

Reconciling coercion in the constitution of the American republican state.

Thomas G. Rodgers

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Abstract

In fracturing the imperial bond and rejecting the sovereignty of the King in Parliament, the patriots of 1776, and after 1783 Americans, embarked upon a remarkable conversation concerning the form of the state, the nature of governance, and the character of republican citizenship. Central to this process, but lacking in sustained focus, was the contentious issue of the role of coercion requisite to sustain the revolutionary process and respect the virtuous character of a free people. This article argues that the experience of building a state, with particular focus on the Commonwealth of Virginia, ensured that the framers eventually became reconciled to the paradoxes of coercion in securing the safety of the new nation.

Key Words: History; American Revolution; U.S. Constitution; Coercion; Virginia

In his essay, Federalist No. 20, on the historical precedents of confederal government, James Madison drew the conclusion that it would be “subversive of the order and ends of civil polity” were the “destructive *coercion* of the *sword*,” to be substituted in the “place of the mild and salutary *coercion* of the *magistracy*.”¹ The alarming prospect of physical violence that would doubtless ensue between the states in an ill-regulated confederation was, therefore, an important reason to endorse the proposed Constitution in which the powers of government would be properly regulated and coercion would be both “mild and salutary”. Madison, along with many other political thinkers and leaders of the Revolution, Alexander Hamilton excepted, was consistent in his desire to constrain the coercive powers of the state, but he was equally desirous to ensure that the state should be endowed with those coercive powers. However, as the dichotomy between the coercion of violence and of the law revealed, the question of what type of coercion would be suitable in a republic was to prove a complex one.

The Founders’ debates over what constituted the acceptable nature and extent of coercion helped to inspire, and then to inform, the unfolding drama of revolutionary state formation that transformed the Thirteen British North American Colonies into the fledgling United States of America. The project of state formation initiated by the collapse of the colonial regime across the thirteen British North American colonies and extending through to the implementation of the Constitution of the United States of America constituted one of the most intense and sustained efforts to remake government in the early modern Atlantic World.² Throughout this period the colonists, later United States’ citizens, were forced to

¹ James Madison, with Alexander Hamilton, “Federalist Paper No. 20,” in *The Federalist*, ed. Terence Ball (Cambridge: Cambridge University Press, 2003), 93. Italics in the original. This distinction had previously been made by Alexander Hamilton in “Federalist Paper No. 15”, 68.

² On the construction of the revolutionary state the classic statement remains Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (1969; repr., Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 2008); essential for understanding the Framers’ ambitions for the federal Constitution is Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003). Further approaches identified by: Jack P. Greene, “State Formation, Resistance, and the Creation of Revolutionary Traditions in the Early Modern Era”, in *Creating the British*

confront, time and again, the most fundamental questions pertaining to the nature of governance and the relationship between state and citizen. A critical, yet often overlooked, component of these debates was the issue of coercion. The term itself had a precise enough definition relating to restraint by force or threat, but its location as a concept within the political thought on government was much more complex.³ Within an era marked by profound conceptual change, in which the terms of political language were tempered under the great pressure of debate, coercion was not a term that sustained explicit scrutiny on its own terms. In part, the relative obscurity of coercion as a central tenet of the debate surrounding state formation stemmed from the multivalent language of the “monopoly of legitimate physical violence” endowed to the state, including force, power, sovereignty, and authority.⁴ Although separate and precise, these concepts were inevitably intertwined in the discussions surrounding the creation of the revolutionary republican state; a delineation that continues in the historiography.⁵

Coercion, understood politically, was primarily an expression of the authority of the state to compel obedience to the laws of the commonwealth. Following Thomas Hobbes, whose *Leviathan* of 1651 was a masterwork on the form of the early modern state, the role of coercion is made clear: “For he that performeth first, has no assurance the other will performe

Atlantic: Essays on Transplantation, Adaptation, and Continuity (Charlottesville: University of Virginia Press, 2013), 34-63; Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville: University of Virginia Press, 2009); and Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill & Wang, 2007). Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution* (New York: Oxford University Press, 2016) is another foray into long-running debate of the Framers' intentions.

³ Samuel Johnson, *A Dictionary of the English Language*, 2nd ed. (London: W. Strahan, 1755), 1:400.

⁴ Max Weber, “The Profession and Vocation of Politics,” in eds. Peter Lassman and Ronald Spiers *Weber: Political Writings* (Cambridge: Cambridge University Press, 1994), 310-11. A significant influence on the approach to interpreting political concepts in this article derives from the essays in Terence Ball and J. G. A. Pocock, eds. *Conceptual Changes and the Constitution* (Lawrence: University Press of Kansas, 1988).

⁵ For instance, the dual entry for “coercive power/government of force” in the index of Edling’s *Revolution in Favor of Government*, 317.

after; because the bonds of words are too weak to bridle mens ambition, ambitions, avarice, anger, and other Passions, without the feare of some coërcive Power”.⁶ Coercion, in this abstract formulation, was therefore an expression of the power that the state could threaten, and if necessary wield, to ensure that government was maintained. Thus, coercion expressed a particular aspect of the vocabulary of political force and violence. Beyond this political realm, coercion described any form of force of compulsion, and could and did encompass a whole host of coercive relationships that existed within the early modern Atlantic World. These social relations, such as that of master and slave or servant, or family patriarch and dependents, were enforced by law and custom and to some extent replicated the political commonwealth of the state. However, in the ideological ferment of revolution, the elites who challenged the role of coercion in the state proved unwilling to see it challenged within their own little commonwealths.

The term coercion was elided to a degree in the founding debates because of its negative connotations with the seemingly unwarranted compulsion that marked Parliament’s endeavors to punish the recalcitrant colonists. Liberty was the watchword for the patriots and in the febrile atmosphere in which they feared they were being enslaved coercion was too easily associated with tyranny and slavery. The Loyalist Jonathan Boucher tellingly reclaimed the opprobrious term from Patriot dismay over the Coercive Acts and applied it to his own treatment, writing that “everything that savours of, or but approaches to, coercion or compulsion is persecution and tyranny.”⁷ A republican society did not imply the wholesale rejection of coercive force; indeed coercive actions could be extensive and extreme, ranging as they did from the economic coercion of non-importation of British goods to violence directed against enemies of the Revolution, actions characterized as “self-defense”. However,

⁶ Thomas Hobbes, *Leviathan* (1651), ed. Richard Tuck, revised student ed. (Cambridge: Cambridge University Press, 1996), 96.

