

Quandaries of War and of Union in North America: 1763 to 1861

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The key theoretical idea underlying this article is that an institutional equilibrium in the economic domain can be destroyed or transformed by rapid belief changes in the political domain. Events circa 1776, 1787, and 1860 in the United States are all examined in an attempt to understand the interaction between these economic and political transformations. More explicitly, the author views the economic domain as fundamentally three dimensional, characterized by the use of land, labor, and capital. In contrast to general economic reasoning, he considers the equilibrium in this domain to be institutional, rather than the consequence of the interplay of economic forces. Threats, generated in the political domain, have consequences in the economic domain, and these in turn induce belief changes in the political domain. Such belief changes may bring about war, or constitutional disequilibrium, leading possibly to a new political economic stasis.

I. INSTITUTIONAL EQUILIBRIUM IN THE POLITICAL ECONOMY

And to my surprise, I found that many Fathers of the Republic regarded the conflict over the Constitution as springing essentially out of conflicts of economic interests, which had a certain geographical or sectional distribution.¹

Beard's classic on the Constitution was first published in 1913, and may have reflected the natural concerns of an historian with a memory of the political con-

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flicts in the 1890s between populist Democrats, like William Jennings Bryan, and procapital Republicans like McKinley. Beard focused on the conflict of interest in 1787 between adherents of a hard money principle (namely “merchants, money lenders, security holders, manufacturers, shippers, capitalists, and financiers”) and those favoring soft money, “non-slaveholding farmers and . . . debtors.”²

Beard’s interpretation follows directly from Madison’s assertion in “Federalist X,” on the existence of fundamental, and divergent, economic interests in a society.

From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensures a division of society into different interests and parties.³

Beard’s perspective was natural at a time when Republicans favored the hard money gold standard, while Democrats had pushed for an expansion of liquidity in the form of a move to bimetallism.⁴ In similar fashion, it was obvious in 1787 that property interests, particularly conflicts between creditors and debtors, were politically relevant. Beard had observed that the total unredeemed debt of the Confederation in 1789 was of the order of \$57 million, plus approximately \$25 million of state debt. More significantly, approximately \$10 million of this was money borrowed abroad.

It was very clear in 1787 that, to survive, any state needed to adopt a careful fiscal stance. The British success in the various eighteenth century wars with France (at least until the British victory at the close of Seven Years War of 1756–63) obviously depended on its ability to manage its debts. France, the principal ally and financial supporter of the Confederation during the Revolutionary War, had doubled its debt between 1775 and 1784 to approximately 2,600 million livres (about 600 million dollars). France’s inability to fund this debt (essentially because it lacked “credible commitment” and was required to pay higher interest rates than the Bank of England) led to the fiscal crisis of 1788 and eventually to the French Revolution.⁵

Beard’s work was very influential in the early attempts during the last fifty years to construct models of political competition. For example, the economist Kenneth Arrow, has commented that

I took for granted that the idea that an individual chooses in the polity with regard to his economic choices and status was already part of general knowledge. This concept probably goes back to Aristotle and surely anteceded Karl Marx. It was a staple of ordinary discourse . . . deriving from Charles Beard’s *An Economic Interpretation of the Constitution*.⁶

Indeed, Anthony Downs, Arrow’s student, proposed a formal model of election that in many respects was based on Beard’s conception of a single dimension of economic interests.⁷

However, there is no fundamental reason to suppose that political decision making is necessarily restricted to a single dimension of policy. Clearly, political and economic choice has consequences both for the utilization of land and labor. Implicit in the constitutional bargain of 1787-1788 was a decision to retain the institution of slavery. This had consequences for the utilization and wage rate for labor. Moreover, there was no necessary correlation between a preference on the *capital* axis, say for hard money, and a particular preference on the *labor* axis, for or against slavery.

One of the themes of this article is that any understanding of U.S. political history requires an acknowledgment that these *two* fundamental economic axes are, at least, necessary for understanding constitutional change over the long run.⁸

In some situations, a third axis, *land*, is also necessary. William Riker's work on U.S. federalism took issue with Beard's interpretation and argued that it was the fear, expressed by the U.S. elite, of Spanish intrusion into the Mississippi Valley that was the direct cause of the constitutional move in 1787. The writings of Jay and Hamilton in *The Federalist Papers*, and Madison's letters to Jefferson and Washington add support to Riker's argument.⁹

Indeed, Riker proposed an inductive generalization: a *necessary* cause of any move to federation is the perception of an external military or diplomatic threat that can only be countered by political union, or of an opportunity that only union can realize.¹⁰ In this work, Riker attempted a political analysis of the move from what he called the "peripheralized federalism" of the Confederation of 1783-1789 to the "centralized federalism" of the U.S. after 1789.¹¹ In later work he attempted to study the process of ratification by aligning the voting elite, in Downsian fashion, along a single "federalism" axis.¹² In his last work, Riker developed this idea by examining the rhetorical devices of persuasion used by federalists and antifederalists in 1787-1788.¹³ By examining rhetoric, Riker implicitly focused on the *beliefs* of the participating elite, rather than on the economic preferences that so preoccupied Beard.¹⁴

Twenty years before Riker's *Federalism*, Douglass Adair, in his doctoral thesis, also mounted an attack on Beard's mode of economic analysis. For Adair, the key element of the debate in 1787 over Union was Madison's argument in "Vices" and "Federalist X" about the capacity of the extended republic to mitigate the effect of factions.¹⁵ In Adair's opinion, Madison's argument drew on Hume's speculations about the "Perfect Commonwealth."¹⁶ Adair's inferences have had great influence on historians seeking to understand the constitutional debates over Union.¹⁷

One purpose of this article is to attempt to integrate the economic perspective of Beard, the political viewpoint of Riker and the historical focus of Adair, in order to interpret Constitutional transformations in U.S. political history. My theoretical perspective is that any description of the economy must generally pay attention to the three factors of capital, land, and labor.¹⁸ However, decisions on

the nature of the institutional equilibrium of the economy are made in a parallel political realm. Instead of assuming with Beard and Riker that choices are the result of preferences, I shall focus on the beliefs of the participants to these constitutional choices.

This framework needs some clarification. This can best be done with Riker's own interpretation of the ratification process. The constitutional choice in 1787 was between Union, in some form (which I shall denote by A_1) and the *status quo* (A_2) of the Confederation. Under A_2 there was some probability, p (a subjective belief), that Spain would implement the threat of closing the Mississippi (at a cost T to the American elite). Under A_1 , the likelihood of such a threat would be much reduced. To sustain A_1 over the long run it would be wise to build an efficient fiscal apparatus, to guarantee the economic health of the new federation. As Beard observed, such a choice could benefit holders of capital while hurting debtors. For simplicity, let q be the subjective probability of the occurrence of such a fiscal system under Union, and C the imputed cost (or benefit) of the system. Antifederalists argued that any federal system would lead, with high probability (r) to pervasive factional chaos, with high cost, (F). Thus any individual's choice between A_1 and A_2 turned on estimates of (q, C) and (r, F) against (p, T) . Individuals with identical fundamental preferences, and indeed identical cost estimates, could differ in their desired choices if they differed in their subjective beliefs (the probabilities q, r, p). A holder of capital, who regarded fiscal austerity as a likely consequence of Union, would tend to choose Union even if the threat by Spain was considered to be of small consequence.

However, what Beard failed to consider was that a holder of capital might fear the consequence of Union if the expected cost, (rF), of factionalism in the Federal system, was high. Riker's point, in contrast, was that the essays by Jay and Hamilton in *The Federalist Papers* emphasized the high expected cost (pT) of the threat to the land in the Mississippi Valley. Riker's last work on rhetoric did consider the effects of Madison's constitutional argument, but did not fully examine its credibility.

For the federalist argument to work, it was clearly necessary that the expected factional cost (rF) had to be seen to be low. Adair may have been correct in noticing the influence of Hume's essay on Madison. However, for the Madison argument to carry weight, it had to be persuasive against the accepted interpretation of Montesquieu.¹⁹

Madison was aware that any decision, such as the ratification of the Constitution, involved risk of failure, as well as possibility of success. The logic of Madison's argument in "Federalist X" is in the "theorem"

that if the proportion of fit characters be no less in the large than in the small republic, the former will present a greater option, and consequently a greater *probability* of a fit choice.²⁰ (italics added)

The use of the term “probability of a fit choice” in a situation of risk is very reminiscent of Condorcet’s result, now known as the jury theorem.

As Condorcet’s biographer, Keith Baker, has emphasized, Hume’s notion of probable belief had great influence on Condorcet’s ideas. This led Condorcet to consider the situation where a jury makes a decision, using majority rule, under risk.²¹ Condorcet showed that such a jury was more likely to make a “fit choice” than an average juror.²²

Although Madison made no mention of Condorcet in “Federalist X”, it is plausible that the credibility of his argument derived from its underlying logic. A voter, accepting Madison’s argument that the constitutional arrangements of the extended republic would lead to a fit choice, would also acknowledge that the expected political cost, rF , would be low. A “utility” calculation would tend to imply that the expected cost of the *status quo*, pT , would exceed the expected cost of union, $qC + rF$. It is obvious from this expected utility calculus why a threat, that could only be mitigated by Union, was a *necessary* cause (to use Riker’s terminology). The threat could not be a *sufficient* cause, however, since a majority, winning coalition could well believe, *contra* Madison, that the costs of Union were much higher. This raises the question of contingency, the degree to which the social choice, *pro* or *con*, depends on trivial or unpredictable occurrences.

Riker’s own work after 1980 was, to a degree, influenced by the chaos theorems of social choice and voting theory.²³ Indeed he argued that “nearly anything can happen in politics.”²⁴ Riker used the term “heresthetic” for the study of the strategic “manipulations” that lead to particular political outcomes.²⁵ His emphasis on such a study stemmed from the belief that the “determinism” of, say, economic theory, was sterile in that it admitted “no element of choice.” In contrast, the “interdeterminism [of the chaos theorems] while provid[ing] for choice and chance deni[es] the possibility of generalizing about social outcomes.”²⁶

A second purpose of this article is, in a sense, to combine these two aspects of Riker’s reasoning about the nature of constitutional transformation. On one hand, Riker’s own argument about the necessary cause of Federalism was based on an expected utility calculus. As indicated above, an individual’s choice over the rationality of a move to Union depended on estimated costs and benefits, calculated by using beliefs (or subjective probabilities) of probable outcomes.²⁷ The body of the article will examine three fundamental constitutional transformations: the American Revolution of 1776-1783, the constitutional ratification of 1787-1789, and the lead-up to the election of Lincoln in 1860. The interpretations of these events will be based on expected utility analysis.

However, while an expected utility calculation may clarify these important episodes in American political history, there will necessarily be highly contingent events which transform the beliefs of the protagonists. Such contingency may change the utility calculation, and thus the eventual social outcome. Whereas Riker saw contingency arising out of voting “disequilibrium,” I shall argue that it

arises out of uncertainty.²⁸ In the political realm, constitutional transformations may themselves be the consequence of a process by which initial uncertainty gives way to a commonly held “core belief” in the rationality of some social option.

I shall suggest that the constitutional transformations discussed in this article all exhibit a common structure. Prior to the transformation, the society is beset by a “constitutional” quandary—a state of extreme perplexity or uncertainty. The quandary becomes more pronounced, as various “prophets of chaos” argue over how the society should address the underlying problem. An “architect of order” then reconfigures the quandary, so that the expected costs, and fundamental probabilities, can be brought into clearer perspective. Even after this reconfiguration, however, the social decision problem often has the form of a dilemma, since neither option under consideration is risk free. However, given the institutional decision-making rule, a winning coalition forms around a commonly held belief over the best social option to adopt.

The transformation within a society from a state of uncertainty to one of a commonly held belief has been termed an “information” or belief “cascade.” The idea behind such a cascade is that once a subset of the population has formed an opinion over the superior option, then other groups in the population are influenced, in turn, to choose the same option. In the earlier applications of this notion, it was assumed that the underlying form of the social game was that of a prisoner’s dilemma but with differential expected costs distributed in the population.²⁹ In the constitutional transformations considered in this article, it is not the case that the entire society comes to a common belief about the appropriate course of action. Instead, it is usually the case that the society bifurcates into two sections holding mutually incompatible beliefs: one section, a winning coalition, holding the “core belief”, dominates over a losing coalition.³⁰

The transformations that I shall consider to illustrate this idea all involve profound crises over the nature of the constitutional equilibrium.

(a) *The decision to declare independence from the British Empire in 1776.* Using the formalism introduced above, we can regard the choice as one between A_1 , the declaration, and A_2 , the *status quo*. Under A_1 there is a (high) probability, q , that the British will attack, win the resulting conflict, and exact a high punishment cost, C . For a declaration to be “rational,” it is necessary that this expected cost, qC , be balanced by a high cost of accepting the *status quo*, A_2 . I shall argue that the expected cost of A_2 was based on the subjective probability (p) that the British intended to restrain the American colonies from expansion into the Ohio Valley.³¹ The cost of this (T) was equivalent to the value of the land in the entire region. Thomas Paine estimated this to be of the order of twenty-five million dollars.³² Given the efficiency of the British military apparatus, it would be rational to regard both q and C as high. In the discussion below, I suggest that the crucial, and contingent, element in the decision was the choice of the French King Louis XVI

to offer aid to the Colonies, prior to June 1776.³³ Benjamin Franklin can be seen as the architect of this promise of aid, and his effort had the effect of reducing the expected cost of the choice of A_1 . The decision by the Continental Congress to declare independence triggered a belief cascade in the population, so that this social choice was deemed rational by a majority. The loyalists, a substantial but “losing” proportion of the population, still regarded this decision as irrational, and many fled to Canada. From this perspective, the social decision implicit in the Declaration of Independence was based on a “core belief” that the risk of defeat was worth taking. The critical factor underlying the decision was *land*, although, of course, French aid can be seen as a capital flow to the Colonies.

