

Bálint Kulifay: The United States of America Under the Articles of Confederation

“The extent of our country was so great, and its former division into distinct States so established, that we thought it better to confederate as to foreign affairs only. Every State retained its self-government in domestic matters, as better qualified to direct them to the good and satisfaction of their citizens, than a general government so distant from its remoter citizens, and so little familiar with the local peculiarities of the different parts. [...] There are now twenty-four of these distinct States, none smaller perhaps than your Morea, several larger than all Greece. Each of these has a constitution framed by itself and for itself, but militating in nothing with the powers of the General Government in its appropriate department of war and foreign affairs. These constitutions being in print and in every hand, I shall only make brief observations on them, and on those provisions particularly which have not fulfilled expectations, or which, being varied in different States, leave a choice to be made of that which is best. You will find much good in all of them, and no one which would be approved in all its parts. Such indeed are the different circumstances, prejudices, and habits of different nations, that the constitution of no one would be reconcilable to any other in every point. A judicious selection of the parts of each suitable to any other, is all which prudence should attempt [...].”

- Thomas Jefferson's letter to A. Coray, 1823^[1]

Introduction

The key document that shaped the constitutional framework of the United States of America is the widely known United States Constitution, created in 1787 and brought into effect two years later, in 1789. A less commonly understood fact is that the Constitution was not, in fact, the initial founding document of the freshly independent English colonies. In our present study, we shall endeavour to provide a reasonable assessment of the Articles of Confederation, the initial constitution of the United States of America, which operated under a far looser framework than its successor, bearing distinct advantages and drawbacks of its own. From internal problems of taxation and even law enforcement to an inability to conduct efficient foreign policy and combat piracy, a myriad matters kept pushing the Founding Fathers of America towards a closer union with a stronger central power in a sequence of events often seen in the history of many confederations.

Historical Background

In the wake of the Seven Years' War^[2] (1756-1763), which was perhaps the first truly globe-spanning war in history, the victorious British Empire found its coffers sorely depleted. Seeking to quickly increase revenue, measures were taken that placed heavier financial burdens on the Thirteen Colonies in America, whose militias had taken the lion's share of the fighting in the American theatre of the war. In particular, the Stamp Act of 1765^[3] emerged as an especially hotly contested issue, seeking to impose a tax on all paper documents in the colonies. Arguing that it was only their own representative assemblies that could levy taxes on them, the Americans maintained that the act was unconstitutional, and they resorted to physical violence to try and coerce the stamp collectors into resigning.^[4]

This decades-long political dispute over the perceived injustice of Great Britain's overtaxation of its American colonies - without offering their leaders representation in the empire's state affairs - led to the eruption of armed conflict and a full-fledged war of independence in 1775, which lasted for the following eight years. With crucial French and Spanish assistance, the rebels were victorious, and their mother country recognised their sovereignty over the colonies under the name: United States of America.

For the freshly declared rebel states to secure international recognition and assistance, it was essential that they projected a form of legitimacy. That legitimacy arose first of all from their Declaration of Independence - ratified on July 4, 1776 -, and second of all, from the creation of a constitution. Therefore, the process was started in the summer of 1776 already, and the committee of the Second Continental Congress responsible for its drafting had to relocate several times due to British military advances.

Finally, on November 15, 1777, the final draft of the Articles of Confederation and Perpetual Union was completed. State legislatures of the Thirteen Colonies began its ratification - which took four years - and signed the document, which became the first constitution of the United States of America, in the following order:

- Virginia: December 16, 1777
- South Carolina: February 5, 1778
- New York: February 6, 1778
- Rhode Island: February 9, 1778
- Connecticut: February 12, 1778
- Georgia: February 26, 1778

- New Hampshire: March 4, 1778
- Pennsylvania March 5, 1778
- Massachusetts : March 10, 1778
- North Carolina: April 5, 1778
- New Jersey: November 19, 1778
- Delaware: February 1, 1779
- Maryland: February 2, 1781

Federalism vs. Anti-Federalism

One of the greatest theoretical and political debates regarding the exact constitutional framework of the fledgling American country was revolving around the question of federalism. Like all wartime governments, the Continental Congress was, by necessity, exercising a wide range of powers during the American Revolutionary War, imposing mercantile restrictions, creating and maintaining military units, issuing legal tender, adopting a code for the military and conducting diplomatic affairs with foreign countries.^[5] It is in the very nature of war that allocating great autonomy to the various states would have led to disorganisation, inaction, inefficiency, chaos and ultimately, defeat. However, once hostilities finally abated and armed conflict ceased altogether in 1783^[6], such martial considerations were put aside once more and civilian politics have retaken the stage.