⁷ “To George Washington from Jonathan Boucher, 6 August 1775,” *Founders Online*, National Archives, last modified June 13, 2018, <http://founders.archives.gov/documents/Washington/03-01-02-0164>. [Original source: *The Papers of George Washington*, Revolutionary War Series, vol. 1, 16 June 1775–15 September 1775, ed. Philander D. Chase. Charlottesville: University Press of Virginia, 1985, pp. 252–255.]

this was not coercion against virtuous citizens.⁸ In practice, moreover, the potential legitimacy that the British state may have had to apply coercive measures was, by the eve of the Revolution, irredeemably undermined by the rejection of British sovereignty. Yet for all of these problems with the term, coercion could not be discarded from the technical vocabulary of eighteenth-century governance and was therefore essential to the process of state making whether or not the patriots or framers wished to use the word explicitly. Coercion was something of a paradox that required at least some attempt to reconcile the need to guarantee liberty alongside the protection of state, citizen, and property.⁹

Reconciling and rehabilitating coercion into the conception of the republican state was therefore a process undertaken by a faction of the political elite who felt their grip on the levers of power undermined by the democratic tendencies that emerged from the Revolution. These were men acclimatized to exercising control both within the public and private spheres of their lives. Yet whilst these pragmatic motivations remain crucial for understanding the outcome of the framers' actions, the legacy of their abstract, often arcane, discussions of coercion had equally profound consequences for the future treatment of the inhabitants of North America, and for the resilience of the state in the face of threat. By establishing the form of government afresh, wholly according to the best theories of political thought of the era, the framers were able to delineate the coercive character of the state in a manner that was to prove decisive to the future stability of the state.

⁸ Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of Opposition to Britain, 1765-1776* (London: Routledge & Kegan Paul, 1973), 251-253, 273-4. As Maier notes, legal-minded Patriots were alarmed with the implications of mob violence.

⁹ E. A. Goerner and Walter J. Thompson phrase it thus, "the liberal state is a paradox: a coercive public order to guarantee individualistic liberty," in "Politics and Coercion", *Political Theory* 24, no. 4 (1996), 620. There has been a growing interest in the question of violence and coercion in the historiography of the American Revolution and also of the US state: Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton: Princeton University Press, 2015). A recent PhD thesis, discovered too late for the arguments to inform this piece, is Aaron Tristan Knapp, "Law's Revolutions: Coercion and Constitutional Change in the American Founding." PhD diss., Boston University, 2016. <https://hdl.handle.net/2144/14538>.

Virginia's journey from colony to independence as a sovereign state, and the critical role played by Virginians in the design and debate over the federal Constitution, exemplified the complex transition of the place of coercion in the ideology of state formation. Although sharing many of the characteristics of the common cause of the other colonies, the combination of republican rhetoric, revolutionary ideology, social conflict, and the existence of large enslaved population created a specific context in which the tensions of coercion were examined with particular scrutiny. Virginia was to exhibit most acutely some of the great ironies of the Revolution, which were both part of, and to some extent mirrored, the dilemmas of a coercive state. Beginning with the initial resistance to what was considered the intolerable coercion of the British Empire, Virginian Patriots constructed a stoic imagery of republican virtue to contrast with the corrupting influences emanating from Parliament. The idealistic expectations were possibly unreachable, for as Arthur Lee confessed, "the fears, I have long entertained, that there was not virtue enough in America to sustain her liberties, overwhelm me now with affliction."¹⁰ However, as continued resistance gradually dismantled the sinews of the colonial regime, and the necessity arose of replacing the framework of government with a new constitution, confidence was regained. As one commentator wrote, conditions in the commonwealth were propitious to erect the "best republicks, upon the best terms that ever came to the lot of any people before us."¹¹

For the Patriots the connection between virtue and liberty stood in stark contrast to the corrupt tyranny stretching out from Whitehall to strangle freedom. The peril of the situation, in part exaggerated by metaphor, but real enough in the form of British military resources, served to differentiate the intolerable coercion attempted by the failing colonial regime and the self-preserving persuasion and vigilance of unified resistance. The emerging revolutionary regime, evolving from extra-legal committees to autonomous government, was full willing to exercise coercive powers against the perceived enemies of liberty, but careful justification was required. However, as Peter Thompson has recently suggested, the hardening position of the patriot proto-government against colonists lukewarm or hostile to

¹⁰ Arthur Lee to Theodorick Bland, London, 21 August 1770 in ed. Charles Campbell, *The Bland Papers* (Petersburg: Edmund & Julian Ruffin, 1840) 1:28. Significance of virtue discussed in Wood, *Creation of the American Republic*, 65-70; J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975).

¹¹ E. F. *Virginia Gazette* (Purdie), May 17, 1776, 2.

the resistance movement absorbed the ideological foundations of the punishment of chattel slavery into the armory of coercive control.¹² Thus the paradigm of a state differentiating between virtuous citizens and an unruly – and therefore to be ruled – enemy was further incorporated into the strategy of the nascent republican state. When, in November 1775, the Virginia governor, Lord Dunmore, attempted to recruit slaves to bolster the imperial regime this logic of slavery and revolution – that Britain was attempting to enslave and that resistance must succeed – was only reinforced.¹³

Once independence was firmly accepted, establishing a republican state to support defensive measures became an urgent necessity. Carter Braxton urged the Virginia Convention “to assume the reins of government, and no longer suffer the people to live without the benefit of law”, or the ongoing uncertainty would lead to “[a]narchy and riot” and would therefore “render the enjoyment of our liberties and future quiet, at least very precarious.”¹⁴ In a similar, if less alarmist, vein, Richard Henry Lee wrote to Edmund Pendleton of his hopes for the progress being made by the Virginia Convention on this task, noting that “a wise and free government, without which, neither publick or private happiness

¹² Peter Thompson, “Social Death and Slavery: The Logic of Political Association and the Logic of Chattel Slavery in Revolutionary America”, in eds. Patrick Griffin, Robert G. Ingram, Peter S. Onuf, and Brian Schoen, *Between Sovereignty and Anarchy: The Politics of Violence in the American Revolutionary Era* (Charlottesville: University of Virginia Press, 2015), 139-164.

¹³ Philip D. Morgan and Andrew Jackson O’Shaughnessy, “Arming Slaves in the American Revolution,” in eds. Christopher Leslie Brown and Philip D. Morgan, *Arming Slaves: From Classical Times to the Modern Age* (New Haven: Yale University Press, 2006), 189. The exclusionary nature of racial discourse during the Revolution is compellingly revealed in Robert G. Parkinson, *The Common Cause*

¹⁴ Carter Braxton, *An Address to the Convention and Ancient Dominion of Virginia* (1776), in eds. Philip B. Kurland and Ralph Lerner, *The Founders’ Constitution* (Chicago: Chicago University Press, 1987); online ed. <http://press-pubs.uchicago.edu/founders/documents/v1ch18s10.html>. For discussion of this political metaphor in the Confederation period see: Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill & Wang, 2007), 5.

or security can long be expected.”¹⁵ For Lee, along with other republicans, the key to security was the imposition of constraints upon governmental power and prerogative. Prefaced by its Bill of Rights, the republican constitution of Virginia certainly introduced and clarified considerable protection for the liberty of the citizen. The first three sections stipulated the principles upon which the new government would be conceived, emphasizing the belief in popular sovereignty. The third section, designed to incorporate a Lockean notion of just resistance, began with a brief overview of the purpose of government: “that government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community: that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration.”¹⁶ However, for all of the emphasis on protecting the individual, the function of government to protect the people, and by extension the revolutionary state, required and received much more specific coercive powers. In addition to establishing the state constitution, the convention delegates issued an ordinance “to enable the present magistrates and officers to continue the administration of justice, and for settling the general mode of proceedings in criminal and other cases, till the same can be more amply provided for.” That there would be more ample provision was expressly addressed in the preamble: “it will require some considerable time to compile a body of laws suited to the circumstances of the country, and it is necessary to provide some method of preserving peace and security to the community in the meantime.”¹⁷ Perhaps inevitably, this required a continuation of the existing laws derived from the English Parliament and Virginia General Assembly.

