

21: Defects of United States Articles of Confederation

Having summarized the roots and fates of other confederate governments in the last three papers, I will now proceed to enumerate the most important and disappointing defects in our system. To decide a safe and satisfactory remedy, we absolutely must become well acquainted with the extent and malignity of the disease.

[2] No Power to Enforce Federal Laws

An obvious defect of the existing Constitution is the total lack of sanction to its laws. Currently, the United States has no power to demand obedience or punish disobedience to their resolutions either by fines, by suspension or divestiture of privileges, or by any other constitutional mode. The federal government is not expressly given the authority to use force against delinquent members.

If we say that, from the nature of the social compact between the States, the right to enforce federal resolutions exists, the assumption is contrary to the wording in the *States' rights* clause, Article Two, Articles of Confederation: "that each State shall retain every power, jurisdiction, and right, not expressly delegated to the United States in Congress assembled."

To suppose this federal right does not exist seems absurd. But we are faced with the dilemma of either accepting this preposterous supposition, or violating or explaining away the provision in Article Two.

Recently, the lack of a States' rights clause in the new Constitution has been the subject of severe criticism, opponents arguing that this will cause it to fail. However, if we are unwilling to weaken the force of this praised provision, the United States will become the extraordinary spectacle of a government without even the shadow of constitutional power to enforce the execution of its own laws. From the historical examples cited, the America Confederacy appears different in this area from every similar federation. It will become a unique, new phenomenon in the political world.

[3] No Federal, State Mutual Guaranty

The lack of a mutual guaranty of the State governments is another major imperfection in the federal plan. The Articles say nothing on this subject. To suggest the guaranty exists simply because it's useful would be an even more flagrant departure from the above quoted clause than to imply a tacit power of coercion. The consequences of not having a guaranty may endanger the Union, but it isn't as dangerous to its existence as the lack of a constitutional sanction to its laws.

[4] U. S. Can't Defend State Constitutions

Without a guaranty, the Union cannot assist in repelling domestic dangers that may threaten State constitutions. Usurpation may arise and trample upon liberties in each State, while the national government could legally do nothing more than watch its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while the Union could not constitutionally help the friends and supporters of the government.

Concrete evidence of this danger is the recent tempestuous situation that Massachusetts barely survived. Who can say what might have happened if the malcontents had been led by a Caesar or by a Cromwell? Who can predict the effect of despotism, if established in Massachusetts, on the liberties of New Hampshire, Rhode Island, Connecticut, or New York?

[5] Mutual Guaranty: Advantage of Unity

Some people, influenced by exaggerated State pride, object to a federal government guaranty. They say it would involve an objectionably aggressive and undesired interference in the internal concerns of States.

They would deprive us of important advantages expected from union because they misunderstand the provision. It could not impede reforming State constitutions by a majority of the people in a legal and peaceful mode. This right would remain undiminished. The guaranty could only operate when violence was used to force changes.

Too many checks cannot be provided against calamities of this kind. The peace of society and the stability of government depend absolutely on the efficacy of precautions in this area.

[5a] People Hold Governmental Authority

When the people hold the whole power of the government, fewer pretenses to use violence to remedy partial or occasional distempers will appear. In a popular or representative government, the natural cure for poor administration is changing men. A national authority guaranty would as often be leveled against the usurpations of rulers as against the ferments and outrages of faction and sedition in the community.

[6] Taxation by State Quotas

Regulating State contributions to the national treasury by quotas is another fundamental error in the Confederation. It has already been pointed out that the national

financial needs haven't been met during this trial period, with plenty of examples. Now I will address it as it relates to equality among the States.

People who study the circumstances that produce and constitute national wealth must agree that no common standard or barometer exists to measure the degrees of it. Neither land values nor population numbers, both proposed as the rule for State contributions, are just representations.

For example, if we compare the wealth of the United Netherlands with that of Russia, Germany, or even France with their land value and aggregate population, we immediately discover no comparison between the proportion of either of these and the relative wealth of those nations. The United Netherlands has the higher wealth; the three other nations have immense land and much larger populations.

