The Creation of a National Government: Federalists and Anti-Federalists

History 138B

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The Background to American Federalism

• Federalism as a league of sovereign states
• Colonies as “countries” - made war and peace in the 17th and 18th; taxed themselves; even fought over territory with each other; but did accept imperial oversight (trade regulations and royal veto)
• The imperial crisis (‘65-’74): colonies claimed control over their “internal police”; Parliament and the King controlled trade and foreign policy
• Independence declared by a union of “free states”
• States were the most democratic governments in the world in the late 18th; ratified by the people; annual elections; expanded suffrage; bills of rights; separation of powers
• State reforms – northern states ended slavery (slowly); separation of church and state in some states (Virginia)
• The Articles of Confederation (1781) as a treaty among sovereign states who entered into “a firm league of friendship” retaining their “sovereignty, freedom, and independence”; this is what federalism meant in 18th
• Congress had “external” affairs: war, peace, foreign affairs; the states control over “internal police”
The Trials of the Confederation

• Congress had no direct taxing power; relied on voluntary requisitions from the states; changes to the Articles required unanimity; major decisions required nine states
• Americans didn’t want to create another distant central government like Parliament
• War financed by paper money and debt (taxes not sufficient); debt had to be paid back to state and federal bondholders, foreigners, army officers, and soldiers
• Not worth a continental: in April 1781 $1 Spanish silver dollar worth $146 in Continental paper money
• States won’t voluntarily pay Congress in specie (gold or silver)
• Congress can’t get states to agree to a national tax (Rhode Island vetoed impost in 1781, New York in 1783)
• Army officers at Newburgh in 1783 almost mutinied over pay (possible military coup)
• Congress can’t get states to fulfill treaty obligations (Loyalists not compensated so Britain keeps forts in northwest and closes West Indies to Americans; Spain closes Mississippi to American shipping)
The Trials of the Confederation

- Native Americans still control the west
- Sectional tensions: John Jay can’t negotiate with Spain because south fears Congress will cede right to Mississippi
- States let debtors off the hook and also raise taxes (Shay’s Rebellion)
- Successes: Congress won the war; obtained a generous peace; got the states to cede western land; organized the Northwest (no slavery; territories become equal states)
- The emergence of a nationalist critique of the Articles in the 1780s
- Nationalists served in Congress or the army (or both); disillusioned by the lack of virtue shown by the people/states
- Washington, Madison, Hamilton: Confederation too weak in a dangerous world; states undermining republican government; states too democratic (tyranny of the majority)
Philadelphia and After

- The road to Philadelphia: majority of the 55 delegates to the convention had served in the army or in Congress or both
- Debates in the Federal Convention (May to September 1787) – the Virginia Plan and the “great compromise” on representation
- The new constitution – a national government with real (though ‘enumerated’ or limited) powers; elected by the people; with separation of powers (bicameral legislature; executive with veto, independent judiciary); compromises on slavery; free trade between states
- Crucial powers of new federal government: can tax public directly, can borrow (national debt), can raise and pay for a national (‘standing’) army; can sign binding treaties
- State sovereignty limited – no treaties, tariffs, issuing of money, impairing contracts – but still powerful (“internal police”)
- U.S. now partly federal, partly national
- Anti-Federalists’ critique: republics have to be small; fear of ‘consolidated’ federal government; no bill of rights
- Ratification (1788) with a Bill of Rights (1791)
- The limits of the Bill of Rights (doesn’t apply against the states)