¹⁵ Richard Henry Lee to Edmund Pendleton, 12 May 1776, in eds. Paul H. Smith, et. al., *Letters of Delegates to Congress, 1774-1789* (Washington, D.C.: Library of Congress, 1976-2000), 3:667, [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg003615\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg003615))).

¹⁶ The Constitution of Virginia – 1776, in ed. Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the States, Territories, and Colonies now or heretofore forming the United States of America* (Washington: Government Printing Office, 1909), 7:3812.

¹⁷ *Ordinances passed at a General Convention of Delegates and Representatives from the several counties and corporations of Virginia (1776)* (Richmond: Ritchie, Truehart & Du-Val, 1816), 9-10.

As Gwenda Morgan notes, it was not the ideology of the Revolution itself which begat legal reform along the lines of Enlightenment discourse, but nevertheless the opportunity to review the legal code was seized with some enthusiasm by the reform-minded.¹⁸ In keeping with the broader opportunity to rid the framework of government of its problematic inheritances from Britain in the writing of the new constitution was the chance to revise the laws with a similar intent; most notably with establishment of a committee tasked with this purpose, principally comprising of Thomas Jefferson, George Mason, and Edmund Pendleton. That the fundamental principles of these tasks were, within the strict limits of existing racial and gender hierarchies, liberal, did not obviate the reassertion of legitimate force where required. In a written exchange between Pendleton and Jefferson, prior to their collaboration as committeemen, the challenge of reconciling the apparatus of the state against criminal activity was canvassed. Pendleton, hearing rumors of Jefferson's over-enthusiasm, acknowledged that the law had "hitherto been too Sanguinary, punishing too many crimes with death," and was willing to see it "changed for some other mode of Punishment in most cases." In his response, Jefferson repudiated the allegations that his intention was to do away with penalties and rely on virtue alone, clarifying that:

It is only the sanguinary hue of our penal laws which I meant to object to.

Punishments I know are necessary, and I would provide them, strict and inflexible, but proportioned to the crime. Death might be inflicted for murder and perhaps for treason if you would take out of the description of treason all crimes which are not such in their nature. Rape, buggery &c. punish by castration.¹⁹

Jefferson's proposals for a graduated scale of punishments revealed an enthusiasm for theoretical neatness rather blind to its barbarous implications.

Although the proposed bill "for Proportioning Crimes and Punishments in Cases Heretofore Capital" was never enacted, it represented something of the tensions inherent within the developing republican state toward the degree of violence that could be sanctioned

¹⁸ Gwenda Morgan, "'One of the first fruits of liberty:’ penal reform in the young Republic", in ed. R. A. Burchell, *The End of Anglo-America: Historical Essays in the study of Cultural Divergence* (Manchester: Manchester University Press, 1991), 87.

¹⁹ Jefferson to Pendleton, Philadelphia, 26 August 1776, *ibid*, 503-506. Perhaps unsurprisingly, Jefferson was later to distance himself from this crude example of the *lex talionis*, Jefferson, *Autobiography*, in ed. Merrill D. Peterson, *Thomas Jefferson: Writings* (New York: Library of America, 1984), 38.

for the state to wield.²⁰ This instance was not an explicit discussion of coercion, and was, moreover, confined to the punishment of crimes against “lives, liberties and property of others”, that is of individual citizens and not the state. Nevertheless, as Pendleton had conceded and other enthusiasts for reform had argued, the inherited regime of capital punishment was unsuitable for an enlightened republic.²¹ Reformulating the state’s representation and deployment of force, at least in the case of criminal endeavors, demonstrated a desire to constrain and codify the coercive apparatus. However, even the architect of the plan, Jefferson, was not blindly optimistic in the ability of human nature to have the quantum of virtue necessary to sustain the peace of the land unaided.²² Rather, the apportioned severity of the proposed sentences testified to the rigor with which the republican state could punish criminal acts. Within the broader revision of the laws that Jefferson was engaged with, albeit with a completely different intellectual context, Jefferson vehemently rejected the authority of the state to coerce the mind. In the famous preamble to the Bill for Establishing Religious Freedom, which premised that “Almighty God hath created the mind free,” Jefferson explained that “the holy author of our religion ... chose not to propagate it by coercions” on either the mind or the body.²³ Jefferson may have advanced more rapidly toward reform than many of his fellow Virginians were willing to countenance, but the episode of the committee of revisors revealed the desire to clarify and strengthen the

²⁰ “64. A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital, 18 June 1779,” *Founders Online*, National Archives, last modified April 12, 2018, <http://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0064>. [Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 492–507.]

²¹ Steven Wilf, *Law’s Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (New York: Cambridge University Press, 2010), 10.

²² Maurizio Valsania, *The Limits of Optimism: Thomas Jefferson’s Dualistic Enlightenment* (Charlottesville: University of Virginia Press, 2011), esp. 78-84. Valsania further discusses Jefferson’s latterly-expressed willingness to supersede the law in exceptional circumstances: 149-151.

²³ “82. A Bill for Establishing Religious Freedom, 18 June 1779,” *Founders Online*, National Archives, last modified April 12, 2018, <http://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082>. [Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 545–553.]

authority of the fledgling state in a manner conformable to its republican character. This was a state in which the limits on coercion to enhance the liberty of individuals fully justified the effective deployment of force against those who were deemed to threaten the state.