(b) *The ratification of the Constitution, 1787-8.* As discussed above, the expected cost pT of the *status quo*, A_2 , was high. Antifederalists, however, regarded the expected cost, $qC + rF$, of Union to be even higher. Madison’s logic, as expressed in “Federalist LI,” was that the probability of a tyranny of the majority was much reduced under the Constitutional form adopted at the Philadelphia convention. His prior argument in “Federalist X” was that the expected cost, rF , of factional turbulence would be low in the heterogeneous republic. It is also plausible that Madison’s argument about the “probability of a fit choice” carried additional weight because of the success of the earlier risky decision to declare independence from Britain. From the perspective proposed here, Madison was the crucial architect of the Constitutional decision.

In line with the above discussion, the Constitutional decision involved both *land* (the threat by Spain) and *capital* (the degree of fiscal responsibility of the federal apparatus). However, as the threat by Spain declined in the period after 1788, so did the willingness of Jeffersonian Republicans to accept the equilibrium on the capital dimension. This, of course, led to a bifurcation into a two-party system. After the Louisiana Purchase of 1803-1804, controversy over both land and labor (through the compromise over slavery) became more muted. Risk of threats, by Britain, first of all, and later Spain and then Mexico, did not recede completely. Nonetheless, political competition between Whigs and Democrats became more focused on the single capital dimension.

(c) *The origins of the Civil War.* The stability of the Whig/Democratic party system until the 1840s depended on the maintenance of an equilibrium on the land and labor axes. The suppression of the question of slavery was almost destroyed when northern Whigs and Democrats voted against the “gag-rule” in December 1844. Nonetheless, attempts from 1840 to 1852 by “free-soil” or “liberty” presidential candidates to raise the issue of slavery never gained more than 10 percent of the popular vote. However, in 1856, the Republican “anti-slavery” presidential candidate, Frémont, took 33 percent of the vote, and nearly 39 percent of the electoral college. On March 6, 1857, the Supreme Court, under Chief Justice Taney, made its decision on *Dred Scott v. Sanford*, effectively denying that blacks had any

rights as citizens. In essence, the decision asserted that the Federal authority had no right to deny slavery in the territories. This destroyed what had been a long-standing compromise over slavery on the *labor* axis, and seemingly legitimized the expansion of slave interests into all western territories. While the factor of *land* was relevant, it was so only because of the implicit conflict between free and slave labor in the West.

Riker has argued that Lincoln's victory in the presidential election of 1860 stemmed from a heresthetic move by Lincoln in 1858 against Stephen Douglas, at Freeport, Illinois, during their contest for the Illinois Senate seat.³⁴ By posing a question that forced Douglas to appear antislavery to the Illinois voters, Lincoln effectively gave the election to Douglas. According to Riker, Douglas's reply to Lincoln's question induced southern proslavery voters, in the later presidential race of 1860, to reject Douglas. Riker contended that the resulting split in the Democratic party, between Breckinridge and Douglas, gave Lincoln the presidency. I shall argue below for a different interpretation of these events. First of all, the South was deeply hostile to Douglas prior to the Freeport debate. In April 1860, at the Democratic convention in Charleston, Douglas did indeed obtain a majority of the delegate votes. However, southern delegates had insisted on a two-thirds majority, and this was beyond Douglas's reach. In essence, the South forced the split between two Democratic candidates. Even had the split not occurred, a combined Douglas-Breckinridge platform could only have increased the total Democratic electoral college vote from 84 to 91. Lincoln would still have had a majority of 173 out of 303.

Lincoln's strategy, from as early as June 26, 1857, was to examine the logic and possible consequences of the *Dred Scott* decision. At the Freeport debate in 1858, the most important question Lincoln asked Douglas was whether Douglas would acquiesce to a Supreme Court decision, if it were made, that decreed "that states cannot exclude slavery from their limits."³⁵ In later speeches in 1860, Lincoln implied that the eventual consequence of the *Dred Scott* decision could be the legal use of slave labor in Northern free states.

To put Lincoln's logic in terms of an expected utility calculation, the *status quo*, A_2 , was associated with a high probability (p) that the South did intend to implement such a threat against the North. The cost (T) to free labor would clearly be very high indeed. The machinations of southern delegates at the April Democratic Convention, and their refusal to accept Douglas as a compromise candidate, must have had the effect of increasing the subjective estimate of p . A vote for Lincoln would, in all likelihood lead to a change from A_2 to a new constitutional equilibrium, A_1 , possibly necessitating war. The probability q that the threat would dissipate under a Lincoln presidency must have been difficult to determine. Compromise to avoid the threat might entail a cost (C). However, there would be some real probability (r) of war under a Lincoln presidency, at cost F . A necessary

reason for a voter to choose Lincoln was the credible belief that the eventual cost of the *status quo*, *pT*, would be high.

In 1856, approximately 1.3 million voters had chosen Frémont, the Republican candidate. At that point, any expectation of a real threat, or of war, would have been low. After 1856, however, many Republicans, such as William Seward, were uncompromising in their rejection of slavery.³⁶ These “prophets of chaos” only increased the depth of the quandary facing the northern electorate. In his speeches between 1857 and 1860, Lincoln focused on the threat facing the North, making it real and credible. At the same time he asserted that his intention was to contain southern slavery, not destroy it. This held out the promise of a constitutional compromise between North and South, that might at least remove the threat implied by *Dred Scott* and avoid war. It is for this reason that the Republican delegates chose Lincoln. In the election, the Republican vote increased by 500,000 (over the 1856 figure) to 1.8 million. All fifteen states north of New Jersey gave Lincoln a majority. By clarifying the nature of the southern threat, Lincoln may well have created a dilemma for members of the northern electorate, since neither the *status quo* nor the possibility of war could have been deemed attractive. As in the two earlier decisions over independence and ratification, the degree of risk associated with the election and the probable eventualities was very high. The fact that a clear majority of the northern electorate chose Lincoln (and this choice was reflected in a majority of the electoral college) can be interpreted in terms of the creation of a “core belief” in the necessity of a constitutional transformation. Lincoln was the architect of this transformation.

The southern view, in contrast, was that the election destroyed the “Madisonian” logic of the federal bargain of 1787. A tyrannical majority, the North, had come into being through the institutional device of the electoral college. This gave the South the constitutional authority to secede. After the election, an attempt was made in the form of the Crittenden Resolution of January 16, 1861, to allocate all land south of the Missouri Compromise line of 36° 30’ to slave interests. This would have given the South less than the *Dred Scott* decision implied, but almost all that could have been desired by the slave-owning élite. Lincoln’s veto of the compromise confirmed to the South that the North did, indeed, threaten the institution of slavery. South Carolina was the first state to secede on December 29, 1860. As more southern states seceded, the costs for the remaining states, such as Virginia, of remaining in the Union, must have increased. Although institutional rules over the secession vote varied from state to state, the belief cascade so generated in the South led eventually to secession by eleven states.³⁷

Lincoln, in his inaugural address of March 4, 1861, asserted that the fundamental document of the Union was the Declaration of Independence. Moreover, the compact implied by the declaration made secession unconstitutional. For the Confederacy, the Constitutional compact of 1787-1788 was broken because of the

tyrannical threat of the North. Since these beliefs were incompatible, war became inevitable.

Thus the constitutional transformation that occurred during and after the Civil War was the consequence of the creation of two incompatible beliefs that depended on differing interpretations of the events of 1776 and 1787.

To relate these various constitutional quandaries and eventual transformations one to another, I shall first, in Section II below, give an historical narrative of the two major constitutional quandaries following the end of the Seven Years War in 1763. Section III goes on to consider the origins of the “slavery” quandary of 1857-1860, the election of Lincoln in 1860, and the secession crisis. A brief conclusion attempts to draw some inferences about the stability of political economic equilibrium.

II. FROM THE SEVEN YEARS WAR TO THE LOUISIANA PURCHASE

The Quandaries Facing America, 1763-1804

The attempt by Beard to understand the ratification process of 1787-1788 through interpreting preferences on the capital dimension as well as the effort by Fink and Riker³⁸ to use preferences on a “federalism” axis, both suffer from the same defect. Such models can give no account of why Jay, Hamilton, and Madison (and even Jefferson) were all “Federalists” in 1787-1788 but later diverged in their beliefs about the proper strength of the state. One clue is given by Riker himself when he mentions the “regional resentments over the Jay-Gardoquin negotiations in 1786 for a Spanish trade treaty.”³⁹ At the time, “Jay’s treaty” was seen to benefit the North, by opening Spanish ports to U.S. shipping at the cost, particularly to southern states, of closing the Mississippi for twenty years. In fact, Spain at the time was a potential aggressor, controlling both East and West Florida, including New Orleans, and the East bank of the Mississippi. Spanish imperial intentions, to exert control over the Mississippi valley, were a direct threat to expansionist interests in Virginia with respect to the territories of Georgia and Kentucky.

James Madison, in a long letter to Thomas Jefferson in Paris, had analyzed the Spanish matter in great detail.⁴⁰ After discussing the advantage to Spain of having a nonbelligerent neighbor (the United States) rather than a potential enemy (namely, Britain) with which to contend, Madison emphasized how important an open Mississippi and New Orleans were to the future growth of the United States. It is fairly clear that both Jay and Madison at this point believed that a strong federal government was necessary for the United States to survive the depredations of the European powers. Jay appears to have believed that all the European powers threatened the United States and that more was to be gained by neutralizing the threat through the pursuit of trade with both Britain and Spain.⁴¹ Madison seem-

ingly saw Spain as the principal threat, even in 1787. By the late 1790s such a fear was probably less potent, and as a consequence, maintaining a strong government was seen by Madison as less of a necessity. In fact, by the mid-1790s, Spain did appear less of a threat, and France was still embroiled in its revolution. It would appear rational to Madison and Jefferson that a small state apparatus would be adequate to defend the Union.

In fact, this belief by the Jeffersonian Republicans almost turned out to be demonstrably false. In 1802, Napoleon dispatched a fleet and army to subdue rebellion in Hispaniola, with orders to continue on to St. Louis, and reestablish New France in Louisiana, west of the Mississippi River. Unfortunately for Napoleon's plans, the army was destroyed by disease and the Haitian troops. In April 1803, Talleyrand offered the whole of Louisiana to Robert Livingston, Jefferson's envoy to France.⁴²

From this brief sketch it should be evident that "preferences" over the appropriate nature of government institutions are necessarily intertwined with beliefs about the extent of the threat by foreign powers to the fledgling country. Differing beliefs derived from different interpretations about the intentions of policy makers in the three main European powers, namely Britain, France, and Spain. To understand how these beliefs evolved, it is necessary to go back to the crucial period 1763-1776 when the American colonies made the first moves toward independence. The literature on this topic has, of course, treated the deteriorating relations between the thirteen American colonies and Britain. However, two questions have not been addressed in sufficient depth.

First, why did the "game" between Britain and the colonies escalate in the way it did? This escalation is surprising, since Britain was the protector of the colonies *against* France during and after the Seven Years War of 1756-1763.⁴³ Secondly, why did the colonies trust France to be their ally against Britain?

It must have been clear to the colonies that they could not succeed against Britain, if they stood alone. It is obvious to us, now, that the defeat of Cornwallis, by Washington at Yorktown in 1781, necessitated the assistance of a French army of 7,000 men and the French fleet of thirty ships of the line. But even before the final maneuvers of the war, the American army could never have withstood the British advances without French money and supplies. In fact Louis XVI and Charles III of Spain supplied 2 million livres (more than 100 thousand pounds sterling or 400 thousand Spanish dollars) *before* July 1776, which was sufficient to provide equipment and arms for 25,000 men.⁴⁴ I shall argue that without this aid, the colonists' Declaration of Independence would have been irrational.

This aid by the French was only rational, for France, if it could be seen to thwart British Imperial objectives. The French finance minister, Anne-Robert Jacques Turgot, had been trying to return the French fiscal system to health, and strongly objected to the aid. He was opposed by the foreign minister, Comte de Vergennes. Louis chose Vergennes' strategy. The aid was approved in May 1776, and Turgot

resigned. Between 1776 and 1781, France granted the colonies more than 10 million livres in aid and an additional 35 million livres in loans.⁴⁵ The eventual cost of the “American” war to France was well over a thousand million livres.⁴⁶ It bankrupted France, forced Louis XVI to call the Estates General in 1789 and probably catalyzed the French Revolution.

France did not, of course, go to war with Britain immediately. France first signed the Treaty of Amity and Commerce and a Treaty of Alliance with the United States in February 1778 and later the Treaty of Aranjuez with Spain in April 1779. This latter treaty committed France to assist Spain until Gibraltar was regained by Spain from Britain. The delay was partly because France had only sixty-five ships of the line to Britain’s ninety, while Spain had fifty.⁴⁷

To emphasize the point, if it was rational for the United States to fear Britain, would it not be equally rational for the United States to fear France and Spain? To declare independence against Britain, and thus to incite a war the United States could not win without France, could only be rational under the belief either that France and Spain had no imperial intentions against the colonies or that any such ambitions could be “neutralized.” But France clearly did have imperial ambitions in the Mississippi Valley, in “New France.”

While it was not entirely obvious in 1776 that Spain had imperial ambitions east of the Mississippi River, it was self-evident that Spain was a territorial power in the west. Moreover, any alliance between America and France would, in all probability, involve Spain. Assuming success against Britain, it would be logical to infer that Spain would expect a territorial gain. In fact, at the close of the American Revolution, Spain did gain both East and West Florida *and* New Orleans. Spain then sought advantage by attempting to close the Mississippi River to American ships. While the details of these events could not be foreseen in 1776, the potential threat of Spain had to be considered by the eventual signers of the Declaration of Independence.

Once the two questions are posed, it is obvious that to answer them it is necessary to understand the beliefs of both the Founders and the decision makers of the various European powers. To set out this diplomatic game, it is necessary to attempt at least a qualitative assessment of the inferred costs and benefits of the various outcomes and of the relative “probabilities” of the responses of the European states. The subjective estimates of these probabilities are precisely what I mean by the “beliefs” of the Founders.

To rephrase the two questions I now ask the following: first, why did the Founders believe that the expected costs of remaining under British “tyranny” exceeded the expected costs of declaring independence? The expected costs of declaring independence necessarily involved possible costs in the future as a result of French and Spanish imperial ambitions. So the second question becomes: What was the basis for the Founders’ belief that France and Spain could be trusted?

I shall attempt to answer the first question by reexamining the interaction between Britain and the Colonies from 1763 to 1776, to ascertain the nature of the expected costs of British “tyranny.”

