

Defects of the Articles of Confederation, Part 2

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Synopsis: This is the second in a series of articles on this subject, which discusses the power to raise and supply an army and navy.

No matter how a government is constituted, its first duty is to protect the people from other governments and other factions which intend to invade its territory, attack the people, or infringe upon their legitimate interests. Any government unwilling or unable to perform this task will soon lose all legitimacy; first, it will excite the ambition of other governments or factions; secondly, it will earn the contempt of the domestic population. No sensible people can prosper or seek happiness if subject to coercion or invasion by armies in the service of other governments or by armed factions; the uncertainty and fear among the people is certain to restrain the promotion of progress. What population will support a government that allows invasions and attacks upon them without a commensurate response? They may as well avoid the expense of the government and take measures into their own hands. To remain viable then, every government must enjoy the confidence of the people that it can and will deter or respond to outside threats. Once that confidence is lost, such a government is ripe for replacement either by a domestic revolt or conquest.

The purpose of this series is to review the problems under the Articles of Confederation, but it is instructive first to review the difficulties encountered before the Articles formally went into effect on 2 Mar 1781. By the time Congress issued the Declaration of Independence on 4 Jul 1776, the states were already involved in a shooting war. The war had been fought entirely by militia at Lexington and Concord (18, 19 Apr 1775) and Bunker Hill and Breed's Hill (17 Jun 1775). When George Washington took over as commander of the Continental army at Cambridge on 3 Jul 1775, it consisted of 3,000 regular troops authorized by Congress and 16,000 militiamen from the northern states. The militia continued to be the dominant force throughout the battles of Hampton Roads, VA (26-28 Oct 1775); Montreal (12 Nov 1775); Great Bridge, VA (9 Dec 1775); Quebec (31 Dec 1775); Moore's Creek, NC (27 Feb 1776); Boston (4-17 Mar 1776); and the remaining defeats in Canada up to June of 1776. Washington recognized early on the great risk associated with fighting a protracted war using militiamen with short terms of service. In his letter to Congress 2 Sep 1776, he wrote in part, concerning the lack of discipline among the militia, and their enlistments [1]:

"All these circumstances fully confirm the opinion I ever entertained, and which I more than once in my letters took the liberty of mentioning to Congress, that no dependence could be in a militia or other troops than those enlisted and embodied for a longer period than our regulations heretofore have prescribed. I am persuaded and as fully convinced, as I am of any one fact that has happened, that our liberties must of necessity be greatly hazarded, if not entirely lost, if their defense is left to any but a permanent standing army, I mean one to exist during the war."

By his last qualification, "during the war", he is no doubt referring to the suspicion held by many in the states at that time, that a standing army leads invariably to domestic tyranny engineered by whoever controlled the army. He did not have enough troops of sufficiently durable enlistments to defend New York; losing at Long Island (27-29 Aug 1776); Manhattan (15, 16 Sep 1776); White Plains (28 Oct 1776); Ft. Washington (16 Nov 1776); the evacuation of Ft. Lee (20 Nov 1776); and the retreat through New Jersey (28 Nov - 12 Dec 1776).

On 16 Sep 1776, Congress responded to his letter of 2 Sep, authorizing 88 battalions to be raised by the states according to quota and pay schedule established by Congress. They were to be paid and outfitted

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by the states, and each state was to appoint all officers of rank colonel and below. Although these troops were authorized as part of a regular army, their existence was still too dependent on the states. First, promotion below colonel could not be done based on merit in the field; it could be done by whatever system the states adopted back home. Secondly, the pay set by Congress was too low; men found they could do better by waiting for an appointment to a state militia.

The Continental army, or what was left of it, was in an exceedingly precarious situation at the close of 1776. It still consisted mostly of militia, and those enlistments were about to run out. Having been faced with continuous defeats the past six months, this army, barring some miracle, was at risk of simply melting away at the first of the year. Washington revisited this same topic again in a letter of 16 Dec 1776 [2] to the President of Congress, writing in part:

"Sir: In a late letter which I had the honor of addressing you, I took the liberty to recommend that more battalions should be raised for the new army, than what had been voted. Having fully considered the matter I am more and more convinced not only of the propriety, but of the necessity of the measure. That the enemy will leave nothing unessayed in the course of the next campaign, to reduce these states to the rule of a most lawless and insufferable tyranny must be obvious to everyone, and that the militia is not to be depended on, or aid expected from them, but in cases of the most pressing emergency, is not to be doubted. The first of these propositions is unquestionable, and fatal experience has given her sanction to the truth of the latter; indeed their lethargy of late and backwardness to turn out at this alarming crisis, seem to justify an apprehension, than nothing can bring them from their homes. ... In a word, the next will be a trying campaign and as all that is dear and valuable may depend on the issue of it, I think no measure would advise that nothing should be omitted to ensure that shall seem necessary to our success. Let us have a respectable army, and such as will be competent to every exigency. I will also add that the critical situation of our affairs and the dissolution of our present force, (now at hand) require that every nerve and exertion be employed for recruiting the new battalions."