As the theoretical limits of the state's coercive authority over its citizens were debated, and the contrasts with the arbitrary colonial form were drawn, the revolutionary state continued to rely on the traditional, nearly unremarked, domestic coercive authority inherent in the overlapping patriarchal authority of the early modern household and chattel slavery.²⁴ That Virginia's slaveholding political elite had, as Alan Taylor wryly describes, "a very weak sense of irony," when it came to their rhetoric over British attempts to enslave them, and their own ownership of human chattel has long been discussed as a matter of paradox or hypocrisy.²⁵ The relationship of slavery to the republican state demonstrated one of the most significant coercive mechanisms available to legislators: the deliberate exclusion of a person, or group of people, from legal protection. The "Bill concerning Slaves" drafted by the committee repeatedly defined in its different sections the conditions under which the persons specified would be "out of the protection of the laws." Existing prohibitions on slave testimony in courts against citizens, against travelling in groups, nor without permission were maintained. Corporal punishment ('with stripes') decreed by a Justice of the Peace was prescribed for such infractions.²⁶

Virginia had inherited the interconnected hierarchies of coercive control which had long been a hallmark of the evolving system of the early modern Atlantic world. As Douglas Hay demonstrates, the severity of eighteenth-century English criminal law was implemented with the purpose of reinforcing the social order as well as punishing malefactors.²⁷ The severity of capital punishment or transportation meted-out to fellow subjects was part of a

²⁴ Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 1996), 15-19, 319-324.

²⁵ Alan Taylor, *The Internal Enemy: Slavery and War in Virginia, 1772-1832* (New York: W. W. Norton, 2013), 14.

²⁶ "A Bill concerning Slaves" in *Report of the Committee of Revisors appointed by the General Assembly in Virginia* (Richmond: Dixon and Holt, [1784]), 40.

²⁷ Douglas Hay, 'Property, Authority and the Criminal Law', in eds. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane, 1975), 24-25.

spectrum of state sanctioned violence that extended to the unlimited coercion of the Caribbean plantation regime or that used against Native Americans in war. That the spectrum was fractured by the Somerset decision in 1772 merely reinforced the fissures of coercion that were inherent within empire. The recourse of the revolutionary republican state to these separate traditions of coercive authority was therefore merely a continuation of existing practice and ideology, albeit with some amendment. It was the inner pragmatism that ensured the continued functioning of a state whose wellspring was supposedly the virtue of the people, but which refused to extend its privileges to any who were not assuredly loyal.

State formation in Virginia may have permitted the implementation of long-held theoretical principles of governance, but the context of resistance and revolutionary war inevitably conditioned interpretations of the nature and legitimacy of force. Coercion was required to sustain the Revolution, an additional burden to the state's traditional purpose to maintain the acceptable bonds of society. Consequently, it was entirely coherent to their political ideology for staunch advocates for liberty, of whom some were to become leading Antifederalists, to voice strong opinions on the necessity of effecting coercive measures. The legitimization of this behavior was couched in the fundamental purposes of government and the zeal for advancing the cause of liberty and protecting property. One of the greatest challenges for revolutionary state, at least for the early part of the war, concerned the raising of troops to serve in the Continental Army. The trials of waging an extended war quickly tested the virtuous spirit of voluntarism on two connected fronts: recruiting men and raising taxes. As the struggle continued, the necessity of a more coercive approach became clear.

Military power and discipline were the ultimate resource of the state and consequently set apart from the accepted privileges of civilian government; much to the disgust and fear of English radical writers and American patriots.²⁸ However, the theoretical objection was to being “govern'd by Armies” and “Military Government,” and to the failure to reduce the army to the “usual Guards and Garrisons” once immediate danger had passed.²⁹ The practical experience of eighteenth-century warfare both at home and abroad produced a greater legal focus on the extent and prerogatives of military power, notably Stephen Adye's 1769 *A*

²⁸ Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged ed. (Cambridge, MA: The Belknap Press of Harvard University Press, 1992), 62-63. [R3: Military Coercion Historiography – huge]

²⁹ Cato [Thomas Gordon], *A Discourse on Standing Armies* (London: T. Warner, 1722), 8, 17.

Treatise on Courts Martial, dedicated to the Commander in Chief in North America, Thomas Gage. The rigors of military discipline, “so plainly shewn by the Articles of War, which every military Man is, or ought to be fully acquainted with,” were a separate and long-established code, the necessity of war and acts of Parliament justifying its severity.³⁰ It was within this mixed intellectual heritage that Virginia’s legislators sought to embody their fellow citizens to defend their liberties. As with the protection of property, social class divisions went some way to explaining practices which would be uncomfortable, if not intolerable, for the politically enfranchised. Thus, Michael McDonnell identifies the continuity between the practices of the colonial regime, in which “provincial elites raised soldiers by coercing and exploiting the lowest classes of whites,” and that of the revolutionary state.³¹

Virginia’s failure to raise troops for the Continental Army reflected the increasing strains of waging a revolutionary war; with the somewhat incompatible competition between the desire to maintain the Commonwealth’s militia, and those who expressed exasperation against the “lazy, worthless young men” who were not volunteering.³² Implementing a draft in 1777 to combat continued shortfalls demonstrated how far the urgency of defense against British forces, or internal enemies, had eroded faith in the inherent virtue of the people. Volunteering was to be encouraged by bounties in order to make conscription more palatable,

³⁰ Stephen Payne Adye, *A Treatise on Courts Martial* (New York: H. Gaine, 1769), 6; Blackstone covers the nature of military discipline and its support by Parliament, William Blackstone, *Commentaries on the Laws of England* (Chicago: Chicago University Press, 1979), 1:399-402. The significance of a separate sense of military law is also discussed by Edling, *Revolution in Favor*, 82.

³¹ Michael A. McDonnell, “‘Fit For Common Service?’ Class, Race, and Recruitment in Revolutionary Virginia”, in eds. John Resch and Walter Sargent, *War and Society in the American Revolution: Mobilization and Home Fronts*, (DeKalb: Northern Illinois University Press, 2007), 105. McDonnell’s broader examination of the social conflict exacerbated by wartime conditions in his *The Politics of War: Race, Class, and Conflict in Revolutionary Virginia* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 2007).

³² Richard Henry Lee to Thomas Jefferson, 29 April 1777, cited in Jeff Broadwater, *George Mason: Forgotten Founder* (Chapel Hill: University of North Carolina Press, 2006), 112; Mason’s views, 73.

but there was also an undercurrent of threat. The apprehension of certain classes of deserter would reduce by a straight swap of man for man the quota from that county. The provision concluded, “all deserters heretofore or hereafter enlisted or draughted in this commonwealth, and not otherwise punished by martial law, shall be compelled to serve double the time of their absence from duty.” Military government by the British was still abominated, but martial law was the accepted law for military personnel. Under the growing pressure of the approaching British invasion in late 1780-1781 the discord of the draft increased resistance from an individual to a collective level. In extremis, with British troops undermining the operation of government, the line between martial law and military government became blurred. George Mason complained of draft resistance in the lower counties: “if such dangerous Mutinies are not affectually quelled, & the Ring-leaders punished, our Government can’t subsist. IF the Civil Power of the Countys where they have happened is insufficient, I hope the military Force, lately raised, will afford Means of doing it.”³³

The creation of the Virginian state in time of revolution and war revealed both the idealism of the republican vision of governance and the pragmatism of authority. Although weakened by internal tumults and exterior threats, elite Virginians of different political persuasions were, at least, inheritors of an intellectual tradition which located legitimate coercion as an essential of state sovereignty. Within the state there was debate about its form, extent, and acceptability, but not its necessity. However, the Commonwealth of Virginia was not a state alone, but a state confederated within the United States of America under the Articles of Confederation. It was in this relationship that the blurring of sovereignty produced new discussions over the acceptable nature of coercion for the common good. Once again, but in a different framework, the question of compulsion in the name of the people would raise significant debate and challenging answers.³⁴

Mirroring the process of republican state formation within each state was the protracted and controversial process to establish a form of government between the states under the Articles

³³ William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the first session of the legislature in the year 1619* (Richmond, 1821), 9:344; McDonnell, “Fit For Common Service?”, 123-5; George Mason to Thomas Jefferson, 6 October 1780, in ed. Robert A. Rutland, *The Papers of George Mason, 1725-1792* Chapel Hill: University of North Carolina Press, 1970), 2:676.