Britain and the Colonies: 1763-1776

As North and Weingast have described, the “glorious revolution” of 1688 induced a constitutional and fiscal transformation in Britain that better equipped her to borrow and to fight wars.⁴⁸ As Brewer shows, the British National Debt increased to 36 million pounds during the War of Spanish Succession (1701-1712), increased another 30 million pounds during the War of Austrian Succession (1739-1749), and jumped a further 60 million pounds during the Seven Years War (1756-1763), to a total of more than 132 million.⁴⁹ Excise taxes provided nearly 50 percent of government income, with land taxes and customs duties each covering about 20 percent. A declining percentage of the debt was unfunded.

During the Seven Years War, the rapidly increasing expenditure shocked the Pitt-Newcastle government.⁵⁰ Annual government expenditure had increased from a prewar figure of four million sterling to nearly twenty million by 1761. The land tax was at the war time rate of four shillings on the pound (instead of the peace time rate of three shillings). This yielded a million pounds, which was seen as the maximum possible. The war dragged on after the capture of Guadalupe (in May 1759) and Quebec (September 1759). Pitt and Newcastle both resigned (in October 1761 and May 1762, respectively) before the final signing of the Peace in March 1763. The main strategic decision at the close of the war was whether to keep Canada and Louisiana (to help protect the lower colonies) or retain Guadalupe (with its great wealth from sugar). In the end, Britain kept Cape Breton, Canada, and Louisiana east of the Mississippi. Spain, which had become embroiled in the war in January 1762, was to cede East and West Florida to Britain. In particular, France gave up all of her territories in India. Louisiana, west of the Mississippi, had already been ceded to Spain (possibly to avoid Britain laying claim to it in 1763).

From 1763 until 1770 the British government was highly factional. A party system was not well developed and factions coalesced round powerful figures such as Pitt (later Earl of Chatham), the Marquis of Rockingham, the Duke of Newcastle, the Earl of Bute, and Frederick, Lord North. Animosity and antagonisms led to frequent resignations. There were also fears, perhaps unwarranted, of revolution; these were triggered by published attacks by a member of the House, John Wilkes, against the Court. Wilkes was tried in May 1763, released, and then expelled from the House in January 1764, and outlawed in February.

Even before the Peace, resentment and confusion in the government over how to reduce government expenditure brought about the resignation of the Earl of Bute (in March 1763). George Grenville became First Lord of the Treasury in

April 1763 and attempted to further reduce government expenditure, by winding down the size of the army from 120,000 to 30,000. A million pounds were raised by exchequer bills and nearly a million by malt and cider excise taxes.

The British government also chose, in 1763, to slow down, if not halt, American expansion to the west. Partly this was to reassure the Indian tribes between the Appalachians and the Mississippi after Pontiac's Rebellion.

Pontiac, a chief of the Ottawa, had brought the tribes to rebellion, and had overwhelmed frontier settlements in Virginia, Maryland, and Pennsylvania, capturing almost all British posts except for Detroit and Fort Pitt. The Grenville administration issued a "Proclamation" closing the West to settlers from the Appalachians to the Mississippi. Pontiac's rebellion did however continue until the end of 1764.⁵¹ The British believed that settler pressure would provoke continued Indian wars, and it is reasonable to infer that they saw it as their duty to stop this conflict as best they could. Land in East and West Florida and Quebec was offered for settlement instead. Middlekauff observes there was bitter resentment against this proclamation.⁵² Illegal migration into western Virginia, Maryland, and southwestern Pennsylvania continued. This proclamation is particularly relevant, when considered in connection with the Quebec Act to follow in 1774. A further intention of the proclamation to limit expansion may have been due to concern that uncontrolled growth of the colonies would unjustly benefit powerful interests who were able to use their wealth to speculate in western land. As Watson notes, "George Washington was one of many Virginians to plan the profitable exploitation of the Indian lands."⁵³ Although "East Louisiana" (east of the Mississippi) had been ceded to Britain by the 1763 treaty, the frontier between the colonies and East Louisiana still had to be maintained by 10,000 British troops at a cost of 350 thousand pounds, plus a system of Indian superintendents at a cost of 20,000 pounds. From the British viewpoint, these costs appeared necessary to *protect* the Indian tribes.

In March 1765, the Grenville administration passed the Stamp Act (imposing a stamp duty of one pound on legal transactions, etc.) and the Sugar Act. The latter reduced Walpole's duty of six pence on foreign sugar to three pence but tightened enforcement of collection. The revenues to be raised from these duties (an estimated sixty thousand pounds) were earmarked for the colonies. The sugar duty raised no alarms, but the stamp duty—the first direct tax on the colonists—led to riots. The agitation resulted in Grenville's resignation in July 1765, and the Marquis of Rockingham became First Lord of the Treasury. Rockingham advised repeal of the Act. George III, believing that Parliament had a right to tax the colonies, hoped for a modification that might retain the spirit of the act.

Benjamin Franklin, who had arrived in England in 1764 with a commission from Philadelphia to plead its interests at court, was questioned in the House in 1765. He argued that the justification for the Act, in terms of the cost of colonial defense, had no foundation.

I know the last war is commonly spoken of here, as entered into for defence . . . of the people of North America. I think it is quite misunderstood. [The war] began about the limits between Canada and Nova-Scotia. . . . None of the lands had been granted to any colonist; we had therefore no particular concern or interest in that dispute. As for the Ohio, the contest there began about your right of trading in the Indian Country. . . . The colonies were in perfect peace with both the French and Indians; the troops were not, therefore, sent for their defence . . . therefore the war . . . was really a British War.⁵⁴

As Stourzh comments, “this statement must have startled the House of Commons.”⁵⁵

Knowing that William Pitt would argue against the Stamp Act in the debate that started in January 1766, a compromise was constructed. To placate Grenville and his supporters, a Declaratory Act was passed in March 1766 in both Houses, asserting the right of the British government to tax the colonies, “to make laws and statutes . . . to bind the colonies and people of America . . . in all cases whatsoever.” Only Pitt voted against. Speaking against the Stamp Act, Pitt said, “I rejoice that America has resisted: three millions of people so dead to all feelings of liberty as voluntarily to submit to be slaves, would have been fit instruments to make slaves of all the rest.” The repeal of the Act was carried by a majority of 108 (275 to 167).⁵⁶ This reversal made inevitable a new administration under Pitt (now Earl of Chatham) as Lord Privy Seal and the Duke of Grafton as First Lord of the Treasury.

In the debates in the House the following year over the cost of protecting America (now at more than 400,000 pounds), Grenville proposed that the cost be halved, and the colonies bear the burden. Rockingham’s allies further proposed that the land tax be reduced from four shillings to three (costing the government a half million pounds).

In June 1767, Acts levying taxes (proposed by Charles Townsend) on lead, glass and tea were passed under the expectation of raising 40,000 pounds.⁵⁷ Townsend died in the late summer and Frederick, Lord North, became Chancellor of the Exchequer in December of that year, and later (after February 1770) combining this office (until 1782) with that of the First Lord of the Treasury. From this point on, the factionalism that had plagued the government became less severe. From the American point of view, “tyranny” became worse.

However North’s first act was to repeal the Townsend duties, other than tea, and to modify the Currency Act, so that colonies could issue paper bills of credit for public debt. Tea brought in about 12 thousand pounds duty. To help the East India Company over financial difficulties, the Company was allowed to import “surplus” tea into the colonies. Excused the shilling English duty, the threepence American duty remained.⁵⁸ About three hundred chests, worth eleven thousand pounds, were immediately shipped to Boston. On 16-17 December 1773, the Boston Tea Party excited the whole country.

Prior to the early 1770s, it must have been very unclear indeed to the American colonists whether the British did indeed intend tyranny in some form. To illustrate, George Washington wrote to Charles Washington, in January 1770, to ask

[if] the officers and soldiers under the King's Proclamation have any chance to come in for Lands West of the Alligany [sic] mountains, I should be glad to know if any of them which may fall in your way would sell their rights; and upon what terms.⁵⁹

Washington obviously thought the Proclamation Act was a temporary arrangement. The passing of the Quebec Act in 1774 dramatically changed the views of the colonial elite. The purpose of this Act (which had been planned for a number of years) was to settle the problem of the interior. Besides placating the Catholic majority of Quebec (by recognizing French law in court cases), the boundary of Canada was extended to include Illinois and Detroit down to the Ohio.⁶⁰ One consequence was that the Vandalia company was made valueless (this company had aroused the interest of George Washington and Patrick Henry, among others). The Indian lands thus ceded to Canada had been in the natural hinterland of expansion of Virginia and Pennsylvania.⁶¹

In October 1774 Parliament was dissolved, and Edmund Burke was elected for Bristol in the new House. Having been agent in Britain for the New York Colonial Assembly, he had argued for repeal of American taxation in 1774. In March 1775 gave his famous speech in the House.⁶² Watson paraphrases Burke as follows:

If the Americans were offered freedom, they would cleave to the mother country in gratitude: if they were allowed to grow rich, even by evasion of just demands, so much the greater would be the resources and power which they could bring to the common effort in case of another war with France and Spain.⁶³

North's efforts at conciliation took the form of a proposal that each colony accept the legitimacy of British sovereignty and raise the money to fund British defense in any way it saw fit. In April 1775, shots were fired at Lexington, George Washington was appointed Commander in Chief of American forces in July, and North's proposals were rejected.

Beliefs of the Americans about British and French Intentions in 1776

Is it plausible that the American Revolution occurred because of the belief that "taxation without representation is tyranny"?⁶⁴ Much has been made of the fact that the British conception of representation was *virtual*. In the absence of parties, factions ruled not because of their ability to command a majority of the enfranchised population, but by their ability to obtain the allegiance of powerful elites in the Commons and Lords. Franklin must have noted the chaotic consequences of factions. Indeed Madison's later writings, particularly "Federalist X," make it

fairly clear that the factions he feared were of the Parliamentary kind. Although the colonists may have spoken of the tyranny of the Crown, and Jefferson used this language in the Declaration of Independence, it is difficult to interpret the sequence of policy choices of the British administration during 1763 to 1775 as truly tyrannical. All the evidence presented above suggests that Britain had increasingly tended to conciliation on the matter of taxes *but not on its control of westward expansion*.⁶⁵

Thus, an alternative interpretation is that the Quebec Act catalyzed the revolutionary impulse of important members of the American elite. Egnal has argued that “in every colony the revolutionary movement was led by an upper-class faction whose passionate commitment to the rise of the New World was evident well before 1763.”⁶⁶ These expansionists were clearly thwarted by the restrictions on colonial advance to the West imposed by Britain, first by the 1763 Proclamation and then by the 1774 Quebec Act.

While the agitation over representation gave popular support to the revolutionary cause, it was the combination of interest *and* belief that provided it with direction. The interests of the expansionary elite were directly affected by the policy of the British. Moreover, the elite was given cause to believe that the British intended to resist westward expansion in the future.

This, of course, is a much less appealing interpretation of the cause of the Revolution than the standard model of hatred of the tyranny of taxation. However it does give a plausible explanation why, after ten years of bargaining between Britain and the colonial assemblies, the revolutionary impulse gathered rapid pace in 1774-1775.

Even so, belief that Britain intended to thwart westward expansion would not be a sufficient cause to induce revolution, *unless* there existed an expectation that the revolution would succeed. One possibility is that the prorevolutionary faction believed that Britain would not commit its resources to the war. However, the British gave every appearance of believing that the colonies owed allegiance to Britain. To let the colonies secede would create a demonstration effect, a loss of face to Britain. An additional credible belief on the part of the British would be that, by seceding, the colonies would fall into the sphere of influence of France. One way to reduce the credibility of such a British belief would be for the colonies *not* to approach France for aid. However, without French aid, the colonies, in all likelihood, would be subject to British force.

If the colonies approached France for aid and the British knew of it, then fearing French influence over, or control of, America, the British would, for certain, attack. Thus the American elite was truly in a quandary. Their rational choice of whether or not to declare independence depended not only on their interpretations of British beliefs over American intentions, but also on their estimates of the French willingness to offer aid as well as the intensity of French and Spanish territorial ambitions in North America.

I contend that, had the Americans not approached France for aid, then it would have been irrational for the Continental Congress to declare independence. However, it was rational to approach France in *secret* prior to making the choice for Independence. Depending on the promised level of French aid, and the expected marginal contribution of this aid to American success, it was then rational for Congress to declare independence.

On the French side, and assuming that American independence was beneficial to France, the optimal level of aid would be that which just “tipped” the American decision toward independence. This level of aid depended on the American calculation of costs and benefits. In particular, the more valued the opening up of the West was to the Americans, the less the required level of aid. Moreover, the more valuable the West, the more would the Americans be able to tolerate the possibility of future aggression by France. Whether it was rational for the French to offer aid depended in turn on their calculations of future benefits. If they could increase the probability of American success by enlisting a further ally, Spain in particular, then the less the ultimate cost to France. It was for this reason that France delayed “declaring” war on Britain until it had involved Spain in the enterprise. Another important point is that the more effectively could the French persuade the Americans that the French were not territorially aggressive, then the less the amount of aid that was necessary to tip the American decision.

It should be obvious however that any belief on the part of the French and Spanish that they could gain territory in the future from an enfeebled American would make aid to America that much more acceptable. In fact, the argument made by Turgot against inciting American independence was based on his judgment that France stood to gain very little. In contrast to Turgot, neither Vergennes nor Louis XVI had a clear understanding of the French fiscal difficulties. Moreover, they probably had a somewhat over-optimistic assessment of the chances of later territorial gains.

I further contend that, after balancing the expected costs and benefits of a declaration of independence, with benefits calculated only in terms of avoidance of taxation, then there was no rationale for a declaration of independence. Even if the benefits include the potentially enormous gain of control of the Ohio Valley, these do not cover the expected cost of a War of Independence. However, if there was a significant chance of French aid and this aid could be expected to substantially shift the probability of winning the war, then the Declaration can be “rationalized.” Indeed the Declaration was still “rational” even if the Founders considered the probability that, after gaining their independence, the French would attempt to take territorial advantage of the Americans.

