, and it may be added, that a great Security will by this Means be derived to the Union from the Establishment of a common and mutual Interest.³

3d. It is wisely provided in the sixth Article, that "no Body of Forces shall be kept up by any State, in Time of Peace, except such Number only as, in the Judgment of the United States in Congress assembled, shall be deemed requisite to garrison the Forts necessary for the Defence of such State." We think it ought also to be provided and clearly expressed, that no Body of Troops be kept up by the United States, in Time of Peace, except such Number only as shall be allowed by the Assent of nine States. A standing Army, a military Establishment and every Appendage thereof, in Time of Peace, is totally abhorrent from the Ideas and Principles of this State. In the memorable Act of Congress,⁴ declaring the United Colonies free and independent States, it is emphatically mentioned as one of Causes of the Separation from Great-Britain, that the Sovereign thereof had "kept up among us, in Time of Peace, standing Armies, without the Consent of the Legislatures." It is to be wished

XII AN IMPERFECT UNION

the Liberties and Happiness of the People may, by the Confederation, be carefully and explicitly guarded in this Respect.⁵

4th. On the eighth Article we observe, that as frequent Settlements of the Quotas for Supplies and Aids to be furnished by the several States, in Support of the general Treasury, will be requisite, so they ought to be secured. It cannot be thought improper or unnecessary to have them struck once at least in every five Years, and oftener if Circumstances will allow. The Quantity or Value of real Property in some States, may increase much more rapidly than in others, and therefore the Quota, which is at one Time just, will at another be disproportionate.⁶

5th. The Boundaries and Limits of each State ought to be fully and finally fixed and made known. This we apprehend would be attended with very salutary Effects, by preventing Jealousies as well as Controversies, and promoting Harmony and Confidence among the States: If the Circumstances of the Times would not admit of this previous to the Proposal of the Confederation to the several States, the Establishment of the Principles upon which, and the Rule and Mode by which the Determination may be conducted, at a Time more convenient and favourable, and a Provision for dispatching the same at an early Period, not exceeding five Years from the final Ratification of the Confederation, would be satisfactory.⁷

6th. The ninth Article provides, that no State shall be deprived of Territory for the Benefit of the United States. Whether we are to understand that by Territory is intended any Lands, the Property of which was heretofore vested in the Crown of Great-Britain; or that no Mention of such Lands is made in the Confederation; we are constrained to observe, that the present War, as we always apprehended, was undertaken for the general Defence and Interest of the confederating Colonies, now the United States. It was ever the confident Expectation of this State, that the Benefits derived from a successfull Contest were to be general and proportionate, and that the Property of the common Enemy, falling in Consequence of a prosperous Issue of the War, would belong to the United States, and be appropriated to their Use. We are therefore greatly disappointed in finding no Provision made in the Confederation for empowering the Congress to dispose of such Property, but especially the vacant and unpatented Lands, commonly called the Crown lands, for defraying the Expenses of the War, and for other such publick and general Purposes. The Jurisdiction ought, in every Instance, to belong to the respective States, within the Charter or determined Limits of which such Lands may be seated; but Reason and Justice must decide, that the Property which existed in the Crown of Great-Britain, previous to the present Revolution, ought now to belong to the Congress in Trust for the Use and Benefit of the United States. They have fought and bled for it in Proportion to their respective Abilities, and therefore the Reward ought not to be predilectionally distributed. Shall such States as are shut out by Situation from availing themselves of the least Advantage from this Quarter, be left to sink under an enormous Debt, whilst others are enabled, in a short Period, to replace all their Expenditures from the hard Earnings of the whole Confederacy?⁸

7th. The ninth article also provides, that the Requisitions for Land-Forces to be furnished by the several States, be proportioned to the Number of *white* Inhabitants in each. In the Act of Independence we find the following Declaration: "We hold these Truths to be self-evident, that all Men are created equal; that they are endowed by their Creator with certain unalienable Rights, among which are Life, Liberty, and the pursuit of Happiness." Of this Doctrine it is not a very remote