³⁴ Articles of Confederation in Thorpe, *Federal and State Constitutions*, 9-17.

of Confederation and then the Constitution. Whereas the composition of sovereignty within an existing polity was relatively clear-cut, the question of how it was to be shared between the sovereign states acting in concert was to prove significantly more challenging to determine. The problem of the coercive powers that could be accorded to this form of state was therefore the subject of much more explicit scrutiny and debate than had been required by the relatively straightforward transformation from monarchy to republic. Yet, for all the differences between these two different expressions of state formation, the purpose and means by which the state was to be endowed with coercive authority were couched in the same language of social contract and good governance. These ideals were, from the inception of national politics, a counter to the factionalism and frustrations of regional jealousy over tactics and resources. The protracted struggle to ratify the Articles of Confederation were set in sharp relief by the ongoing hardships of war. One correspondent of Thomas Jefferson lamented the impasse and opined that ratification would “give force and energy to the proceedings of congress”.³⁵ However, when the Articles came into effect on 1 March 1781 their limitations provided no panacea and early attempts to amend sought to remedy the most glaring defects. Under the increasing threat to Virginia posed by the advance of Cornwallis’s army the perceived failure of Congress to provide sufficient support prompted an exasperated Theoderick Bland to spell-out the principles at stake: “all things will go well-could the states be prevailed on to throw into the hands of Congress a few of those sovereign powers, which are (in the hands of the individual States) totally inefficient to work the general weal-as the powers of no one state can be competent or coextensive to the wants of the whole.”³⁶ Bland’s diagnosis of the fundamental problems was both acute and succinct, at least in comparison to the constitutional prose which had been drafted to achieve this very purpose.

³⁵ “To Thomas Jefferson from William Fleming, 22 May 1779,” *Founders Online*, National Archives, last modified March 30, 2017,

<http://founders.archives.gov/documents/Jefferson/01-02-02-0106>. [Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 267–270.]

³⁶ Theodorick Bland to St. George Tucker, Philadelphia, 11 May 1781, in Smith, *Letters of Delegates*, 17:230n3 identifies that Bland had privately used the term coercion in relation to the additional powers that Congress might require to enforce the Articles of Confederation. I am grateful to Dr Gwenda Morgan for this reference.

The first movement to strengthen the Articles upon their ratification was the report of a committee, comprising James Mitchell Varnum, James Duane, and James Madison, charged with preparing a “plan to invest the United States in Congress assembled with full and explicit power for effectually carrying into execution in the several states all acts or resolutions passed agreeably to the Articles of Confederation.”³⁷ The report, in James Madison’s handwriting, sought to make explicit the provision for enforcing the resolutions of Congress under the Articles. It was “most consonant to the spirit of a free constitution that on the one hand all exercise of power should be explicitly and precisely warranted, and on the other that the penal consequences of a violation of duty should be clearly promulgated and understood”. To that end, a further clause was proposed for addition to the Articles authorizing the use of federal force “to compel such State or States to fulfill their federal engagements”.³⁸ The proposal was swiftly drowned in procedural procrastination: the report was turned-over to a new committee for further deliberation, which delivered another report, which was, in turn, referred to a new committee (this one consisting of Edmund Randolph, Oliver Ellsworth, and Varnum), who drafted a further report for the 22 August 1781, which was then shelved.³⁹

Whilst the short-term failure to initiate reform, especially against the backdrop of war, was a harbinger of the structural paralysis that so alarmed the Articles’ nationalist critics, Madison’s involvement in drafting the first report also provided a glimpse of the struggle to frame coercive authority in an acceptable manner. Madison’s first draft of the amendment included the use of the word “coercive” in relation to the authority and power that Congress lacked and ought to have: “And Whereas the want of such provision may be made a pretext by delinquent States against whom coercive measures which may be necessary for preserving the authority of the Confederation & for doing justice to the States which shall duly fulfill

³⁷ *Journals of the Continental Congress, 1774-1789*, ed. Worthington C. Ford et al. (Washington, D.C., 1904-37), 19:236.

³⁸ “Proposed Amendment of Articles of Confederation, [12 March] 1781,” *Founders Online*, National Archives, last modified June 29, 2017, <http://founders.archives.gov/documents/Madison/01-03-02-0007>. [Original source: *The Papers of James Madison*, vol. 3, 3 March 1781–31 December 1781, ed. William T. Hutchinson and William M. E. Rachal. Chicago: The University of Chicago Press, 1963, pp. 17–20.]

³⁹ The content, progress, and treatment of these reports is detailed in *DocHist*, I:141-3.

their foederal engagements”. Whether it was Madison or James Duane who was unhappy with the style, or with the content, the final draft excised the charge against delinquent states and the concomitant threat of coercive measures. Instead, the lines were amended to suggest the debatable legitimacy that might arise from the lack of explicit clarity pertaining to the precise powers granted to Congress.⁴⁰ Madison was much more forthright in his letter to Jefferson on the subject of the report and on the “necessity of arming Congress with coercive powers”; in private the sensibilities of the smaller states’ amour propre could be ignored.⁴¹ The nature and degree of aversion to coercion displayed in this instance is debatable, a slim foundation on which to build a case, but it does stand as a contrast to the much more open avowal of the term in the subsequent process of drafting and ratifying the Constitution.

The continuity of the concerns from these first failed attempts at amendment to the proposals for extra-Congressional reforms to the Articles reflected the growing fears that post-revolutionary government was unvirtuous, unstable, and increasingly unworkable. Virginian critics of this state of affairs maintained, in keeping with Madison’s earlier analysis, that the lack of coercion was integral to the problems faced by the fledgling republic. As George Washington confided to James Madison, he had “doubts whether any system without the means of coercion in the Sovereign, will enforce obedience to the

⁴⁰ The evolution and responsibility for the draft is identified in the editorial apparatus: “Proposed Amendment of Articles of Confederation, [12 March] 1781,” *Founders Online*, National Archives, last modified June 29, 2017, <http://founders.archives.gov/documents/Madison/01-03-02-0007>. [Original source: *The Papers of James Madison*, vol. 3, 3 March 1781–31 December 1781, ed. William T. Hutchinson and William M. E. Rachal. Chicago: The University of Chicago Press, 1963, pp. 17–20.]