Thus the two questions on British tyranny and the degree of trust for the French and the Spanish turn out to be interrelated. If the “marginal” expected value of French aid is sufficient to offset the expected costs of later French aggression, then it becomes rational to declare Independence. Of course, not all the Founders in

Philadelphia would make precisely the same calculations. However, in the following section I examine the historical record and come to the conclusion that the Continental Congress was informed of the intention of the French and Spanish to support Independence prior to July 4, 1776. Moreover, the French gave emphatic declarations that they had no territorial ambitions in America. I argue that this was sufficient to tip the Continental Congress toward Independence. However, the Spanish were very careful not to formally bind themselves to an alliance with the United States, although France did so in 1778. In fact, Spain's objective in North America was to regain the Floridas, and in particular, the port of Pensacola. The analysis is still valid, even when Spain is included in the "game," if the subjective probability held by the Americans of later Spanish aggression is relatively low. As the following discussion of the secret negotiations may suggest, this was something of an error on the part of the Americans. It is true, however, that as of July 1776, the Spanish had given little indication of territorial ambition against the Americans.

The decision in the Continental Congress on 2 July 1776, to make the move to Independence was however not unanimously approved by all the delegates. John Dickinson and Robert Morris of Pennsylvania absented themselves, giving the Pennsylvania delegation a majority for independence. Rodney, of Delaware, only just made it in time to make the majority for that State, and New York continued to abstain. David McCullough contends that it was John Adams who was the architect of the decision.⁶⁷ In addition, of course, Thomas Jefferson first penned the document that became the Declaration. However, as I shall argue in the next section, the critical element of the decision was the knowledge, held by some members of the Continental Congress, of the promise of French and Spanish aid. Franklin was the architect who brought about this promise.

For the decision to be binding, no state could formally declare against independence. As such, the decision by the Continental Congress was based on a "core belief" in the wisdom of the declaration. Once the decision was made public, then it in turn contributed to the creation of a core, or majority, belief in the population that the decision was indeed the best choice.

This interpretation implies that the belief, by the elite, that Britain threatened American westward expansion was also *necessary*, but not sufficient, for the Declaration of Independence. Without such a potential prize, the elite would have seen such a war as irrational. In addition, I argue that (given this necessary cause) the credibility of the promises of the French aid, and of her assertions of amity, were sufficient for the core belief.

In the next section I shall examine precisely how the latter belief regarding French intentions came into being during 1775-1776. Because the continuation of the war by the Americans depended on French, and Spanish, aid and amity, it is also important to understand how American concerns, regarding European

aggression, slowly changed during the war, as the Spanish increasingly exhibited their intention of gaining the Mississippi Valley.

*“The Committee of Secret Correspondence” and
the Alliance between America, France and Spain, 1776-1783*

It is difficult to draw a full picture of the negotiations between America, France, and Spain. It seems, however, that negotiations started when Caron de Beaumarchais met Arthur Lee in London in early 1776.⁶⁸ Beaumarchais had been in France in September 1775 in conference with Vergennes, the French foreign minister, and Sartine, the minister of Marine. Vergennes had previously (August 1775) commissioned a secret ambassador, Julien-Alexandre de Bonvouloir, to the Continental Congress. On November 29, 1775, the Congress created a “Committee of Secret Correspondence,” including Franklin, John Dickinson, and John Jay. In December, the Committee directed their agent, Arthur Lee, in London to furnish it with more information on the disposition of foreign powers toward Congress. Franklin also wrote to Charles Dumas, in the Hague, asking for similar information. After meeting with Lee in London, Beaumarchais, in December, wrote to Louis XVI recommending the secret supply of munitions and money to the colonies.

In the same month, Bonvouloir met with the Committee of Secret Correspondence in Philadelphia, and by February 1776, Bonvouloir’s report reached Vergennes and Louis. Vergennes then drafted a statement entitled “Considérations” which recommended (1) preparations by France and Spain against Britain while maintaining the appearance of friendly relations, so as to deceive Britain over French intentions, and (2) secret assistance to the colonies in the way of munitions and other material but “without making any convention with them until their independence be established and notorious.”⁶⁹ On 1 March 1776, Vergennes sent a dispatch to Grimaldi, Spanish Foreign Minister, asking if Spain would also render secret assistance. Interestingly, Grimaldi’s reply, agreeing in principle, included the following remark:

[W]e ought to want the English and *them* [the colonies] to exhaust themselves reciprocally.

Earlier, in December 1775, Franklin had written to the Spanish prince Gabriel of Bourbon,

I think I see a powerful Dominion growing up here, whose interest it will be, to form a close and firm alliance with Spain (their territories bordering) and who will be able to repel the force of all the other Powers in Europe.⁷⁰

On 3 March 1776, the Committee of Secret Correspondence dispatched Silas Deane (previously a delegate to Congress from Connecticut) to Paris with instructions to persuade Vergennes of the commercial advantages of increased trade

resulting from amity with the American states. Deane was also told to purchase arms for 25,000 soldiers, plus artillery, from the French. In April, 1776, Vergennes had his principal secretary prepare a document titled "Réflexions" which argued that French assistance to the colonies would weaken British power by reducing British trade and increasing French. It would open the way to possible recovery of Canada and the fisheries of Newfoundland. Fear of aggression by the colonies was unfounded because there would be "as many small republics as there are now provinces." As I have noted, the Finance Minister, Turgot, argued against providing aid. In particular he saw no merit in Vergennes' weak argument that helping the colonies would draw British attention away from their possible conquest of the French West Indies.

Louis XVI accepted Vergennes' advice and approved aid of one million livres on 2 May 1776, to be used to supply the colonies through a "fictitious" company, *Roderique Hortalez*. Charles III of Spain matched this gift with another one million. Beaumarchais informed Lee of the dispositions in May 1776, and a dispatch was sent to America. The ship apparently was sunk at sea to avoid capture by the British. Bemis states that an oral message was delivered in Philadelphia on 1 December 1776, to the effect that

the French Court would not think of entering into a war with England, but that they would assist America by sending from Holland 200,000 pounds sterling of arms and ammunition.⁷¹

Whether the Congress only learned of the aid in December is unclear. Indirect evidence suggests that *Roderique Hortalez* had spent heavily in early summer 1776, and that this was known to Congress. On 10 October 1776, Beaumarchais wrote to the Spanish Ambassador, Aranda, in Paris, that 5.6 million livres had already been spent. These monies included 2.5 million on clothes, 2.5 million on war munitions and hire of vessels, 0.6 million for officers and crews, and so on.

As Bailey points out,

America with its critical lack of military equipment, simply could not have carried on without this aid. Ninety percent of the powder used by the colonials during the first two and one-half years of the war came from Europe. Most of it was supplied by Hortalez et Compagnie, which at one time was operating fourteen ships.⁷²

On circumstantial evidence, it is implausible that only one courier was sent to America. It must have been important to Vergennes to persuade the Continental Congress that it was worthwhile to declare independence. Since it would be an embarrassment to the same Congress to appear dependent on French aid, I regard it as very likely that secret French communications reached the Committee before the end of June 1776.⁷³ Because these communications with the French were so secret, the agent Arthur Lee found himself facing accusations in 1777 from Beaumarchais that 3.6 million livres were owed. In his defense, Lee wrote in

October 1777 to the Committee that Beaumarchais had told him in April 1776 that “the court of France wished to send aid to America, 200,000 pounds sterling, in specie, arms and ammunition.” He concluded with the remarks that

three months before Mr. Dean’s arrival in Paris [in late April 1776] M. de Beaumarchais settled with me, in London, the sending of these supplies of money and munitions by way of the ‘Cape’, under the firm of Hortalez and Co., and that I should apprise Congress of it; which I did by Mr. Story, and by other opportunities *as the gentlemen of the secret committee know*.⁷⁴ (italics added)

By a peculiar coincidence, the secret journal of the Committee has disappeared. In any case, the Committee had good reason by May or June 1776, to expect French aid. Beaumarchais’s supplies reached the United States in time to be deployed in the first major victory for the Americans, at Saratoga in October 1777.

Before leaving Philadelphia on 27 October 1776 for France to meet with Vergennes and negotiate the formal treaties, Franklin met with the British leader, Lord Howe, on Staten Island (11 September). After this meeting, Franklin drafted a “Sketch of Propositions for a Peace,” which suggested that Britain cede Canada (and presumably the Ohio valley) to the United States. Since Franklin must have understood that Britain would never grant “French Quebec” to the United States, it is plausible that the Howe-Franklin negotiations broke down precisely because of the issue of the 1774 Quebec Act and the Ohio Valley.

Franklin took with him the “Plan of 1776,” drafted by another Committee of Congress (including Franklin and John Adams) in September 1776. This plan formed the basis of the *treaty of amity and commerce* between France and the United States, signed in 6 February 1778.⁷⁵ Although the “secret” negotiations between France and the United States were well known to the British, it was not in their interests, nor indeed of the French, to make this public, and be obliged to move to a state of war. Meantime, the British Parliament enacted (9 March 1778) various Acts, based on North’s proposals, to repeal all objectionable British Acts made after 1763, and to negotiate with the Colonies for their “home rule” within the Empire.

Copies of the French treaties arrived before the British peace delegates in Philadelphia, and Congress almost immediately ratified the treaty with France on 4 May 1778. Hostilities broke out between France and Britain on 17 June 1778.

The French Minister Plenipotentiary, Gérard, arrived in America on 12 July 1778, with a French fleet, under d’Estaing. The British had, immediately after the passage of the Acts in March, attempted to communicate with Franklin to dissuade him from the French Alliance and to send a recommendation to this effect to the Congress. Bemis notes that Franklin burnt the British proposals.⁷⁶ This suggests that the British were perfectly willing to remove *all* taxation from the Colonies but that the main point of dispute between Britain and the United States was still the matter of westward expansion to the Mississippi.

Spain played an extremely subtle game during the negotiations between the United States and France. In February 1777, Arthur Lee had been sent to Spain to attempt to negotiate a triple alliance against Britain. The Spanish principal minister, Grimaldi, met Lee at Vittoria, promised aid but refused recognition of the United States. After Floridablanca became principal minister, he negotiated with the British, promising neutrality in the French-British war if Britain would return Gibraltar. The British refused. Almost immediately, Spain signed the Treaty of Aranjuez (April 1779) with France but did not declare war on Britain until 21 June 1779. Bemis notes that, about this time, Floridablanca “realized” that accepting the western boundary of the United States at the Mississippi was not in Spain’s interests.⁷⁷ Vergennes, in his eagerness to involve Spain in the war with Britain, not only committed France to continue the war until Britain returned Gibraltar, but also suggested to the Spanish minister that the conquest of the “British” east Bank of the Mississippi would be acceptable to the French. Vergennes also pressed Gérard to persuade Congress to accept this Spanish claim. Congress, increasingly perturbed by the potential Spanish threat, asserted the Mississippi western boundary and the 31° latitude as the southern boundary with West Florida. John Jay was sent on 13 August 1779 to Madrid to negotiate American free access to the Mississippi River and to ask for a subsidy, or loan, of five million dollars.

The Spanish continued their “intrusion” into the United States. A Spanish expedition from Arkansas took possession (and planted the flag) on the East Bank (November 1780), and a later expedition from St. Louis captured a British post in Michigan and formally proclaimed Spanish possession of the whole Illinois River country (that is, above the Ohio and on the East Mississippi Bank). If these intrusions could be sustained, then they would restrict the United States to the area east of the Appalachians. The Spanish had also, by this time, reconquered West Florida from the British, and thus had a claim by conquest to the entire East Bank up to the Great Lakes. Indeed, this fact was publicized in Spanish magazines.⁷⁸ John Jay was in Madrid from January 1780 until May 1782, attempting to dissuade the Spanish from their ambitions on the Mississippi. Congress had authorized him to recognize the right of Spain to control Mississippi navigation (as of February 1781).⁷⁹ Jay did obtain grants of nearly \$200,000 from Floridablanca, but no recognition of U.S. independence. The experience must have been humiliating for Jay; the complicated negotiations and elements of extreme subtlety displayed by both the French and Spanish only fed Jay’s distrust.

In the meantime, George Washington’s opposition to a French expeditionary force in the United States had weakened, after the British captured Savannah in December 1778. With Spain in the war, it was possible to send a French army of 6,500 men under Comte de Rochambeau. The French fleet reached Rhode Island in May 1780. A second French fleet under Comte de Grasse captured a number

of Caribbean Islands and then sailed up the coast to reinforce Washington and Lafayette at the crucial battle of Yorktown in October 1781.

After the defeat of Cornwallis at the hands of the combined American-French army, with the essential assistance of the French fleet, the British Parliament had little option but to sue for peace. Lord North resigned on 20 March 1782.

The peace negotiations were tortuous, partly because of Spain's intransigent demand for Gibraltar *and* for continued control of the Mississippi Valley. The French also were concerned to limit, if they could, American expansion to the west. In March 1782, the American Foreign Secretary, Livingstone, wrote to Franklin expressing the opinion that the United States had a legal claim to the West. First, the claims were based on grants by the British crown, particularly to Virginia. Moreover, the West had come under the sovereignty of the British king "only by virtue of his being the king of the people of America; ceasing to be king of the people of America at the moment of the Declaration of Independence, the king's rights to the backlands ceased."⁸⁰

Somewhat later, Franklin, in a letter to Livingstone, wrote,

my conjecture of that court's [Spain's] design to coop us up within the Allegany [*sic*] Mountains is now manifested. I hope Congress will insist on the Mississippi as the boundary, and the navigation of the river, from which they [Spain] could entirely exclude us.⁸¹

Joseph Rayneval (Vergennes' confidante) and the Spanish ambassador, Aranda, at this point proposed a western boundary that would have given Spain a region that today encompasses most of Kentucky, Tennessee, Mississippi, Louisiana, and Alabama. Jay heard of these machinations through British secret agents. He inferred that not only did Spain seek this territory, but that Spain hoped to induce the British to agree. Spain's offer to Britain was that all the territory north of the Ohio would be British.

