

The Defects of the Articles of Confederation, Part 6

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Synopsis: This is the sixth in a series on the problems encountered under the Articles of Confederation. In this edition, the issue of territorial disputes between the states is discussed.

Before reviewing how the Articles of Confederation operated with respect to territorial issues, it is first necessary to recall that the states retained land claims under the ancient colonial English charters. The charters of Massachusetts and Connecticut extended ostensibly all the way to the western end of the continent. The colony of New York had been established during the reign of Charles II; as a result, Massachusetts and Connecticut exempted that area, but continued to claim all the lands to the west at their respective latitudes. Massachusetts also held the territory of what is now the state of Maine. During the period from its establishment to the Revolution, the colony of New York gradually gained influence over the Iroquois Indians and the other tribes that had accepted the nominal sovereignty of the Iroquois. Consequently, New York claimed all the land occupied by these tribes, which extended westward nearly to what is now Michigan. After the Spanish gained control of the southwest it was recognized that these claims now extended only to the Mississippi River.

The original charters of Virginia, North Carolina, and Georgia also extended to the western sea, although by the time of the Revolution was valid only to the Mississippi River given the Spanish occupation of the southwest. South Carolina likewise had some claims to territory in the west, but was not clearly specified.

The claims of Virginia were further enhanced by the fact that two earlier expeditions had led to the conquest of some western territory. In 1774, after Parliament had passed the Quebec Act, Lord Dunmore, governor of Virginia, called out a large number of settlers in western part of the colony to suppress an Indian uprising against some of the settlers along the Ohio River. In November of that year, this force defeated the Shawnees at Point Pleasant and established peace with the Shawnees and their allies. Virginia then exerted indirect control over the Ohio Valley even before the Revolution; this action, known in history as Lord Dunmore's War, effectively nullified the British Quebec Act since the colonial settlers controlled it before the British could organize it directly under a government set up by Parliament. A second action during the Revolution furthered Virginia's claims. An expedition led by George Rodgers Clarke began a campaign in Jun 1778 to defeat the British and their Indian allies along the Mississippi and Ohio Rivers. By the end of July, they had taken Cahokia and Kaskaskia. By Feb 1779, Clarke had taken Vincennes; this gave Virginia physical control of all the territory along the Ohio River as far as present-day Detroit and westward to present day St. Louis.

The powers given to Congress under the Articles of Confederation to determine territorial questions between the states was contained in the second and third paragraphs of Article IX:

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they can not agree, Congress shall name three persons out of each of the United States, and from the

list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment without favour, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between the different States.

As seen by this provision, the method of resolution was to be a determination by a special court appointed under the supervision of Congress. These judges, or commissioners, would then be tasked with formulating a decision on any territorial disputes between states. This presented three problems. First, it was not particularly efficient, as each case was to be handled in isolation from every other. It was probably not a feasible system for resolving large-scale competing territorial claims. Secondly, there was no provision for conflicts within a state in which one part wished to separate from the other. Third, there was no provision by which additional states could be added to the Confederation out of any western lands.

The legislature and delegates to Congress from the state of Maryland performed a very useful service to the eventual union by helping to resolve the first of these defects. The Articles were agreed to and recommended to the states on 15 Nov 1777, and were ratified by eight states on 9 Jul 1778. But, unlike our Constitution, which could be activated through ratification by any nine of the thirteen states, the Articles required all the states to ratify it before it could go into effect. The legislature in Maryland, recognizing the difficulties that would ensue over the colonial charters, passed a resolution on 15 Dec 1778 stating their refusal to consider ratification of the Articles until all the states had conveyed their land claims to Congress. Maryland thus wisely made the activation of the Confederation dependent upon cession of all the competing claims to the western lands.

The states responded to Maryland's challenge in a most commendable way. On 19 Apr 1779, New York conceded that Congress should have power to determine its western boundary. In Oct 1780, Connecticut ceded its western claims except for a small slice of territory just east of what is now Cleveland. Virginia, who had not only strong claims to western lands, but was actually in control of a great deal of it, mag-

unanimously ceded its claims to Congress on 2 Jan 1781. Since the claim of Massachusetts was weak, and the territories claimed by North Carolina and Georgia were mostly still wilderness, Maryland authorized its delegation to ratify the Articles on 30 Jan 1781. Maryland, the final state to ratify, did so on 1 Mar 1781, and Congress officially assumed authority under the Articles on 2 Mar 1781.

The provision contained in the Articles was used once, in the long-standing feud between Pennsylvania and Connecticut regarding the Wyoming Valley, situated in Pennsylvania just north of what is now Scranton. Although contained entirely within Pennsylvania, the area had been settled by settlers from Connecticut, and was claimed by that state. A special court convened under the Articles settled this dispute in a ruling on 30 Dec 1782, which was accepted by both sides.

But the power conveyed under the Articles proved insufficient to deal with disputes within the states. The Maine district of Massachusetts desired to break away and form an independent state. There had been a long-running feud between New Hampshire and New York regarding the territory now known as Vermont. This district, although belonging in strictness to New York, desired independence before the Revolution. It declared itself independent on 15 Jan 1777, calling itself "New Connecticut", and petitioned for entry into Congress as a fourteenth state. The name was changed on 8 Jul 1777 to "Vermont". The delegation from New York successfully prevented this request from coming before Congress, and it remained unresolved until Vermont formally seceded from New York on 4 Jul 1786.

The case of North Carolina is unique. In Jun 1784, North Carolina ceded its western claims to Congress on the condition that Congress would have two years to decide how to allocate it. But the settlers in that area, beset by problems with Indians, were refused help from both Congress and North Carolina, and accordingly set up their own state, named Franklin in 1786. This led to a low-level civil war in this region, now the state of Tennessee, until 1788, when it was rejoined to North Carolina. The important point here is that Congress was too weak to resolve the conflict either way.

Last, we must take notice of the Northwest Ordinance of 13 Jul 1787, passed by Congress to determine the conditions of settlement and eventual statehood for all the lands in the west that had been ceded to Congress. It was an admirable law, providing an excellent method of settlement, governance as a territory, a prohibition of slavery, and guarantees of certain civil rights. It superseded an earlier one of 28 Jun 1786, which contained the great defect of permitting slavery in the west. While the Northwest Ordinance proved to be an excellent expedient, it was done without outside any specific authority in the Articles. As a result, Congress simply treated this vast territory as a traditional English folk land, in which it is divided and administered ad-hoc as the population increases. Congress passed it of necessity, as the population was growing. But the fact that it had no authority to exercise any sovereign authority of this nature only proved the general deficiency of the Articles, for the powers granted would have to be violated as circumstances arose; that could only lead to quarrels and instability among the states.

The requisite power over territory, lacking in the Articles, was granted to Congress under the federal Constitution in Article IV, Section 3:

[Article IV]

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.