⁴¹ “From James Madison to Thomas Jefferson, 16 April 1781,” *Founders Online*, National Archives, last modified June 29, 2017, <http://founders.archives.gov/documents/Madison/01-03-02-0034>. [Original source: *The Papers of James Madison*, vol. 3, 3 March 1781–31 December 1781, ed. William T. Hutchinson and William M. E. Rachal. Chicago: The University of Chicago Press, 1963, pp. 71–73.] Banning contends that Madison’s work on this report was an indication of his desire to make explicit and not expand the powers of Congress; coercion is not treated as a particularly problematic term. Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Cornell: Cornell University Press, 1995), 21-22.

Ordinances of a Genl Government.”⁴² Madison had even fewer doubts, explicitly linking the lack of coercive sanctions as one of the vices prevailing in the existing system of confederation government: “A sanction is essential to the idea of law, as coercion is that of Government. The federal system being destitute of both, wants the great vital principles of a Political Cons[ti]tution.”⁴³ A reliance on virtue alone was insufficient for the state when treating with citizens, the same lesson would need to be applied to the states themselves. The form and application of coercive measures in a constitutional relationship did not, however, have the same foundations as that of the criminal law or wartime emergency to justify. Having expressed his doubts on a system without coercion, Washington proved wary of expressing a simple solution: “But the kind of coercion you may ask? – This indeed will require thought.”⁴⁴ Within the privacy of the convention the answer to Washington’s question was to be gradually unfolded in the debates and decisions that wrought the form of the Constitution.

The convocation in Philadelphia of fifty-five statesmen met at the behest of Congress to suggest “alterations” that, if approved, would “render the federal Constitution adequate to the exigencies of Government and the preservation of the Union” laid the foundations for a new form of federal government that was much more explicitly endowed with coercive authority.⁴⁵ That the remedy developed and proposed over the summer of 1787 was a fundamental reconceptualization of the relationship between state and citizen; contained innovations and compromises that propelled the political development of the new nation; and

⁴² George Washington to James Madison, 31 March 1787, in eds. W. W. Abbot and Dorothy Twohig, *The Papers of George Washington: Confederation Series* (Charlottesville: University Press of Virginia, 1992-2007), 5:115.

⁴³ James Madison, “Vices of the Political System of the United States, April 1787,” *Founders Online*, National Archives, last modified March 30, 2017, <http://founders.archives.gov/documents/Madison/01-09-02-0187>. [Original source: *The Papers of James Madison*, vol. 9, *9 April 1786–24 May 1787 and supplement 1781–1784*, ed. Robert A. Rutland and William M. E. Rachal. Chicago: The University of Chicago Press, 1975, pp. 345–358.] For the broader significance of this memorandum: Jack N. Rakove, *James Madison and the Creation of the American Republic* (3rd edn. New York: Pearson, 2007), 52-58.

⁴⁴ GM to JM, 31 March 1781, *PGW:CS*, 5:115.

⁴⁵ *JCC*, 31:74.

remains the operative Constitution of the United States to the present day has ensured that the meaning and events of the convention continue to receive intensive scrutiny. To address the requirement proposed by Congress to meet exigencies and to preserve the Union was, inevitably, to confront the question of the coercive powers appropriate for a state to assume.

Although the lack of coercive power had been explicitly identified as a weakness of the Articles prior to the convention, it was not a term that was readily adopted or deployed by the delegates, at least according to the various written memoranda of debates. As with previous usages in the language of state formation, coercion was an essential, but nevertheless a principle to be incorporated in relative silence. Consequently, the coercive strain of what was to become the Federal state was imbrued through the many different debates pertaining to sovereignty, representation, slavery, and the more explicitly enumerated powers accorded to the Congress.

Launching the first statement of what the new federal government ought to encompass, Edmund Randolph's speech introducing the Virginia Plan identified that the "character of such a governme[nt] ought to secure 1. Against foreign invasion: 2. Against dissensions between members of the Union, or seditious in particular states: ... 4. To be able to defend itself against incroachment: & 5. To be paramount to the state consistutions."⁴⁶ Regardless of the specific proposals that comprised the Virginia Plan, Randolph's character sketch identified the coercive attributes of statehood.⁴⁷ Further discussion on the plan explored the meaning of this radically different vision of a "national" or "supreme" frame of government, which was to have "a compleat and *compulsive* operation."⁴⁸ George Mason then elaborated the distinction between a confederation that was "deficient in not providing for coercion & punishment agst. delinquent States" and the type of government that was required which "could directly operate on individuals, and would punish those only whose guilt required it."⁴⁹ Differentiating between the use of coercion against a political entity and the punishment of individual criminals was to prove a crucial justification for the shift in the

⁴⁶ Mr. Randolph, Madison, 29 May 1787, Farrand, *Records*, I: 18

⁴⁷ Klarman, *Framers' Coup*, p. 148, explores the coercive provision contained in the Virginia Plan to enforce obedience from recalcitrant states.

⁴⁸ Mr. Govr. Morris, Madison, 30 May 1787, Farrand, *Records*, I:34. Emphasis in original.

⁴⁹ Mr. Mason, in *ibid.* Klarman argues that Mason's contribution persuaded Madison against the use of force against states in his review of the coercive properties of the Virginia Plan, *Framers' Coup*, p. 148.

locus of sovereignty; it was also useful in relegating coercion beneath the more acceptable language of crime and punishment.⁵⁰

Concomitant to the reformulation of sovereignty into a national legislature was the argument that it should have a negative over state laws which might infringe on the former's prerogatives. In keeping with preceding justifications, the proposed clause was framed as a means to dampen friction and remove the need to deploy force. For Madison, the "negative was the mildest expedient that could be devised" and a much more practical remedy than "an appeal to coercion."⁵¹ This was a continuation of his previously voiced concern that the use of force against an individual state could give the "party attacked" license to believe the compact of union dissolved.⁵² Opposing the proposed negative on principle, Gunning Bedford rejected the danger posed to smaller states by larger and suggested that whether or not there would be a negative the remedy would still be the same, "after all, if a State does not obey the law of the new System, must not force be resorted to as the only ultimate remedy, in this as in any other system."⁵³ Although the measure was rejected for reasons both practical and philosophical the episode illuminated the challenges faced in delineating the coercive powers of the proposed Constitution.⁵⁴ Madison displayed foresight in his concern that a resort to coercion would be difficult to enact and therefore preferable to avoid, but in this case the consensus was that the universal remedy would be worse than localized disease.