If I am correct in my analysis of the logic of the Declaration of Independence, then the great benefit of western expansion, which had provided the motivation for the War of Independence, appeared at this junction almost lost. In desperation, and without consulting Franklin, Jay sent communiqués to Britain suggesting a separate peace.⁸² News of a great British success at Gibraltar meanwhile reached London on 30 September 1782. On 5 October, a preliminary American-British treaty was agreed, based on the Mississippi boundary and the 31° N boundary to the South. Separately, Jay urged that Great Britain take West Florida. Indeed a secret codicil to the treaty specified that, at final peace, if the British held West Florida, then the boundary line would be a line drawn "from the Mouth of the River Yazsous where it unites with the Mississippi due East of the River Appalachicola" (that is further north, at 32° 28' rather than 31° N). The preliminary terms of Anglo-American peace were signed on 30 November 1782, by John Adams, Benjamin Franklin, John Jay, Henry Laurens, and Richard Oswald.

In a nice touch, Franklin told Vergennes that a ship was about to be dispatched to Philadelphia under a passport (safe-passage) from George III. The vessel could take the last promised French loan. So indeed the ship sailed, with the last French loan of six million livres, the signed Anglo-American treaty, and a passport issued by George III to the "United States of America." Vergennes clearly had little resentment left against the Americans.

Gibraltar was still a stumbling block to an Anglo-French peace. Vergennes offered the French Islands of Guadalupe and Santa Lucia if the British would pass Gibraltar to Spain. Spain in turn was concerned that this would increase British strength in the Caribbean and threaten her South American Empire. She was willing eventually to forego Gibraltar, if she could keep East and West Florida. The Anglo-French preliminary treaty was signed on 20 January 1783, followed by the final French and Spanish treaties on 3 September 1783.

*The Ratification of the Constitution and
the Risk of European Threats, 1784-1804*

Jay returned from France to be appointed Secretary of Foreign Affairs in 1784. He immediately had to face two pressing problems created by Britain and Spain. On one hand, Spain had not formally recognized the United States in the 1783 peace treaties and had every intention of securing the Mississippi region and Florida. From Spain's perspective, the peace treaty between Britain and the United States, supposedly granting the Mississippi boundary to the United States, was in no way binding. On the other hand, the British were unwilling to abandon their forts in the Ohio. The latter problem was not resolved until Jay's Treaty of 1794. The concern over Spain's intentions was a principal source of the increasingly dominant belief in the United States that union between the States was necessary for the protection of the Confederation. In turn, Spain was concerned that the growth of the United States would be a threat to Spain's own interests in the Americas. As Aranda, the Spanish ambassador, put it, "This federal republic is born a pygmy. A day will come when it will be a giant, even a colossus. . . . [W]e shall watch with grief the tyrannical existence of this same colossus."⁸³

Floridablanca, Spain's minister, set in motion a scheme to create an Indian buffer state, under the protection of Spain, that would block westward expansion. When this proved difficult, Spain's agent, Diego de Gardoquin, attempted to split the States, by offering trade advantages through increased Spanish trade and by intervention to assist the United States in forcing the British from the Ohio. While these offers were of great interest to merchants in the North, the *quid pro quo*, an acceptance by the United States of a closed Mississippi, would especially thwart Virginian interests.

In 1786, seven of the thirteen states agreed in principal to the proposed treaty with Gardoquin. Since such a treaty required a ratification by all thirteen states, it

was obvious that no Spanish treaty was feasible. However, the fact that seven states appeared to approve of the treaty led Madison to believe that the differing interests of the states could fracture the Confederation. Indeed Kentucky, then part of Virginia, had threatened secession if the Jay-Gardoquin treaty were approved. Madison wrote to Washington that unless the treaty was squashed, then “the hopes of carrying this State into a proper federal System will be demolished.”⁸⁴

Spanish ambitions had thus shown that the Confederation was too weak to preserve itself and was liable to dissension and collapse. Obviously enough, belief that the Confederation was weak and needed to be strengthened through the creation of a federal institution was a function of the belief that powerful states (whether Spain, France, or Britain) posed a threat. Jay, Hamilton, and Madison, among others, clearly believed, in 1786, that Spain was a threat. Such beliefs provided the need for a solution, of some kind, to external threat and led to the Annapolis Convention in September 1786. Prior to this Convention, Madison read his way through the “literary cargo” on “history, politics and commerce sent by Jefferson from Paris. . . . Everywhere, Madison found that weak unions courted disaster.”⁸⁵ At the convention, Madison and Alexander Hamilton discussed what was to be done. Shay’s Rebellion (August 1786 to February 1787) further sharpened the need to deal with disunion, and from February 1787, the process began of naming the states’ delegates to the Constitutional Convention in Philadelphia.

In the process of the Ratification of the Constitution that followed (from September 1787) it became obvious that seaboard cities such as Boston, New York, Philadelphia, and Baltimore were in favor. A strong federal apparatus and increased trade, through negotiation, were to their advantage. Small states, on the other hand, such as Delaware, New Jersey, Georgia, Connecticut, and Maryland would also benefit from Union, as long as their particular interests could be preserved.⁸⁶ The advantages of Union for New York State and Virginia appeared less obvious. Although the Spanish threat was most apparent in the South, the Virginian elite could calculate that their State, being rich and populous, would be able to hold its own. Although New York City would be advantaged by trade, the State of New York, if it had expansionist intentions, would see these in the Great Lakes Area, far from Spanish activities.

To persuade New York, Alexander Hamilton first sought out John Jay and then James Madison, to contribute a series of articles in the New York *Independent Journal*. The first essay (by Hamilton) of *The Federalist Papers* appeared on 27 October 1787. The next eight, appearing between 31 October and 21 November and written by Jay and Hamilton, all provide a fundamental reason for Union, namely the threat of foreign powers.⁸⁷ Jay, in number III, talks of “dangers from foreign arms and influence.” In number IV, he says, “Spain thinks it convenient to shut the Mississippi against us on the one side, and Britain excludes us from the Saint Lawrence on the other.” In number V he says, “let candid men judge this, whether the division of America into any given number of independent sovereign-

ties would tend to secure us against the hostilities and improper interference of foreign nations.” In number VII, Hamilton argues that “America, if . . . connected only by the feeble tie of a simple league . . . would . . . be gradually entangled in all the pernicious labyrinths of European politics and wars.” Later, in number XXIV, Hamilton warns of “the growing settlements subject to the dominion of Britain” and “extending to meet the British settlements, [the] colonies and establishments subject to the dominion of Spain.” New York was the twelfth state to ratify, on 26 July 1788, by 30 to 27.

The ratification of the Constitution had elements of a “belief cascade” in the sense that as more states accepted union, it became much less rational even for larger states, such as Virginia and New York, to remain outside the Federal Union.⁸⁸

Although Riker was surely correct in seeing the foreign threat as a necessary cause of the move to Union, his argument cannot explain the triggering of the belief cascade. The arguments of Hamilton and Jay were expressly designed to persuade voters that the expected cost of the *status quo* (pT) exceeded any possible cost of Union (qC). However, this ignored the possible relative costs of factionalism (rF) in the Union, compared to those in the Confederation.

Madison made his famous argument, in the Constitutional Convention, on 6 June 1787, that the extended republic mitigated factionalism. The basis for the argument was his earlier essay on “Vices” of April. Whether Madison’s argument in June was understood by the delegates is still a matter of discussion.⁸⁹ What is clear, however, is that the argument was very much refined by the time of writing “Federalist X” in November.

The key to the argument was Madison’s contention that any representative, elected by a heterogeneous body of voters, could not, in any natural sense, represent their interests. Rather, the representative would necessarily be obliged to seek the public, or collective, good appropriate to the electorate. This is what Madison meant by a “fit choice.” In the same fashion, the representatives themselves, each differing in their conception of a fit choice, would, in making their collective choice, be incapable of basing a decision on private interests. It has been contended that the heterogeneity argument of “Federalist X” contradicts Madison’s own argument of “Federalism LI” on “balance of power.”⁹⁰ In fact the two arguments are compatible, and complement one another. The “fit choice” of a Senate, a House, and a President will surely differ if different methods of selection are used in those three institutions. Compromise between the branches may then be a “risk-averse” technique to refine the decision.

Determining whether Madison was directly influenced by Condorcet’s *Essai* is a subtle matter. Madison had certainly received a copy of the *Essai* from Jefferson, in Paris, in 1786, together with chapters by Condorcet entitled *Lettres d’un bourgeois de New Haven*. It is well known that Madison did, in fact, reject Condorcet’s preference for a unicameral assembly. This does suggest, however,

that he had at least read the work and understood the logic of Condorcet's theorem.⁹¹

"Federalist X" and "LI" essentially put together ideas from Montesquieu, on the virtue of parallel institutions (the upper and lower house and executive, as in Britain) and from Condorcet, on political decision making under risk. The result was to add plausibility to the contention that the expected cost (rF) of factional turbulence in the Republic would be low. While the foreign threat was a necessary cause of Union, I contend that Madison's argument was the sufficient cause. In this sense, Madison was the architect of the new Federal Constitution.⁹²

Once the Union was in place, and George Washington elected President, the fear of such threats naturally subsided. Jay had developed, as we have seen, a deep fear of France and Spain. His experiences during the negotiations over the Peace of 1783 seemingly led him to believe that Britain was a potential ally that could be trusted. Unlike Madison and Jefferson, who saw Revolutionary France, after 1783, as linked with America in their democratic experiments, Jay saw France as a probable Imperial power. The Treaty that Jay, then Chief Justice, negotiated with Britain in 1794 was interpreted by Jefferson among others as an "absurd victory for British diplomacy." Johnson comments that "[I]t was nothing of the sort. It provided for British evacuation of the northwest posts, which had allowed Canadian traders to control the fur-routes and permitted full settlement of the Ohio Valley."⁹³ As a result of this treaty, the expansion into the West (which had been set out "in policy" by the Northwest Ordinance of July 1787) could, in fact, be implemented. The treaty, of course, provoked revolutionary France to declare (2 July 1796) that the Franco-American alliance was nullified and that America was effectively allied with Britain.

Fearing such an alliance, Spain agreed, under the Pinckney Treaty of 1795, to moderate its demands in the Mississippi. But later, realizing that America faced difficulties from France, the Spanish Governor of the Louisiana territory, Baron de Carondelet, was ordered to hold Natchez, on the East bank of the Mississippi, and north of the boundary line.

The Adams administration was also plagued, from 1797, with a "quasi-war" with France, under the instigation of Talleyrand-Périgord, French minister of foreign affairs. Talleyrand realized, however, that a full scale war with the United States could jeopardize French plans for a later incursion into Louisiana. In fact, the XYZ affair in 1798 almost brought about an American declaration of war against France. In all probability, the American president, John Adams, calculated that the defeat of Napoleon in Egypt in 1798 and the rebellion in Sainte-Domingue (Hispaniola) would keep France occupied. Napoleon seems to have had every intention of invading the Mississippi Valley once the French army had dealt with the revolution in Hispaniola. French reverses there made the sale of Louisiana to the United States an obvious solution to Talleyrand's fiscal predicaments.

Jefferson's agreement to the Louisiana purchase, announced on 4 July 1803, was in spite of a constitutional dilemma of which he was well aware. As he wrote to John Dickinson, the Constitution did not give the central government the power of "holding foreign territory, . . . still less of incorporating it into the Union." Instead, Jefferson decided to seize "the fugitive occurrence," urge Congress to ratify the agreement over Louisiana, and then "go to the public to seek a constitutional amendment."⁹⁴

Jefferson's choice nicely illustrates a general point about the structural characteristics of the U.S. political system. The "balance of power" notion, as expressed by Madison in "Federalist LI" referred to a classical tradition within which monarchy, aristocracy, and democracy mutually reinforced one another to prevent degeneration into either tyranny or anarchy. As Adair has suggested, democracy, government by the people, was understood to possess "fidelity to the common good," but not wisdom. Both monarchy and aristocracy tended to "serve the . . . selfish interests of the one or the few." However, aristocracy did offer wisdom, while monarchy "promised the necessary *energy, secrecy, and dispatch* for executing policy."⁹⁵

As I have emphasized throughout this article, political decision making, at any crucial juncture, involves risk. Expected utility calculation is, of course, one aspect of the determination of an appropriate choice. My analyses of the Declaration of Independence by the Continental Congress and the decision in the Constitutional Convention have, in a sense, emphasized the risk-aversion of the delegates. Risk-aversion in matters of such great weight is an essential characteristic of wisdom. However, a country may require, at certain critical decisions, the ability to make risk-preferring choices.

Hamilton's speech at the Philadelphia Convention, 18 June 1787, apparently arguing for a British style monarchy, is often taken to be Hobbesian in insisting on the necessity of order.⁹⁶ Given Hamilton's fear of foreign threat, it is more plausible that he believed that the Union required a single decision maker at its apex, able to make risk-preferring choices in times of danger. Given the degree of power invested in the president, it is obvious that candidates for such office would be selected, in some sense, for risk-preference. "Balance of power" from this perspective means that presidential "risk-preference" should be tempered by legislative "risk-avoidance."

Jefferson was well aware of this risk dilemma. News reached him in 1801 of the forced "retrocession" of Louisiana from Spain back to France, under the secret Treaty of Ildefonso (signed in October 1800). Florida, and thus New Orleans, were still under Spanish control, and in late 1802, the American privilege of deposit at New Orleans was suspended.⁹⁷ It seemed that war with both France and Spain was imminent. The purchase of Louisiana, the result of a completely contingent event, removed that danger. It is plausible that, for Jefferson, the likelihood of presidential risk-preference posed a danger to the newly extended "empire of

liberty.” In a speech to Congress in October 1803, he recommended that citizens divest “themselves of these passions and partialities [which would] embarrass and embroil us in the calamitous scenes of Europe.”⁹⁸

The threat from Europe did not, of course, dissipate. However, it was the threat from within that nearly destroyed this empire of liberty.

III. QUANDARIES OVER SLAVERY AND WAR, 1857-1861

The Supreme Court of the United States rendered its opinion on *Dred Scott* in 1857. The opinion of the Court, written by Chief Justice Taney, was based on the conclusion that Dred Scott, as a black, had

no rights under the Constitution and hence no standing to sue in federal court. . . . the conclusion was devastating to free blacks, since it deprived them of all federal rights, including access to federal court.⁹⁹

Dred Scott, a slave, had sued, in 1846, in the Missouri Circuit Court in St. Louis for his freedom, on the basis of his four years residency in a free state (Illinois) and in free territory (the upper Louisiana Territory, now Minnesota). Northern (free) state courts had increasingly found for freedom after residency in, or indeed transit through, free states, and southern courts had, in the past, tended to accommodate themselves to the northern rulings. The case eventually came before the Missouri Supreme Court, which reached a decision in March 1852. By returning to Missouri, Dred Scott had reverted to the status of a slave.