Federalists, such as Alexander Hamilton and James Madison argued – and continued to argue around the time the Constitution was later adopted – for a strong central government, suggesting that for the country to prosper, it needed a centralised management of key government functions, such as trade, customs, taxation, diplomatic and military affairs.^[7]

While Federalists were usually urban and mercantile, their Anti-Federalist opponents often came from the plantations and favoured agriculture over industry, fearing that a strong federal government, distant from the people and their traditions would sooner or later end up destroying their way of life.^[8]

Furthermore, as for the office of a proposed chief executive, they argued that having just ridded themselves of the British monarchy, they had no intention to exchange one tyrant for another. The Anti-Federalist camp – who sometimes referred to themselves as the *true* Federalists – also included prominent statesmen such as Thomas Jefferson and Patrick Henry, orator of the famed “Give me liberty, or give me death!” speech.^[9]

The Articles

The document itself consists of a preamble, a total of thirteen articles, as well as a conclusion and signatures. One of the most important and, at the same time, most typical aspects of the Articles is the negative approach it takes when determining the federal government's scope of authority; which, at this time, included no executive president or national (supreme) court, only a joint legislature called Congress.^[10]

Accordingly, every power that is not expressly and unequivocally handed to Congress by the Articles of Confederation is to remain within the authority of the member states of the United States of America.

Let us now take a closer look at each of the thirteen articles in order.^[11]

I. "The stile of this confederacy shall be 'The United States of America.'"

This is the full extent of Article One, establishing not only the country's official name, but also that it is to be a confederacy, rather than a federation.

II. "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."

As previously stated, this article is perhaps the most telling part of the document, defining its Anti-Federalist character in earnest.

III. "The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever."

The goal of the union is declared, still in a semi-ceremonial language. Note that the wording is more resemblant of an alliance treaty between independent and sovereign nations than the foundation document of a single country. Another of a confederation's unique characteristics.

IV. From here on out, the articles grow significantly longer, and begin detailing the various constitutional provisions that the nation is founded on. In particular, Article Four lays down the principles of equal treatment between the citizens of the various states, ensuring freedom of movement and opportunity between them, excepting “paupers, vagabonds, and fugitives from justice”, the latter of whom each state is obliged to apprehend and extradite to the state where their crime was originally committed.

V. Article Five establishes the principle of one state, one vote, as well as detailing the common rules of representation in the following manner:

“No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.”

Furthermore, it provides freedom of speech for members of Congress, in addition to an immunity “from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace”.

VI. The next article concerns foreign- and military affairs and this is arguably one of the points where the Articles of Confederation is at its strictest. Any kind of diplomacy whatsoever is within the sole purview of the central government; furthermore, officials of the United States of America are forbidden to “accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.”

It also bars states from entering intra-national treaties, factions and alliances without the consent of Congress, from interfering with treaty stipulations already proposed, from waging war without permission and from keeping a permanent, standing army or navy; unless they are threatened by piracy.

This inevitably had a negative impact on the military effectiveness of the country, although Article Six also attempts to balance it out by requiring that “every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage”.

VII. "When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment."

This being the extent of Article Seven, it grants states the right to appoint their own military officers up to the rank of colonel, implying therefore that higher-ranking officers such as generals may only be created by Congress.

VIII. "All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled."

Taxation is *requested* by Congress and provided by the states proportionately to their real property values. Their enforcement was notably justify open.

IX. Because the Articles deny the central government any power it is not expressly imbued with, Article Nine makes a taxative and exhaustive tally of every authority and function of Congress. These include the exclusive right to make decisions related to war and peace, matters of foreign diplomacy, the creation of letters of marque and reprisal^[12], the appointment of courts dealing with piracy and criminal acts committed on the high seas in general, the establishment of appeals courts, the ability to set weights and measures, the right to be the final mediator between state disputes, the administration of postal services, the appointment of officers, the regulation of the armed forces and the requisitioning of funds.

In addition, Congress was also allowed "to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years"; it was an office more akin to a speaker's, clearly differentiated from an executive federal president.[13] The article also tied several key functions - such as declaring war, entering into treaties, appropriating funds or appointing a commander-in-chief for the

armed forces – to a supermajority of at least nine states.

X. “The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.”

This article provides for the conduct of Congress when it is in recess; not in session. It allows for a Committee of the States to carry the same functions, except for the aforelisted powers that require a nine-state supermajority in a regular Congress session.