Following the intensive discussions and negotiations to establish the principles of representation and the framework of the government, the debate over the specific enumerated powers of the Congress was less fractious.⁵⁵ By making explicit in Article 1, section 8 the means by which the government of the United States could "Provide for the common Defence and general Welfare" of the state and its citizens, the Framers displayed openly the provision for coercive power. The outcome of the internal debates within the convention, at

⁵⁰ Hamilton made this point with some style in Federalist XV, *The Federalist Papers*, 149. See also Edling, *Revolution*, 117.

⁵¹ Madison, 8 June, Farrand, I:164. Yates, in his rendering of Madison's speech, did not use "coercion" specifically, but conveyed the same argument using the terms "compel" and "force". I:169.

⁵² Madison, 31 May, *ibid*, I:54

⁵³ *Ibid*, I:167.

⁵⁴ Further discussion of the debate in Rakove, *Original Meanings*, pp. 81-82.

⁵⁵ Rakove, *Original Meanings*, p. 84.

least so far as the extent of coercion as an adjunct of the new federal government was concerned, was to create the mechanisms for upholding the laws, not to create the means for deploying “coercion in its day-to-day administration of the laws.” As Max Edling rightly states, it did not “follow from the national government’s possession of the means of coercion that liberty was in danger.”⁵⁶

Once released for ratification by the people the Constitution was urged by its supporters as the means to safeguard the liberty won by Revolution. Unsurprisingly, although still worthy of notice, the new framework was defended in the same language of the necessity of government that had been deployed in the establishment of the state constitution. The pseudonymous author A Native of Virginia argued that the “best frame of government is that which is most likely to prevent the greatest sum of evil.”⁵⁷ Others, however, wrote or spoke in a manner which indicated that human nature was entirely dependent upon government for its security, “it being a fixed point that human nature cannot exist without the assistance of government.”⁵⁸ Neither perspective was controversial in terms of political thought, but these positions reflected the trend adopted by advocates of the Constitution to explicitly link the preservation of liberty with the carefully developed framework of government. As Alexander Hamilton made clear in the first number of the *Federalist Papers*, “the vigor of government is essential to the security of liberty.”⁵⁹

⁵⁶ Edling, *Revolution in Favor*, 116. The broader debate that stemmed from the convention concerning the operation of the specific powers of the proposed Constitution is fully analysed by Edling, and therefore requires no further discussion here.

⁵⁷ A Native of Virginia, *Observations upon the Proposed Plan of Federal Government* (Evans 21264), in eds. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan, *The Documentary History of the Ratification of the Constitution Digital Edition*,. Charlottesville: University of Virginia Press, 2009. IX, <http://rotunda.upress.virginia.edu/founders/RNCN-02-09-02-0003-0010>. [Hereafter *Doc. Hist.*]

⁵⁸ The State Soldier III, *Virginia Independent Chronicle*, 12 March [1788], in *Doc. Hist.*, VIII, <http://rotunda.upress.virginia.edu/founders/RNCN-02-08-02-0001-0273>.

⁵⁹ Publius [Hamilton], Federalist I, *The Federalist Papers* [1788], ed. Isaac Kramnick. (London: Penguin, 1987), 89. Further discussion of the problematic relationship between the character of man and the necessity of government in Edling, *Revolution*, 116.

The opportunity offered to the American people by the ratification process was earnestly regarded as an unprecedented chance to deliberately and voluntarily enter into a social contract. What before had been lost in the mists of time, or was traceable to conquest and civil tumult, was now to be deliberated upon reverently, discreetly, advisedly, and soberly. Edmund Pendleton made much of this in his speech to the Virginia Ratifying Convention on 5 June 1788. The peace and freedom presently pertaining in Virginia was propitious for considering “our real happiness and security.” Whereas government established by tyrants initiated a sustained war between despot and people, the opposite was now the case: “this is the only Government founded in real compact. There is no quarrel between Government and liberty; the former is the shield and protector of the latter. The war is between Government and licentiousness, faction, turbulence, and other violations of the rules of society; to preserve liberty.”⁶⁰ Furthermore, Pendleton rejected the notion that the new frame of government should be a source of alarm; the remedy for faults was established within it, and in extremis the people could recall their consent. The propriety of such a remedy could not be gainsaid in a republic born of revolution, yet Pendleton did not wish to end on such a point. In a caveat reminiscent of David Hume’s questioning of the rights of legitimate resistance, Pendleton concluded, “we ought to be extremely cautious not to be drawn into dispute with regular Government, by faction and turbulence, its natural enemies.”⁶¹ The penchant for rhetorical appeals to the authority of the canon of political philosophy was evidently designed to persuade or overawe sceptics, although two could play at that game. Yet the enthusiasm for the improvements in the “science of Government” were evidently helpful in allaying fears reconciling advocates of the Constitution to the concept of coercion, suitably understood.⁶² Beyond theory, there was also recourse to the lessons of history.

Historical examples and their lessons peppered the arguments in both the Constitutional Convention and ratification debates. The cornucopia was drawn from the

⁶⁰ Mr. Pendleton, Thursday, 5 June 1788, *Doc. Hist.*, IX. For analysis of the importance of fictive narratives to establishing claims to sovereignty: Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton & Company, 1988), 261.

⁶¹ *Ibid.*

⁶² Governor Randolph, The Virginia Convention, Tuesday, 10 June 1788, in *Doc. Hist.*, IX.

Classical World, early modern Europe, and more recent events.⁶³ There was one particular example, or set of examples, that was referenced to very similar purpose in different times and locations. In looking to historical example, rather than just principle, analogous cases of composite republican polities were relatively sparse, and consequently recycled; thus the litany of the problems and lessons from the Ancient Greece in the form of the Achaean League, the Amphietyonic League, and early modern Europe in the form of the Swiss Cantons and the Dutch Republic. Madison had investigated these different confederations during the course of 1786; his careful notes identifying key features, and listing both their attributes of “feederal authority” and vices.⁶⁴ In his review of the Classical and early modern examples he frequently noted a lack of central authority and force, but did not explicitly refer to the concept of coercion. There was recourse to these Classical examples in the Convention itself, although early passing mention (by James Wilson) was merely to suggest that states would not be subsumed by a general government.⁶⁵ A fuller elucidation (or at least, recording) of the example coincided with discussion of coercion, this time by Alexander Hamilton.⁶⁶

By the time Madison came to write publicly - if anonymously - in defence of the Constitution as Publius in *Federalist* XVIII, the term coercion was applied without hesitation: “The Amphietyons ... had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions.”⁶⁷ The failure of this confederacy, attributable to the ineffectual way the theory was maintained, combined with the

⁶³ A broader discussion of the influence of the Classics in the early republic is: Nicholas P. Cole, “America and Ancient and Modern Europe”, in eds. Peter S. Onuf and Nicholas P. Cole, *Jeffersonian America: Thomas Jefferson, the Classical World, and Early America* (Charlottesville: University of Virginia Press, 2011), 171-192, ProQuest ebrary.