The same analysis between several American States would furnish a similar result. Contrast Virginia with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey and we will be convinced that the respective revenue abilities of those States bear little or no analogy to their comparative stock in lands or comparative population. A similar process between counties in the same State illustrates the same thing. Any man acquainted with New York State will not doubt that the active wealth of King's County is in much greater proportion than that of Montgomery if either total land value or total number of people is used as a criterion.

[7] No Measurement of Wealth Accurate

A nation's wealth depends on an infinite variety of causes. Situation, soil, climate, type of productions, nature of government, genius of the citizens, the amount of information they possess, the state of commerce, arts, industry—these circumstances, and many more too complex, minute, or adventitious to quantify, create differences in the relative opulence and riches of different countries.

There clearly can be no common measure of national wealth and, of course, no general or stationary measurement to determine a State's ability to pay taxes. Therefore, trying to regulate State contributions to the confederacy by any such rule cannot fail to be glaringly unequal and extremely oppressive.

[8] Quotas and Requisitions, States Unequal

If a way of enforcing compliance with federal requisitions could be devised, the inequality between States' wealth, alone, would be sufficient to eventually destroy the American Union. Suffering States would soon refuse to remain associated on a principle that so

unequally distributes public burdens and is calculated to impoverish and oppress citizens of some States while citizens of others are scarcely conscious of the small proportion of the weight they are required to sustain. However, this evil is inseparable from the principle of quotas and requisitions.

[9] Nat'l Gov't Must Raise Revenue— "Consumption" Taxes

The only method of avoiding this inconvenience is by authorizing the national government to raise its own revenue in its own way.

Imposts, excises and, in general, all duties on articles of consumption may be compared to a fluid that will, in time, find its level with the means of paying them. Each citizen's contribution will be, to a degree, his own option, regulated by attention to his resources. The rich may be extravagant. The poor can be frugal. And private oppression may be avoided by a judicious selection of objects proper for such taxes. If inequalities arise in some States from duties on particular objects, these will probably be counterbalanced by proportional inequalities in other States from duties on other objects. In time, an equilibrium, as far as it is attainable in so complicated a subject, will be established everywhere. Or, if inequalities continue to exist, they will not be in so great a degree, so uniform, or so odious in appearance as those that would spring from quotas.

[10] Limited Tax Revenue Limits Federal Authority

The advantage of taxes on articles of consumption is that their nature contains a security against excess. They prescribe their own limit. And it cannot be exceeded without defeating the end proposed—increasing government's revenue.

[10a] Excessive Taxes Decrease Revenue

When applied to taxation policy, the saying is as true as true as it is witty that, "in political arithmetic, 2 and 2 do not always make 4." If duties are too high, they lessen consumption, collection is eluded, and the product to the treasury is less than when taxes are confined within proper and moderate bounds. This forms a complete barrier against any significant oppression of citizens by taxes of this kind. And it naturally limits the power of the imposing authority.

[11] Indirect vs. Direct Federal Taxes

This kind of imposition is usually called indirect taxes. For a long time, this must be the chief way of raising revenue in this country.

Direct taxes principally relate to land and buildings and may be appropriate for the rule of apportionment. Either the land value or the

number of people may serve as a standard. The states of agriculture and population density of a country are considered co-related. For the purpose intended, numbers are usually preferred because of their simplicity and certainty.

In every country, land valuation is a herculean task. In a country imperfectly settled and constantly being improved, the difficulties make it more impractical. In all situations, the

expense of an accurate valuation is a formidable objection.

Direct taxes, by their nature, have no limits to the discretion of the government. Therefore the establishment of a fixed rule, compatible with its purpose, may have fewer inconveniences than to leave that discretion unbound.

Publius

Articles of Confederation references:

Article 2	States' rights clause
Article 8	`federal taxation by quotas