It was Washington's brilliant attack on Trenton, NJ (26-29 Dec 1776) by crossing the Delaware River in the dead of winter, followed by victories at Princeton, NJ (3 Jan 1777) and Elizabethtown, NJ (7 Jan 1777) that induced many to remain in the army.

Afterwards, as Congress' authorization of 16 Sep 1776 took effect, there was greater balance in the makeup of the army. It should be noted however, that the militia played an important role in two areas: a) the defeat of several Hessian and British detachments at Hubbardtown, NY (4-7 Jul 1777), Oriskany, NY (6 Aug 1777), and Bennington, NY (16 Aug 1777); all of these contributed to Burgoyne's surrender after the second battle of Freeman's Farm (7 Oct 1777). Also, the militia was instrumental in keeping the war in the south alive after General Horatio Gates was defeated by Lord Cornwallis at Camden, SC (16 Aug 1780). It was not until March of 1781, with Nathaniel Greene replacing Gates, that the regular American army resumed fighting the British in the south; Greene was able to deprive Cornwallis of his interior lines and forced him to retreat to Yorktown, VA.

The portions of the Articles of Confederation attendant to our subject are found in Article VI, paragraphs 4 and 5; and Articles VII and VIII, as follows:

[Article VI, paragraphs 4 and 5] No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as, in the

judgment of the United States, Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be invested by pirates, in which case vessels of war be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

Article VII. When land forces are raised by any State for the common defence, 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, all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence 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 to, 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.

It is easily seen from these provisions that the main sources of complaint by Washington continued. Although Congress had the authority to establish a regular army, it was to be largely commanded, except at the flag-rank, by men chosen by the state legislatures. The states were properly restrained from declaring war on their own. But the most serious defect that affected the military was Article VIII, in which the army was to be paid by Congress, but the money was to come from requisitions upon the states. Congress appropriated requisitions, but the states simply refused to pay, or paid only a fraction of their requisition. Congress issued its first requisition under the Confederation on 30 Oct 1781 for \$8,000,000 in Spanish milled dollars (1 SM\$ = 386.7 grains of silver). By the end of 1785, only \$1,600,000 would be paid. Congress made other requisitions, none of which were ever paid. The net result was that Congress was unable to pay the army; this led to several revolts throughout 1783. Congress was forced to adopt a half-pay-for-life provision as a way to keep men in the field; it was later changed to a "commutation" of five years pay immediately. The truth was that Congress could not pay either one; it simply issued notes that matured some years later at 6% interest, or provided land in the western territories. The situation became so bad in 1786 that Congress was unable to raise a force to put down Shays' rebellion in Massachusetts (19 Sep 1786 - 1 Mar 1787), which was a popular tax revolt against the foreclosure of farms.

The U. S. Constitution remedies these defects by giving power to the federal government to lay taxes necessary to raise an army and navy, and to make rules for their discipline. It retained the militia system for two reasons: a) to aid the regular army if called upon; and b) as a means for an armed population to repel any attempt at domestic tyranny. The provisions of interest are contained in Article 1, Section 8, reading in part:

[Article 1, Section 8.] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Congress under the Constitution now has the ability to organize and equip a regular army and navy, establish rules for their deployment, and levy taxes directly for their support without depending on the states. The only limitation, deferring to the continuing (and legitimate) suspicions against standing armies, was that appropriations for the military had to be renewed at least every two years. Alexander Hamilton explained the underlying reasoning behind these provisions, as compared to the corresponding ones in the Articles in the *Federalist Papers* #23:

The principal purposes to be answered by union are these -- the common defense of the members; the preservation of the public peace as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense.

This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the means ought to be proportioned to the end; the persons, from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained.

Whether there ought to be a federal government intrusted with the care of the common defense, is a question in the first instance, open for discussion; but the moment it is decided in the affirmative, it will follow, that that government ought to be clothed with all the powers requisite to complete execution of its trust. And unless it can be shown that

the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, in any matter essential to its efficacy -- that is, in any matter essential to the formation, direction, or support of the national forces.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the "common defense and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and the observations, made under the last head, will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system; that if we are in earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is that the Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practiced in other governments.

The militia, which is the entire armed population, is intended partly to aid the regular army when called and partly to restrain the forces of ambition within the federal government. I mention this only because there are those who maintain a fiction that the National Guard is now the militia mentioned in the Constitution. But the concept that a perpetually armed population is necessary to deter domestic tyranny is confirmed by Madison's comments in the *Federalist Papers* #46:

The only refuge left for those who prophesy the downfall of the State governments is the visionary supposition that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the States should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the States should silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which,

according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures which must precede and produce it.

Thus the Constitution remedied the defects of the Articles of Confederation with respect to the maintenance of regular military institutions. The federal government has always been able to suitably field necessary armies, navies, and other forces as necessary. All Americans should be grateful that the U. S. military has been exceptional throughout its history in maintaining fidelity to the Constitution - very different from the experiences of most nations. That said however, no free people will ever allow themselves to be disarmed, no matter how well the military behaves.

[1] John C. Fitzpatrick, editor, *The Writings of George Washington from the Original Manuscript Sources 1745-1799*, Washington: U. S. Government Printing Office, Vol. 6, p. 5.

[2] *Ibid.*, Vol. 6, pp. 379, 380