⁶⁴ Notes on Ancient and Modern Confederacies, The Papers of James Madison Digital Edition, J. C. A. Stagg, ed. Charlottesville: University of Virginia Press, Rotunda, 2010, <http://rotunda.upress.virginia.edu/founders/JSMN-01-09-02-0001> [accessed 07 Apr 2015] Congressional Series, Volume 9 (9 April 1786–24 May 1787 and supplement 1781–1784).

⁶⁵ King, Wednesday, 6 June, Farrand, *Records of the Convention*, 1:143. The fact that Madison followed Wilson is worth noting.

⁶⁶ Madison, Monday 18 June, *ibid.*, 1:284-6.

⁶⁷ Publius [Madison], *Federalist* XVIII, in ed. Isaac Kramnick, *The Federalist Papers* (London: Penguin, 1987), 160.

many other examples of failed confederacies of history - to Publius the lessons were clear. A much more explicit appeal to these specific historical examples to condemn the Articles of Confederation was made by Oliver Ellsworth in the Connecticut Convention, 4 January 1788. His assessment, although one widely shared in the Philadelphia Convention and beyond, was blunt: “a more energetic system is necessary. The present is merely advisory. It has no coercive power. Without this, government is ineffectual, or rather is no government at all.” To support this assertion, Ellsworth then listed, in order, the example of the Amphictyonic Council, the Achaean League, the German lands within the Holy Roman Empire (although this is not explicit), the Swiss Cantons, and the Dutch Republic.⁶⁸ This recitation followed remarkably closely to Madison’s outline in the *Federalist*.

The creation and implementation of the federal government was occasioned by a range of conceptual shifts that rendered many of the acute fears of the Revolution much more palatable. The rhetorical strategies which defended the necessity of government and legitimised the transfer of sovereignty from the people to the state also served to redeem the concept of coercion. It was not merely that advocates of the Constitution moved from using the term privately to publicly, it was that their enthusiasm for doing so was not challenged on principle by their opponents. Perhaps this reflected a strategy of attacking the mechanisms of the Constitution rather than tilting at its theoretical foundations, but if so it still suggests a more general acceptance that coercion was a legitimate function, indeed the function, of the state. Patrick Henry, who maintained a most dogged resistance to the proposed Constitution on the basis of its threat to liberty, condemned the “arbitrary and tyrannical coercion” which precipitated the Revolution; but it was the abuse of power that was condemned.⁶⁹ The acceptance that government implied coercion and was therefore legitimate was conceded by Antifederalist William Grayson, “I admit that coercion is necessary in every Government in some degree, that it is manifestly wanting in our present Government, and that the want of it has ruined many nations.” But the sticking point remained the issue of implementation, “but I should be glad to know what great degree of coercion is in this Constitution, more than in the old Government, if the States will refuse to comply with requisitions, and they can only be

⁶⁸ Oliver Ellsworth Speech in the Connecticut Convention, 4 January, *Doc. Hist.*, ed. XV, <http://rotunda.upress.virginia.edu/founders/RNCN-03-15-02-0063>.

⁶⁹ Mr. Henry, Virginia Convention, 9 June 1788, *Doc. Hist.*, IX:1064.

compelled by means of an army?”⁷⁰ Grayson’s rhetoric was a deliberate attempt to conflate the unworkable and rejected system of requisition with the Constitution’s empowerment over the individual citizen; and as events were to prove, the coercive power of the federal government was mobilized against those who refused to comply. With the ratification of the Constitution, the debates over the place of coercion in the state turned from theory to practice in the ambitions of the first Federalist administration.

In a debate in the House of Representatives on the subject of public credit Richard Bland Lee argued that the newly established federal government was a “Government of the people, and nothing like a coercive principle was to be found in it.”⁷¹ Lee was both right and wrong in this assessment; his argument on the question taxation before the House was that the principle of government required persuasion of the people, not force, to be effective. In this he was correct, the republican form of government, both at the state and federal level, which had displaced the former colonial system was predicated on the principle of popular sovereignty. The Framers were sincere in their attachment to this theory, at least insofar as they had designed a framework of government that had sought to mitigate or soften the coercive realities of the state. And yet, Bland was also quite wrong. The emergence and evolution of the republican state through Revolution, convention, and ratification was a process in which the necessity of coercion in the state was gradually reconciled with the ideals of liberty and virtue that had launched the colonists toward independence.

That the language of coercion was adopted and utilized by Virginia’s and the nation’s founding elites in their ongoing efforts to refashion a successful republican state may seem axiomatic; as indeed it is. Yet the process of reconciling coercion with the spirit of the Revolution was by no means a straightforward one; and the development of partisan opposition to Federalist policy in the early republic testified that it remained a source of

⁷⁰ Mr. Grayson, 11 June 1788, *Doc.Hist.*, IX, <http://rotunda.upress.virginia.edu/founders/RNCN-02-09-02-0004-0012>. Francis Corbin used a similar phrasing, cited in Jon Kukla, “A Spectrum of Sentiments: Virginia’s Federalists, Antifederalists, and ‘Federalists Who Are for Amendments,’ 1787-1788,” *Virginia Magazine of History and Biography*, 96, no. 3 (1988), 283.

⁷¹ Lee cited in Richard Buel, Jr., *Securing the Revolution: Ideology in American Politics, 1789-1815* (Ithaca: Cornell University Press, 1972), p. 12. Lee’s speech was recorded in *Annals of Congress*, 1st Cong., 2nd sess., 1317.

friction. Significantly, the various debates, reforms, setbacks, and concessions through which coercion became palatable not only shaped the conceptualization of the state, but also created ramifications for the inhabitants denied the rights of citizenship. Francois Furstenberg, in his essay on the entanglement of chattel slavery and the revolutionary inheritance of liberty, rightly notes that “freedom and slavery thus became linked to virtue, understood as the will to resist tyranny.”⁷² The inseparable nature of resistance, virtue, and liberty was integral to the character of the revolutionary state that emerged from the tumults of war and the more deliberative structure of constitutional convention and ratification. It was the creed of both the people and the political elite. However, in building the republican state, established upon the sovereignty of the people, the role of resistance was retained as a rhetorical framework rather than as a practical mode of political action. Such a transformation was by no means uncontested, but the remarkable feature of debate over the character of the state was the manner in which the coercive authority inherent in the state was rehabilitated by the measured, yet insistent, tones of historical precedent and philosophical justification. In seeking ways to disperse, compartmentalize, mitigate, and restrict the coercive character of the republican state, the Framers and their allies ensured that the coercive apparatus that they had inherited from Britain was suitably reconciled to the aspirations of the great experiment in republican liberty.

⁷² François Furstenberg, “Beyond Freedom and Slavery: Autonomy, Virtue, and Resistance in Early American Political Discourse,” *The Journal of American History*, 89, no. 4 (2003), 1302.