XI. “Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.”

When Article Eleven was originally conceived, the American Revolutionary War was still in full swing, with Patriots and Loyalists respectively supporting or opposing the secession from the British crown in virtually every American colony. It was therefore uncertain which side the colony of Canada (The Province of Quebec) would finish the war on. That colony remained loyal to the British Empire and this provision was eventually omitted from the later Constitution of the United States.

XII. “All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.”

War is a costly affair, and the American Revolutionary War was no different. The country emerged from it in significant debt; in pursuit of credibility and legitimacy, the Articles of Confederation wanted to make it clear well in advance that the nascent revolutionary nation would eventually repay it all. Congress therefore took any such debts emerging before its existence upon itself.

XIII. The closing article declares, among others, that “the Union shall be perpetual” and “nor shall any alteration at any time hereafter be made in any of [the Articles]; unless such

alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State”.

The concise phrasing of the provision for a “perpetual Union” – which the United States Constitution would later inherit – eventually led to heated debates about the right of states to secede under certain conditions; debates which culminated in the birth of the Confederate States of America and the American Civil War eighty years after the ratification of the Articles of Confederation.

Effects and Conclusion

There were many hurdles in the way of a successful confederation. Because of the central government’s inability to enforce the payment of funds requested, it constantly languished with a near-empty treasury. It could also not supply the troops properly, which caused critical shortages of food and equipment during the Revolutionary War, threatening several times with the dissolution of military units.^[14] After the war, the promised pensions could not always be paid; by now, military circles were firmly in support of a tighter union, famously toasting with slogans such as “A hoop to the barrel” or “Cement to the Union”.^[15]

The protectionist economic policies of the European great powers spelt further misfortune upon the early United States, which also proved unable to settle its debts or to combat Muslim pirates operating out of the Barbary Coast.^[16]

The Federalist thought gained traction, enjoying the support of George Washington, who had already been hailed as “Father of His Country” for his manifold achievements and military leadership during the war. It can be argued that while *de iure*, there was no single leader of the United States of America, the man with by far the greatest political influence was Washington, who ended up becoming the country’s first executive president under the new constitution, from 1789 to 1797.

Considering the aforesaid developments, the 1787 creation of the far more centralised United States Constitution – a mere decade after the advent of the Articles – was all but a necessity. And although it appeared to be a major victory for the Federalist cause, the struggle still continued. In 1791, as part of the Bill of Rights, the first ten amendments to the United States Constitution, Amendment X was ratified, whose text was a mere sentence:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to

the States, are reserved to the States respectively, or to the people.”

In it, we can see the spirit of the Articles of Confederation rising once more; an attempt to appease the Anti-Federalist camp. Although the amendment remains in effect to this day, its briefness could not prevent the states’ rights calamities that lay ahead in the century to come.

[1] Andrew A. Lipscomb – William Elery Bergh: *The Writings of Thomas Jefferson, Volume 15*. pp. 480-490.

[2] More commonly known in the United States as the French and Indian War.

[3] Officially: *An act for granting and applying certain stamp duties, and other duties, in the British colonies and plantations in America, towards further defraying the expenses of defending, protecting, and securing the same; and for amending such parts of the several acts of parliament relating to the trade and revenues of the said colonies and plantations, as direct the manner of determining and recovering the penalties and forfeitures therein mentioned.*

[4] Gordon S. Wood: *The American Revolution: A History*. p. 30.

[5] Gordon S. WOOD: *The Creation of the American Republic: 1776-1787*. pp. 354-355.

[6] The Peace of Paris came into effect on May 12, 1784.

[7] Kenneth T. JACKSON: *The Encyclopedia of New York City: The New York Historical Society*. p. 194.

[8] James WILSON: *American Government: Brief Edition*. pp. 21-22..

[9] James D. Hart – Phillip Leininger: *The Oxford Companion to American Literature*. p. 286.

[10] Benjamin FRANKEL: *History in Dispute: The American Revolution, 1763-1789*. pp. 17-24.

[11] Yale Law School: Avalon Project – Documents in Law, History and Diplomacy.
http://avalon.law.yale.edu/18th_century/artconf.asp

[12] Which allowed a captain to raise a ship and crew for state-sanctioned piracy, preying on the shipping of countries hostile to the issuing nation. This practice is called privateering.

[13] CSERVÁK Csaba: The Theory of the Distribution of Powers and its Practical Implementation, in Particular with Regard to the United States, *Journal on European History of Law* 2016/2., 114-122.

[14] Merrill Jensen: *The Articles of Confederation*. p. 37.

[15] Mark Puls: *Henry Knox: Visionary General of the American Revolution*. p. 177.

[16] Julian P. Boyd: *The Papers of Thomas Jefferson, vol. 10, 22 June–31 December 1786*, pp. 560–566.