NEW JERSEY IN THE AMERICAN REVOLUTION

Consequence, that all the Inhabitants of every Society, *be the Colour of their Complexion what it may*, are bound to promote the Interests thereof, according to their respective Abilities: They ought therefore to be brought into the Account on this Occasion. But admitting Necessity or Expediency to justify the Refusal of Liberty, in certain Circumstances, to Persons of a *particular Colour*, we think it unequal to reckon nothing upon such in this Case. Should it be improper, for special local Reasons, to admit them in Arms for the Defence of the Nation, yet we conceive that the Proportion of the Forces to be embodied ought to be fixed according to the whole Number of Inhabitants in the State, from whatever Class they may be raised. If the whole Number of Inhabitants in a State, whose Inhabitants are all Whites, both those who are called into the Field, and those who remain to till the Ground and labour in mechanick Arts and otherwise, are reckoned in the Estimate for striking the Proportion of Forces to be furnished by that State, ought even a Part of the latter Description to be left out in another? As it is of indispensable Necessity in every War that a Part of the Inhabitants be employed for the Uses of Husbandry and otherwise at Home, while others are called into the Field, there must be the same Propriety that Persons of a different Colour who are employed for this Purpose in one State, while Whites are employed for the same Purpose in another, should be reckoned in the Amount of the Inhabitants in the present Instance.⁹

8th. In order that the Quota of Troops to be furnished in each State on occasion of a War, may be equitably ascertained, we are of Opinion that the Inhabitants of the several States ought to be numbered as frequently as the Nature of the Case will admit, and once at least every five Years. The disproportionate Increase in the Population of different States, may render such Provision absolutely necessary.¹⁰

9th. It is further provided in the ninth Article, that the Assent of nine States, out of thirteen, shall be necessary to determine in sundry Cases of the highest Concern. If this Proportion be proper and just, it ought to be kept up should the States increase in Number, and a Declaration thereof made for the Satisfaction of the Union.¹¹

We think it our indispensable Duty to solicit the Attention of Congress to these Considerations and Remarks, and to request the Purport and Meaning of them may be adopted as Part of the general Confederation; by which Means we apprehend the mutual Interests of all the States will be better secured and promoted, and the Legislature of this State will then be justified in ratifying the same.

1. The legislators endorsed the enumerated objections on June 15 and adopted the preamble and conclusion the next day.

2. The insistence upon an oath pledging congressmen to pursue measures that would further the interests of the nation instead of their own constituencies stemmed from a fear that the larger, more powerful states would attempt to dominate the confederation at the expense of the smaller members.

3. New Jersey was the first state to argue that the central government should be invested with exclusive jurisdiction over interstate and international commerce and be empowered to levy duties on foreign imports. Augmented congressional authority in these areas would be of great economic benefit to the state. First, congressional control over interstate commerce would protect New Jersey from the rapacity of her neighbors. With virtually no trade with Europe

XII AN IMPERFECT UNION

and only minimal direct traffic with other states, New Jersey was dependent upon the adjacent ports of New York and Philadelphia. The result was an adverse trade balance that drained money from the state and made it difficult for Jerseymen to control their own economic destiny. Second, with little import-export commerce and no public lands, New Jersey could raise money to defray its quota of national expenses only through taxation of its citizenry. Tariff revenue would be an important source of income for the national establishment and thereby reduce the requisitions from the states. (And as a public creditor state, New Jersey favored a prosperous Congress that could pay its debts.) New Jersey's proposals were in vain. Although Congress beginning in 1781 repeatedly recommended the imposition of a continental impost, self-interested states (particularly Rhode Island) always defeated the measure. Nor was the confederation government granted control of interstate commerce. These two economic deficiencies would loom large in the events leading to the federal convention of 1787 and would finally be resolved by the Constitution of the United States.