In the Federal Court in April 1854, it was argued that “every person born in the United States and capable of holding property was a citizen having the right to sue in the United States courts.” If Dred Scott were free, by the Northwest Ordinance of 1787, then he could sue for past wages.¹⁰⁰ The judge however refused to instruct the jury to this effect, arguing that such an instruction would be penal to slaveholders. Montgomery Blair, attorney for Scott, filed suit in the U.S. Supreme Court in late 1854. Arguments were heard in February and again in December 1856. The essence of the attorney’s argument for Scott was that “the clear intent of the framers of the Constitution was that Congress should have absolute authority over a territory while it remained in that status.”¹⁰¹

On 4 March 1857, James Buchanan was inaugurated President, and declared that

a difference of opinion has arisen over when the people of a Territory shall decide [the question of slavery] . . . this is, happily, . . . of but little practical importance. Besides, it is a judicial opinion, which legitimately belongs to the Supreme Court before whom it is now pending. . . . To their decision . . . I shall cheerfully submit.¹⁰²

The Opinion of the Court, of 6 March 1857, declared that Dred Scott was not a citizen, both because he was black and a slave. Consequently, he had no right to sue in Federal Court.

As Jaffa comments, “Taney took dead aim at the heart of the anti-slavery argument when he denied that Negroes were comprehended in the proposition of human equality in the Declaration.”¹⁰³

In a speech as early as 26 June 1857, at the Illinois State House, Lincoln attacked the Taney Opinion, arguing that it was based on “assumed historical facts which were not really true.” In particular, negroes were part of the people for whom the Declaration of Independence was made, since “free negroes were voters . . . in five of the then thirteen states.”¹⁰⁴ This matter would become “a distinct and naked issue between the friends and enemies of the constitution—the friends and enemies of the supremacy of the laws.”¹⁰⁵

On 16 June 1858, Lincoln was nominated Republican candidate for Senator from Illinois, and in his famous acceptance speech predicted that “this government cannot endure, permanently, half slave and half *free*. . . . I do not expect the house to *fall*—but I *do* expect it will cease to be divided.”¹⁰⁶

Stephen Douglas, the incumbent Democrat candidate for the Senate position, retaliated on 9 July 1858, by denouncing Lincoln’s “crusade” against the Supreme Court. In the debates between the two protagonists, between 21 August and 15 October 1858, Douglas attempted to defend his “position of popular sovereignty” against Lincoln’s precise attack on the implications of the Taney Opinion. For Lincoln, this opinion only made sense if the South intended to extend slavery throughout the territories, all the way to the Pacific. This violated the compromise implicit in the ratification, that slavery be accepted but only in those states that had, by tradition, been slave. In Lincoln’s later speeches on the East Coast in 1860, he seemingly argued that the intention of the South was to extend slavery throughout the entire Union. I contend that the credibility of Lincoln’s argument dramatically changed the beliefs, and thus the preferences of the Northern electorate.

Preferences and Beliefs in the North and South

For Riker, the political conflicts between Whigs and Democrats until 1856 had concentrated on economic concerns. The Whig industrial and commercial interests of the East focused on protection and trade regulation, whereas Democrats, concentrated in the South and West, were concerned with issues of land and agriculture. Rogowski’s model of factor endowments can be used to sketch the basis for these differing preferences. Since the United States can be assumed to be relatively poor in capital (with regard to Britain) and in labor (with regard to Europe), a natural protectionist coalition of capital and labor could form. Such an electoral coalition formed the basis for the Whig party. However, land was relatively abun-

dant, so agricultural interests (whether based on slave or free labor) would favor increased trade and decreased tariffs. But landed interests are generally capital poor, and so favor a soft-money principle, and in particular, low interest rates.¹⁰⁷ The Whig and Democratic parties may then cohere around quite different policy positions on the single capital axis. Moreover, both northern and southern regions depended on agriculture, so the two coalitions will be “intersectional.” Presidential elections, for example, between 1836 and 1848, gave no clear indication that the Democrat vote was concentrated in the South. In the House and Senate both coalitions were intersectional. The one occasion when a northern coalition formed was in the House in December 1844, when 55 Democrats (from the North) and 53 Northern and border Whigs voted against the gag-rule. This temporary coalition formed to express the anger of Northern Democrats that their favored candidate, Van Buren, had been blocked by the two-thirds rule imposed during nomination. This two-thirds rule proved to be an effective veto device by southern democrats both in 1844 and in 1860.¹⁰⁸

By 1852, however, the Whig popular presidential vote had fallen to 44 percent. The plurality mechanism of the electoral college meant the Whig candidate, Scott, took only 42 seats (out of 296, or 14 percent). It was obvious that the expansion of available land essentially guaranteed that the Democrat coalition, if it held together, would become dominant. However, this coalition depended on a compromise between western farmers and landed slave interests. As long as slavery did not threaten free labor, this coalition survived.

From an economic point of view, the rapid development of a new northern trade route through the Erie Canal had led to a dramatic fall in transport costs. This created the potential for an export-oriented coalition of eastern capital and labor-intensive western farmers.¹⁰⁹

Frémont, the first Republican presidential candidate, had, in a sense, tried to construct this coalition. His moderate success (33 percent of the popular vote) suggested it was possible. Nonetheless, Fillmore, essentially a Whig candidate, took 22 percent, while the Democrat, Buchanan, won 45 percent of the popular vote, and 174 (or 59 percent) of the electoral college. Stephen Douglas, in 1858, was well positioned to maintain the Democrat coalition and gain the presidency in 1860. For Douglas to win in 1860, he had to preserve a coincidence of interests, based essentially on an ideology of expansion. However, free labor and slave interests had an implicit, but only potential, conflict of interest over whether the west was to be free or slave.

For those southern interests that depended on slave labor, the maintenance of this institution was paramount. For free labor, whether in the south or north, this institution would only impinge on their factor reward if the products of the two kinds of labor were competitive. However, as long as labor was relatively scarce there was little *economic* effect on free labor. The westward expansion of slave labor could change this “equilibrium.” Moreover, any dramatic change in the eco-

nomic and constitutional equilibrium on this labor axis, particularly over the use of slave labor in the north, would clearly affect free labor. For Douglas, it was critical to separate the issue of land and labor, and it was for this reason that he proposed the notion of “popular sovereignty.” By leaving the decision over slavery to the electorate of each territory (once it became populous enough for statehood), he hoped to placate southern interests.

Lincoln’s second question to Douglas, at Freeport, Illinois, on 27 August 1858, asked whether citizens of a Territory could “exclude slavery prior to the formation of a State Constitution.”¹¹⁰ Douglas answered that they could, even though this logic appeared counter to the Taney Opinion. His argument, that local regulations would allow the people to make their own choice in this matter, obviously contradicted Federal guarantees of private property (in this case, of slaves). Riker contended that this answer by Douglas made it clear to southern interests that he would not protect the slave institution.¹¹¹ In fact, the South was already keenly aware that Douglas could win the 1860 presidential election on the basis of his proposed compromise. The *Mobile Register* of 20 August 1858, argued that to reject the Douglas compromise would mean permanent destruction of the Democratic Party. To accept it, however, meant “demoralization as well as disaster.”¹¹²

Riker’s focus on the Lincoln-Douglas debates was to give a reason why the issue of slavery became particularly salient in 1858 to 1860. In his view, this salience gave the Republicans the opportunity to construct a new political compromise and to absorb the remnants of the Whig party.¹¹³ His account, however, glosses over a number of points. It was clear to the South that rejecting Douglas could lead to the election of a Republican president. This would have dire consequences for the South. Even if the Lincoln-Douglas debates did have an effect on southern attitudes to Douglas, leading to a split in the Democratic coalition, there was still the possibility of a sufficiently large Northern vote for a Democrat candidate. The Democrat, Buchanan, had done well in 1856 in the border states, and taken over a third of the electoral votes of the North and West. To succeed in 1860, a Republican candidate had to demonstrate that Douglas’s compromise position was incoherent.

In the first Lincoln-Douglas debate at Ottawa, Illinois, on 21 August, Lincoln had attacked Douglas for his support of the Taney Opinion, arguing that the opinion would lead, and was intended to lead, to the extension of slavery to all states. In referring to the Nebraska bill, Lincoln said “if another *Dred Scott* decision shall come, holding that they cannot exclude it [slavery] from a *state*, then we shall discover” [why the particular wording of Territory and State were used in the Nebraska Bill].¹¹⁴ At the second debate at Freeport, Lincoln asked Douglas if he would acquiesce in such a second decision by the Supreme Court.¹¹⁵ Douglas had earlier declared that the Supreme Court decisions were binding and therefore could make no reply compatible with the concept of “popular sovereignty.”

At the fifth debate at Galesburg on 7 October 1858, Lincoln pursued the attack. By the Taney Opinion, “*The right of property in a slave is distinctly and expressly affirmed in the Constitution!*” [Lincoln’s italics]. Since “nothing in the Constitution or laws of any State can destroy a right distinctly and expressly affirmed in the Constitution” it follows “that nothing in the Constitution or laws of any State can destroy the right of property in a slave.”¹¹⁶

As Fehrenbacher remarks, this “new Court doctrine . . . could produce a ruling protecting slavery within the northern states as well as in the western territories.”¹¹⁷

The decision over the choice of Senator was decided in a joint session of the Illinois House and Senate in November 1858. Republican and Democrat popular votes for House representatives were almost identical, but the Republicans only won thirty-five seats to the Democrats’ forty. In the Senate, the thirteen holdovers split (8, 5) for Democrat, Republican respectively, while there were six new Senators for each party. Douglas won in the joint session with fifty-four votes to Lincoln’s forty-six. This close decision of the popular vote was reflected in the later presidential vote shares between Douglas and Lincoln in 1860 and simply mirrored economic differences between the south and the north of the state.

Although he had been defeated, Lincoln’s speeches had aroused great interest in the northeast, and he was invited to give addresses at the Cooper Institution, New York, in February, and in New Haven in March 1860. In the first speech Lincoln showed that by votes and words, a clear majority of the Framers of the Constitution had approved of the control of slavery by the federal government.¹¹⁸ Moreover, they had marked it as an “evil not to be extended, but to be tolerated only because of and so far as its actual presence among us makes that tolerance and protection a necessity.”¹¹⁹

In New Haven, he said,

I am glad to see that a system of labor prevails in New England under which laborers CAN strike when they want to. . . . One of the reasons I am opposed to slavery is just here.¹²⁰

On 23 April 1860, the Democratic nominating Convention met in Charleston. Jefferson Davis sent a letter withdrawing his own nomination, and advised the Mississippi delegates to leave the convention. By 30 April, the convention had adopted a platform that included a declaration “that the Democratic Party will abide by the decision of the Supreme Court . . . over the institution of slavery in the Territories.”¹²¹ A resolution “that the rights of citizens in property of persons [slaves] must be protected in the Territories by the Federal Authorities” was rejected. Delegates from eight slave states (controlling 37.5 votes) retired from the convention and passed their own resolutions (including one favoring the acquisition of Cuba). Before they left, however, the Convention agreed to a two-thirds rule based on the sum of all delegates’ votes. On 1 May, the first ballot gave Douglas 145.5 votes out of 252 of the remaining delegates (just short of a majority of the whole). By the 55th ballot the next day, Douglas’s total vote had

risen to 151.5 (a majority but not two-thirds of the whole). Delegates from states as different as California, Tennessee, Missouri, Virginia, and Oregon still refused to vote for Douglas. By 148 to 100, the Convention agreed to adjourn. As *The New York Times* editorial remarked, “The south believes sincerely that the North seeks power in order to crush slavery” but it must instead “make up its mind to lose the sway it has exercised so long.”¹²²

On 10 May, the National Union Party (what was left of the Whigs) nominated John Bell (of Tennessee) and Edward Everett (of Massachusetts). The Republican Party Convention met in Chicago on 16 May and before moving to nomination, adopted a platform of seventeen “planks.” The second plank argued for the maintenance of the Union, as bound by the principles of the Declaration of Independence and the Federal Constitution. The eighth denied “the authority of Congress, or a Territorial Legislature—to give legal existence to slavery in any territory of the United States.” The twelfth argued for an increase in the tariff “to encourage the development of the industrial interests of the whole country” and to secure “to the working man, to mechanics and manufacturers an adequate reward for their skilled labor and enterprise.” Two further planks demanded “the passage by Congress of the complete and satisfactory Homestead measure” and a “railroad to the Pacific Ocean.”¹²³ The policy position of the party was quite precisely located at a compromise position on the capital and land axes, moderately protectionist but expansionist in outlook. On the labor axis, the platform was obviously antislavery. The policy proposals were designed to appeal to voters of the northeast who might have voted Whig, as well as to voters of western states (Iowa, Ohio, Indiana, for example) who saw a coincidence between their own “expansionist” interests and those of Douglas. The choice of presidential nominee was crucial for the Republicans. As Donald has noted, had the Democratic Convention chosen Breckinridge, then the antiabolitionist Seward would have been a plausible choice.¹²⁴ However, as an easterner, Seward would probably have done poorly in western states, especially if Douglas had been somehow co-opted on to the Democrat slate. Had Douglas been chosen, Lincoln, with his support in Illinois, would have been the obvious choice. Because of the uncertainty due to the break-up of the Democratic Convention, Seward gained 173.5 (about 37 percent) of the total delegates—compared with Lincoln’s 102—in the first ballot at the Republican Convention. Less popular candidates then dropped out, giving Seward 184.5 to Lincoln’s 181. On the third ballot, Lincoln took 231.5 (not quite a majority). Some Ohio delegates switched to Lincoln, giving him 235.5, and the Convention then voted for Lincoln unanimously.¹²⁵

The differences in the views of Seward and Lincoln over slavery were subtle, but important. For Seward, slavery implied

An irrepressible conflict between opposing and enduring forces [that meant] that the United States must or will, sooner or later, become entirely a slave-holding nation, or entirely a free labor nation.¹²⁶

Lincoln had been careful to hold out the possibility of a compromise with the South. In the address at the Cooper Institute, he said,

Even though the southern people will not so much as listen to us, let us calmly consider their demands, and yield to them, if in our deliberate view of our duty, we possibly can.¹²⁷

Lincoln's speeches had been designed to persuade the northern electorate that the threat of the South (at expected cost, pT) was real. Under Lincoln, this threat would be faced, either by some compromise measure (at cost qC) or, if the South refused conciliation, possibly through war (at cost rF).

In November there were four candidates, Lincoln, Douglas, Breckinridge, and Bell. Douglas took at least a third of the popular vote in twelve of the thirty-three states, all in the northeast and west. Bell's policy of the *status quo* gave him the electoral college votes of Virginia, Kentucky, and Tennessee, while Breckinridge won all nine states of the deep South. (South Carolina allocated its electoral college vote by a session of the legislature.) Lincoln won a majority (more than 50 percent) in fifteen states, and pluralities in Oregon and California. Only in the last two states did Douglas and Breckinridge gain between them a majority. New Jersey was equally divided between Douglas and Lincoln and split its college vote. With almost 40 percent of the popular vote, Lincoln won 180 (out of 305) votes in the electoral college.

Between 29 December 1860 and 25 January 1861, six southern states seceded. Congress proposed the Crittenden Resolutions, in 16 January 1861, which would have extended slavery all the way to the Pacific, south of the Missouri Compromise Line. Since Lincoln was committed to the containment of slavery, he rejected this compromise.¹²⁸

In his inaugural address on 4 March 1861, Lincoln spelled out his view of the contract. The perpetual union was created by the people in the Articles of Association in 1774 and reconfirmed in the Declaration of Independence. The Articles of Confederation of 1778 plighted that this contract be perpetual, while the Constitution was designed "to form a more perfect union."

A majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does of necessity, fly to anarchy or to despotism. This country, with its institutions, belongs to the people who inhabit it. Whenever they grow weary of the existing government, they can exercise their *constitutional* right to amend it, or their *revolutionary* right to dismember, or overthrow it.¹²⁹

In this speech, Lincoln proposed a new constitutional understanding, based, in a sense, on Madison's "Federalist X" but without the required intervention of representatives.

For the elite in the southern states, secession was legitimate because the Constitution itself was regarded as the founding compact between *states*. Lincoln's

election had destroyed the heterogeneity of the republic, creating a tyrannical majority, the North, that directly threatened the South. This violated Madison's logic in "Federalist X." Moreover, Madison had expressed the opinion, in "Federalist XLIII" that

a breach by either of the parties [to a compact between independent sovereigns or states] absolves the other, and authorizes them if they please to pronounce the treaty violated and void.¹³⁰

The share of the popular vote in 1860 for Bell (and his policy of the *status quo*) had been significant in Virginia, Tennessee, Arkansas, and North Carolina. This suggests that a possible majority of the electorate in these states saw no reason to secede. Gary contends that delegate elections and the secession conventions in 1861 were manipulated by the slave-owning elite to force the secessions that did occur between February and June 1861.¹³¹ It is, in any case, difficult to understand the logic of secession. Lincoln had made it clear that their institution would be preserved but would not be allowed to envelope other states. It is consistent with the logic of risk discussed here that Lincoln was perceived as a threat to expansion of slave-owning elite interests to the West. To prevent this, secession and the very considerable risk of war (implied by Lincoln's inaugural speech), appeared worth accepting. For this calculation to be rational, it must have been believed that Lincoln would acquiesce to some compromise that would have given the western lands to slave interests. For Lincoln, however, the moral prize of Union exceeded the terrible cost of war.

CONCLUDING REMARKS

In this article, I have emphasized that constitutional transformations are brought about by the resolution of a quandary intrinsic to the society. Although electoral preferences may be described within a policy space of relatively low dimension, the way these preferences are aggregated at crucial junctures depends on how uncertainty and risk are interpreted by social "architects" of the eventual decision. At these junctures, contingency may play a role in how the quandary is understood. Since the consequences of the decision can be only dimly perceived, the architect must undertake two related tasks. The first, which I have characterized by the term "expected utility calculus," is to lay out as clearly as possible the various eventualities and the associated probabilities. The second is to acknowledge the risk associated with the decision, and to offer an argument for what seems to be the correct choice. The acceptance of this choice by the electorate not only legitimizes the eventual decision but adds weight to the belief that it is indeed "fit." It is this conception of the Constitution that Lincoln created in his inaugural address.

A more abstract interpretation of the transformed Constitution established after the Civil War was that it generated a political economic equilibrium govern-

ing the use of capital, land, and labor. However, for political reasons, the Republican party moved slowly from its civil rights position on the labor axis (in the aftermath of the Civil War) to its “hard-money position” on the capital axis, by the late 1890s. It was only in response to the depression quandary of the 1930s that F. D. Roosevelt could construct a majority coalition that was relatively liberal on both the capital and labor axes.¹³²

NOTES

1. Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: MacMillan, first ed. 1913, second ed. 1935), vii in second edition.

2. *Ibid.*, 17.

3. James Madison, “Federalist X,” in J. Rakove, ed., *Madison: Writings* (New York: Library of America, 1999), 160-7.

4. After the civil rights emphasis of the Republicans during and after the Civil War, the party had increasingly adopted a hard money stance. See, for example, Michael Bordo and Hugh Rockoff, “The Gold Standard as a ‘Good Housekeeping Seal of Approval,’” *Journal of Economic History* 56, no. 2 (1996), 389-428.

5. On Britain, see John Brewer, *The Sinews of Power* (Cambridge: Harvard University Press, 1988). British government debt in 1784 was more than 240 million pounds sterling, approximately one billion dollars or twenty years average government revenue. On the origins of British fiscal commitment, see Douglass C. North and Barry R. Weingast, “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England,” *Journal of Economic History*, 49, no. 4 (1989), 803-32.

On France, see Katherine Norberg, “The French Fiscal Crisis of 1788 and the Financial Origins of the Revolution of 1789,” in P. Hoffman and K. Norberg, eds., *Fiscal Crises, Liberty and Representative Government, 1450-1789* (Stanford: Stanford University Press, 1994), 252-98.

In the 1780s the value of the dollar varied from state to state. The hard currency for trade included the British pound sterling, the French livre, the French crown, and the Spanish silver dollar. Here, the term “dollar” will generally mean the Spanish dollar. Sterling was worth about four Spanish dollars and about eighteen French livres.

6. Kenneth Arrow, “Comments on the Commentaries,” in J. Alt, M. Levi, and E. Ostrom, eds., *Competition and Cooperation: Conversations with Nobelists about Economics and Political Science* (New York: Russell Sage Foundation, 1999), 51-6.

7. Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957).

8. To illustrate, a recent empirical analysis for 1968-1980, based on the National Election Survey for the United States, suggests that at least two dimensions, defined essentially by capital and labor, are currently necessary to interpret voter beliefs and party policy positions. See Andrew Martin, Gary Miller, and Norman Schofield, “Economic Factors and Political Ideologies,” unpublished manuscript, Center in Political Economy, Washington University in St. Louis, March 2001.

9. “Federalist I to IX,” in B. Bailyn, ed., *The Debate on the Constitution*, vol. 1 (New York: Library of America, 1993); J. Madison to G. Washington, letter, 7 December 1786, in J. Rakove, ed., *Madison: Writings*, 60; J. Madison to T. Jefferson, letter, 20 August 1784, in J. E. Smith, ed., *The Republic of Letters*, vol. 1 (New York: Norton, 1995), 341.

10. William Riker, *Federalism: Origin, Operation, Maintenance* (Boston: Little Brown 1964), 13.

11. See also William Riker, *Democracy in the United States* (New York: Macmillan, 1953) for the discussion on the change in constitutional structure.

12. Evelyn Fink and William Riker, "The Strategy of Ratification," in B. Grofman and D. Wittman, eds., *The Federalist Papers and the New Institutionalism* (New York: Agathon, 1989), 220-55.

13. William Riker, *The Strategy of Rhetoric: Campaigning for the Ratification of the Constitution* (New Haven: Yale University Press, 1996).

14. Indeed Riker had expressed surprise that Beard could consider "that the main issues at Philadelphia were domestic matters of the distribution of income." See Riker, *Federalism*, 19.

15. James Madison, "Vices of the Political System of the United States," April 1787, and "Federalist X," 22 November 1787, in J. Rakove, ed., *Madison: Writings*, 69 and 160; Douglass Adair, *The Intellectual Origins of Jeffersonian Democracy* (New York: Lexington, 2000, orig. 1943), 120, and Douglass Adair "That Politics May Be Reduced to a Science," in D. Adair, T. Colbourn, ed., *Fame and the Founding Fathers* (Indianapolis: Liberty Fund, 1974), 132.

16. David Hume, "Idea of a Perfect Commonwealth," in *Essays Moral, Political and Literary* (Indianapolis: Liberty Fund, 1962, orig. 1739), 512.

17. For example, see Lance Banning, *The Sacred Fire of Liberty* (Ithaca: Cornell University Press, 1995), 467, for a comment on this mode of constitutional analysis.

18. A similar emphasis can be found in Ronald Rogowski, *Commerce and Coalitions* (Princeton: Princeton University Press, 1989).

19. Madison himself comments indirectly on Montesquieu's argument that only in a "small" democracy could turbulence be avoided. See Samuel Beer, *To Make a Nation* (Cambridge: Harvard University Press, 1993), 164.

20. Rakove, *Madison*, 165.

21. See Keith Baker, *Condorcet: From Natural Philosophy to Social Mathematics* (Chicago: Chicago University Press, 1975), 135-55, and David Hume, *A Treatise of Human Nature* (London: Collins, 1985, orig. 1752). Baker regards Condorcet as a link between Hume and John Maynard Keynes, *A Treatise on Probability*, vol. 8 of *Collected Writings* (London: Macmillan, 1921). On Keynes' later view on probability see Norman Schofield, "The Heart of the Atlantic Constitution," *Politics and Society*, 27, no. 1 (1999), 173-215.

22. For a partial translation of Condorcet's work see I. Mclean and F. Hewitt, eds., *Condorcet: Foundation of Social Choice and Political Theory* (Aldershot, UK: Edward Elgar, 1996). See also Norman Schofield, "Evolution of the Constitution," *British Journal of Political Science*, 32, no. 1, in press, for a discussion of the possible influence of Condorcet's theorem on Madison's argument in "Federalist X."

23. See Norman Schofield, "Constitutions, Voting and Democracy," *Social Choice and Welfare*, 18, no. 3 (2001), 571-603, for a discussion of Riker's ideas. For an exposition of the so-called chaos theorems, see David Austen-Smith and Jeff Banks, *Positive Political Theory I: Collective Preferences* (Ann Arbor: Michigan University Press, 1999).

24. William Riker, "Implications from the Disequilibrium of Majority Rule for the Study of Institutions," *American Political Science Review*, 74, no. 2 (1980), 432-46.

25. His ideas on this study were advanced in William Riker, *Liberalism against Populism* (San Francisco: Freeman, 1982); William Riker, "The Heresthetics of Constitution-making: The Presidency in 1787 with Comments on Determinism and Rational Choice," *American Political Science Review*, 78, no. 1 (1984): 1-16; William Riker, *The Art of Political Manipulation* (New Haven: Yale University Press, 1986). The word *heresthetic* comes from the Greek root ἀρετικος meaning "to choose."

26. Riker "The Heresthetics of Constitution Making," 1.

27. The above outline of these costs and benefits concentrated on expectations, and therefore implicitly assumed risk-neutral agents. In fact, in his first study of rhetoric in the ratification process, Riker argued that the protagonists were risk averse. See William Riker, "Why Negative Campaigning Is Rational," *Studies in American Political Development*, 5, no. 1 (1991), 224-300.

28. See also Schofield, "The Heart of the Atlantic Constitution," for a discussion of the political relevance of the notion of uncertainty in John Maynard Keynes, *The General Theory of Employment, Interest and Money* (London: Macmillan, 1936).

29. For example, the notion of an information cascade transforming the prisoner's dilemma has been used to account for the rapid breakdown of the regimes in Eastern Europe in 1989. See Timur Kuran, "Now Out of Never: The Element of Surprise in the East European Revolution of 1989," *World Politics*, 44, no. 1 (1991), 7-48; Rasma Karklins and Roger Petersen, "Decision Calculus of Protesters and Regimes: Eastern Europe 1989," *Journal of Politics*, 55, no. 2 (1993), 588-614; Susanne Lohmann, "Dynamics of Informational Cascades: The Monday Demonstration in Leipzig, East Germany 1989-1991," *World Politics* 47, no. 1 (1994), 42-101. For further discussion on this theme, see Norman Schofield, "Constitutional Political Economy," *Annual Review of Political Science* 3 (2000), 277-303.

30. I use the term "core belief" by analogy with the social choice theoretic idea of a "core outcome," namely an outcome that is unbeaten. Contrary to the reasoning underlying the chaos theorems, I suggest that the constitutional transformations are the result of a change from some earlier *status quo* to a new constitutional equilibrium associated with this core belief of the winning coalition.

31. The British implemented this threat by passing the Quebec Act in 1774. The purpose was to restrict colonial advance into the Ohio Valley and was, in effect, the consequence of their attempt to resolve a constitutional quandary over the appropriate treatment of the Indian tribes in the territory. This is discussed further in Schofield, "Evolution of the Constitution."

32. Thomas Paine, *Common Sense* in E. Foner, ed., *Collected Writings of Thomas Paine* (New York: Library of America, 1995 orig. 1776), 49. To put this estimate for *T* in perspective, total British annual tax revenue at this time was of the order of fifty million dollars. See Brewer, *Sinews*.

33. Louis XVI promised aid of ten million livres, just over \$2 million, in May 1776.

34. Riker, *The Art of Manipulation*, chap. 1.

35. Abraham Lincoln, "Second Lincoln-Douglas Debate," in D. Fehrenbacher, ed., *Lincoln, Speeches and Writings*, vol. 1: 1832-1858 (New York: Library of America, 1989), 542.

36. Foner, for example, quotes Seward's assertion that slavery was a "blight," a "pestilence," an "element of national debility and decline." See Eric Foner, *Free Soil, Free Labor, Free Men* (Oxford: Oxford University Press, 1995, orig., 1970), 44.