4. The Declaration of Independence.

5. For pre-Revolution antipathy toward standing armies, see Sec. II, Docs. 14 and 15.

6. With fixed state boundaries and no appreciable amount of undeveloped arable land, New Jersey realistically expected that its population growth would not keep pace with states such as New York, Pennsylvania, and Virginia. Hence, frequent revisions of the requisition scales would be advantageous. It is surprising, however, that as an agrarian state comprised overwhelmingly of yeoman farmers New Jersey did not propose that financial contributions to the central government be proportional to population instead of "in proportion to the value of all land within each state" as stipulated by the Articles. (The New Jersey delegates, Jonathan Elmer and John Witherspoon, voted for the provision in October 1777.)

7. In addition to its obvious import for cessions of western lands, the proposals to fix state boundaries was related to the bitter jurisdictional disputes between Connecticut and Pennsylvania over the Wyoming Valley (northeastern Pennsylvania) and New York and New Hampshire over the region known as "Vermont."

8. New Jersey favored the creation of a national domain not only because the state entertained no pretensions to territory west of the Appalachians, but also because the revenue derived from the sale of public lands would increase the income of the central government and decrease the tax burdens of the states. Moreover, Jerseymen felt that possession of a vast territorial empire would enhance the stature of the nation. Then, too, a number of influential citizens, notably William Trent of Burlington and George Morgan of Princeton, were associated with the Indiana Company, which claimed some three and one-half million acres in what is now West Virginia by virtue of the Treaty of Fort Stanwix (1768); these and other Jersey speculators, involved in competition with both states and rival companies, wanted recognition of existing claims and a free hand to invest in western lands.

9. For obvious reasons northern and southern states were diametrically opposed on whether slaves should be considered in determining per capita

NEW JERSEY IN THE AMERICAN REVOLUTION

requisitions. The controversy persisted throughout the Confederation and was resolved in 1787 by an ignoble compromise in the Constitution which stipulated that each slave was to be counted as three-fifths of a person in apportioning federal taxes and congressional representation. Although slavery was not so extensive in New Jersey as to figure prominently in national concerns, it was a major problem at the state level. See Sec. XIII, Docs. 6, 8-10.

10. Since it was apparent that the population of New Jersey would not increase as rapidly as that of some other states, a regular census would lead to the reduction of the state's per capita requisitions (see note 6 above).

11. The two-thirds majority requirement for passage of important legislation was a means by which the smaller, less populous states could maintain political parity with the larger, more populous states.

3 Nathaniel Scudder to John Hart

[Manuscript Collection, 143, New Jersey State Library.]

Notwithstanding its pointed criticism of certain portions of the Articles of Confederation (see Doc. 2), the New Jersey legislature was not unalterably—or even strongly—opposed to the document as a whole. In recommending unconditional ratification of the Articles to Speaker of the House John Hart, Congressman Nathaniel Scudder bespoke the views of most Jerseymen. Everyone knew that the proposed instrument of government was not perfect. But they also realized that the document could have been more disadvantageous to the interests of the state, that none of the state's objections was important enough to justify rejecting the union, and that the military and diplomatic exigencies of the times demanded confederation. In rising above parochial considerations to further the national interest, Scudder (1733-1781) continued his record of distinguished service to state and nation. A prominent Monmouth County physician, he was active during the Revolution as a member of local committees of correspondence, the Provincial Congress, the state legislature, the Continental Congress, and the state militia. Colonel Scudder was killed in a skirmish at Black Point, near Shrewsbury, Monmouth County, in October 1781.

Freehold July 13th 1778

My Dear Sir,

I do myself the Honor to address you upon an Affair to me of the most serious and alarming Importance. The Honorable Council and Assembly of this State have not thought proper to invest their Delegates with Power to ratify and sign the Confederation; and it is obvious that unless every of the thirteen States shall accede