37. In the last states to secede there is evidence of a considerable degree of political manipulation. See Kelley Gary, "Self Interest, Social Choice and Secession," unpublished manuscript, Washington University in St. Louis, 2001.

38. Beard, *An Economic Interpretation*; Fink and Riker, "The Strategy of Ratification."

39. Riker, *Federalism*, 17.

40. J. Madison to T. Jefferson, letter, 20 August 1784, in Smith, *The Republic of Letters*, 341. Notice that the negotiations with Spain over the Mississippi continued from 1784 until 1786.

41. The Jay-Gardoquin agreement of 1786 was not ratified although it did win the vote of seven states. Jay later negotiated a treaty with Britain in 1794 that opened up the Ohio Valley to settlement. This important concession by the British is mentioned below.

42. See Henry Adams, *History of the United States of America during the Administrations of Thomas Jefferson* (New York: Library of America 1986, orig., 1889), 264.

43. My question here is in response to an escalation argument presented in Jack Rakove, Andrew Rutten, and Barry Weingast, "Ideas, Interests and Credible Commitment," unpublished manuscript, Stanford University, 1999.

44. To put this figure in perspective, the cost to the British of maintaining the forts on the "Proclamation line," separating the settlers and Indians, was approximately 400 thousand pounds sterling.

45. Samuel Bemis, *The Diplomacy of the American Revolution* (Bloomington: Indiana University Press, 1935), 93. The loans were worth about \$8 million.

46. See Norberg, "The French Fiscal Crisis."

47. Jonathan Dull "Diplomacy of the Revolution," in J. Greene and J. Pole, eds., *Revolution* (London: Blackwell, 1991), 321-31.

48. North and Weingast, "Constitutions and Commitment."

49. Brewer, *The Sinews of Power*, 31.

50. It is worth mentioning that the war, to some degree, came about because of the foolhardy expedition of George Washington, in 1754, into French "territory." See David Hackett Fischer and James C. Kelly, *Bound Away: Virginia and the Western Movement* (Charlottesville: University Press of Virginia, 2000), 166.

51. For a discussion of the rebellion, see Francis Jennings, *Empire of Fortune* (New York: Norton, 1988), 442-53, and Francis Jennings, *The Creation of America: Through Revolution to Empire* (Cambridge: Cambridge University Press, 2000), 78.

52. Robert Middlekauff, *The Glorious Cause 1763-1789* (Oxford: Oxford University Press, 1982), 56.

53. Steven Watson, *The Reign of George III: 1760-1815* (Oxford: The Clarendon Press, 1960), 178. For further background on the Indian wars and land speculation see Anthony Wallace, *Jefferson and the Indians* (Cambridge, MA: Harvard University Press, 1999), chaps. 2 and 3, and Woody Holton, *Forced Founders* (Chapel Hill: University of North Carolina Press, 1999), 35.

54. William Wilcox, ed., *The Papers of Benjamin Franklin*, vol. IV (New Haven, CT: Yale University Press, 1982), 458, quoted in Gerald Stourzh, *Benjamin Franklin and American Foreign Policy* (Chicago: Chicago University Press, 1954).

55. Stourzh, *Benjamin Franklin*, 92.

56. An earlier proposal by Grenville to enforce the Act had been defeated by 274 to 134. A discussion of the debates is given by Middlekauff, *The Glorious Cause*.

57. John F. Chown, *The History of Money* (London: Routledge, 1994), 218, suggests the taxes actually raised sixteen thousand pounds, gross, but cost as much to collect.

58. Watson indicates that the reduction in duty meant that tea would cost ten shillings a pound rather than the twenty shillings just a few years previously.

59. G. Washington to C. Washington, letter, 31 January 1770, in J. Rhodehamel, ed. *Collected Writings of George Washington* (New York: Library of America, 1997), 434.

60. Draper discusses the anger aroused in the colonies by the Quebec Act, and points to colonial astonishment at the British acceptance of Catholicism in Canada. He does not mention the expansion of Canada. See Theodore Draper, *A Struggle for Power*, (New York: Random House, 1996).

61. The political geographer, Donald Meinig has commented that the Act “restored the St. Lawrence-Mississippi axis . . . and implicitly testified to the fact that only the Canadians had demonstrated an ability and willingness to deal . . . with the Indians.” See Donald William Meinig, *The Shaping of America: Volume I, Atlantic America 1492-1800* (New Haven, CT: Yale University Press, 1986), 288.

62. Edmund Burke, “Speech on American Taxation,” 19 April 1774, and “Speech on Conciliation with the Colonies,” 22 March 1775 in F. Canavan, ed., *Select Works of Edmund Burke*, vol. 1 (Indianapolis, IN: Liberty Fund, 1999), 157 and 221.

63. Watson, *The Reign of George III*, 201.

64. This assertion is attributed to James Otis.

65. In fact, the British crown had been itself in a constitutional quandary obliged to defend the rights of the Indians, at the probable cost of triggering a revolution by the colonies. The Quebec Act was thought to be one way to maintain a compromise, and the government had no intention of repealing the Act. Jennings, *The Creation of America*, 147, quotes Henry Steele Commager that the “Quebec Act was one the most enlightened pieces of colonial administration in the history of European colonial expansion.”

66. Marc Egnal, *A Mighty Empire* (Ithaca, NY: Cornell University Press, 1988), xi.

67. David McCullough, *John Adams* (New York: Simon and Schuster, 2001), 129.

68. I depend here on Bemis, *The Diplomacy*, Dull “Diplomacy of the revolution,” and Stourzh, *Benjamin Franklin*. Benjamin Franklin had sailed from England on 20 March 1775, leaving Arthur Lee as the agent in London for the Massachusetts Bay.

69. Bemis, *The Diplomacy*, 24.

70. Stourzh, *Benjamin Franklin*, 122.

71. Bemis, *The Diplomacy*, 36.

72. Thomas Bailey, *A Diplomatic History of the American People* (New York: Meredith Co., 1940).

73. A number of letters in code by the French agent, Dumas, in Utrecht (where *Roderique Hortalez* was located) to Franklin are suggestive. See, in particular, Charles Dumas to the Committee, letter, 30 April 1776, in William Wilcox, ed., *The Papers of Benjamin Franklin*, vol. 1 (New Haven, CT: Yale University Press, 1982), 403-12.

74. Quoted in Charles Henry Lee, *A Vindication of Arthur Lee LL.D., FRS* (Richmond, VA: 1894), 16.

75. The commercial treaty was made public by the French on 13 March 1778 but not the second treaty of military alliance (also signed on 6 February 1778). In this treaty, France rejected any claim to Canada but not its claim to Louisiana. See Dull, “Diplomacy of the Revolution,” 324.

76. Bemis, *Diplomacy*, 68.

77. *Ibid.*, 99.

78. *Ibid.*, 102, mentions a date of March 1782.

79. As I have noted previously, this issue was still alive in 1787.

80. Quoted in Stourzh, *Benjamin Franklin*, 201.

81. B. Franklin to R. Livingston, Letter, 12 August 1782, in J.A.L. Lemay, ed., *Franklin: Writings* (New York: Library of America, 1987), 1055.

82. Bemis, *Diplomacy*, 225, suggests that Jay believed Franklin trusted the French too much.

83. Quoted in Leonard Kaplan, *Colonies into Nation* (New York: Macmillan, 1972).

84. J. Madison to G. Washington, letter, 7 December 1786, in J. Rakove, ed., *Madison: Writings*, 60.

85. Ralph Ketcham, *James Madison, A Biography* (Charlottesville: University Press of Virginia, 1990), 183-4. Madison wrote up his observations as *Notes on Ancient and Modern Confederacies* (April 1786).

86. All these five states ratified with large majorities for the Constitution. See the discussion in Fink and Riker, "The Strategy of Ratification," 222.

87. The following quotations are from B. Bailyn, ed. *The Debate on the Constitution*, vol. 1.

88. Even antifederalists agreed eventually to the new institutional arrangements, subject to the provisos of the Bill of Rights. See David J. Siemers, "It Is Natural to Care for the Crazy Machine: The Antifederalists' Post-ratification Acquiescence," *Studies in American Political Development* 12, no. 2 (1998), 383-410.

89. See, for example, Larry D. Kramer, "Madison's Audience," *Harvard Law Review*, 112, no. 3 (1999), 611-79.

90. See Iain McLean, "Before and after Publius: The Sources and Influence of Madison's Political Thought," unpublished manuscript, Oxford University, 2001, and his comments on Robert Dahl, *A Preface to Democratic Theory* (Chicago: Chicago University Press, 1956).

91. In addition to obtaining Condorcet's material, sent by Jefferson, Madison also discussed these matters with Franklin. Until late 1785, Franklin had been minister to France, where he had known Condorcet. Indeed, both had been members of the Academy of Science, where Condorcet's paper had been read. On his return to Philadelphia, Franklin founded a Society for Political Enquiry, which both Washington and Madison attended.

92. I have emphasized here the role played by Madison in the ratification process, without commenting on his contributions in the Federal Convention. These are discussed in Jack Rakove, *Original Meanings* (New York: Alfred Knopf, 1996), for example. One point made by Riker was that the agreement in the Convention, over the form of the Constitution, was highly contingent on the success of various heresthetic maneuvers. Without the agreement, the Confederation would probably have collapsed into numerous weak states. See Riker, "The Heresthetics."

93. Paul Johnson, *A History of the American People* (New York: Harper, 1997), 226.

94. Quoted in William Sterne Randall, *Thomas Jefferson: A Life* (New York: Holt, 1993), 567.

95. Adair, *Fame and the Founding Fathers*, 173.

96. *Ibid.*, 95.

97. Donald William Meinig, *The Shaping of America: Volume 2, Continental America, 1800-1874* (New Haven, CT: Yale University Press, 1993), 10. Meinig devotes the first chapter of his book to Jefferson's problem with Spain.

98. Thomas Jefferson, "Third Annual Message, October 17, 1803," in M. D. Peterson, ed., *Jefferson: Writings* (New York: Library of America, 1984), 508.

99. John Drobak, "The Courts and Slavery in the United States: Property Rights and Credible Commitment," in W. Barnett, M. Hinich, and N. Schofield, eds., *Political Economy* (Cambridge, MA: Cambridge University Press, 1993), 223-45.

100. For the relevance of the Northwest Ordinance, see Douglass North and Andrew Rutten, "The Northwest Ordinance in Historical Perspective," in D. Klingaman and D. Vedder, eds., *The Economy of the Old Northwest* (Athens: Ohio University Press, 1984), 19-35, and Don Fehrenbacher, *The Slaveholding Republic* (New York: Oxford University Press, 2001), 254. Essentially, the Northwest Ordinance, passed in the Convention in July 1787 and later in Congress in August 1789, declared "there shall be neither slavery nor

involuntary servitude in the said territory.” A similar ordinance for the Southwest Territory passed in 1790 made no mention of a ban on slavery.

101. Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* (Westport, CT: Greenwood Press, 1979), 121.

102. Quoted in *ibid.*, 133.

103. Herbert Jaffa, *A New Birth of Freedom* (Lanham, MD: Rowman and Littlefield), 290. I shall refer to this Supreme Court Opinion as the Taney Opinion.

104. Lincoln, *Speeches and Writings I*, 395.

105. *Ibid.*, 393.

106. *Ibid.*, 426.

107. The underlying theoretical argument is obvious enough. If a factor is relatively scarce, so that it demands a higher relative price, then those who command it have an interest in protecting its scarcity by restricting those imports that are relatively intensive in that factor. See Rogowski, *Commerce*, for further discussion.

108. This maneuver in 1844 is discussed in Schofield, “Constitutions, Voting and Democracy,” 586.

109. See John Binder, “The Transportation Revolution and Antebellum Section Disagreement,” unpublished manuscript, University of Illinois at Chicago, October 2000, and Robert Fogel, *Without Consent or Contract* (New York: Norton, 1994).

110. Fehrenbacher, *Lincoln: Speeches and Writings I*, 541.

111. Riker, *The Art of Manipulation*, chap. 1.

112. The dilemma of the South is discussed in more detail in Norman Schofield, “Critical elections and constitutional quandaries,” *Politics, Philosophy and Economics*, in press.

113. See Riker, *Liberalism*, 227-32. A similar argument is advanced in Barry Weingast, “Political Stability and Civil War,” in R. Bates, A. Greif, and M. Levi, J.-L. Rosenthal and B. Weingast, *Analytical Narratives* (Princeton, NJ: Princeton University Press, 1998), 148-93.

114. Fehrenbacher, *Lincoln: Speeches and Writings I*, 520.

115. *Ibid.*, 542.

116. *Ibid.*, 714.

117. Fehrenbacher, *Slaveholding Republic*, 287.

118. D. Fehrenbacher, ed. *Lincoln: Speeches and Writings, Vol. 2: 1859-1865* (New York: Library of America, 1989), 115.

119. *Ibid.*, 120.

120. *Ibid.*, 144.

121. *The New York Times*, 1 May 1860.

122. *The New York Times*, 3 May 1860.

123. *The New York Times*, 18 May 1860.

124. Donald, *Lincoln*, 243.

125. See *ibid.*, 250.

126. Quoted in Foner, *Free Soil*, 69.

127. Fehrenbacher, *Lincoln*, vol. 2, 128.

128. In a letter to Seward, Lincoln wrote “I am for no compromise which *assists* or *permits* the extension of the institution [of slavery].” See A. Lincoln to W. Seward, letter, 1 February 1861, in *ibid.*, 197.

129. *Ibid.*, 218-22. See also Gary Wills, *A Necessary Evil* (New York: Simon and Schuster, 1999), 184, and George Fletcher, *Our Secret Constitution* (New York: Oxford University Press, 2001), 2, for the constitutional significance of this speech.

130. Rakove, *Madison*, 251.

131. Gary, “Self-Interest, Social Choice and Secession.”

132. The theme of a slow transformation of the political economic equilibrium in the “factor” space is pursued in Gary Miller and Norman Schofield, “Activist Coalition Formation, Partisan Realignment and Majority Rule Instability,” unpublished manuscript, Center in Political Economy, Washington University in St. Louis, July 2001. There it is noted that as a result of this slow transformation, an exchange has occurred between the policy positions of the Republican and Democrat parties after the Civil War in comparison with their positions during the presidential election of 2000.