

The Defects of the Articles of Confederation, Part 7

Edward D. Duvall

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Synopsis: This is the seventh in a series about the Articles of Confederation. In this edition, the impact of equal suffrage by the states is discussed.

A republican political system is one in which a large fraction of the general population exerts power indirectly through representatives of their choice. The great attraction of a republic is that those representatives will, over the long run, reflect the views of a majority of the people, but at the same time, will tend to attenuate excessive demands by the public in times of difficulty or uncertainty. A republic is therefore somewhere in the center of the styles of political organization. At one end are the forms in which power is concentrated in a few people. Among these are: a) a dictatorship or absolute monarchy, in which one person has nearly all the power; b) a monarchy and hereditary nobility composed of a small but stable number of people; and c) ruling oligarchies, in which power is assumed by a small number of people who are not members of a permanent class. At the other extreme is pure democracy, in which every eligible person has a direct voice in public affairs.

There are two main classes of systems that can be correctly called republics. In the first type, a purely federative style, the members of the federation are actually subordinate political divisions. Each political subdivision chooses delegates to represent it at an upper political level. In the second type, the general public chooses delegates to the top political level in their capacity as individuals. A mixture of these prevailed under the Articles of Confederation: the eligible voting public, in their capacity as individuals, chose delegates to their state legislatures; those state legislators in turn chose delegates to Congress. In Congress, each state had an equal vote. At the state level then, it was of the second type of republic, but at the national level, was purely federative. The provision is found in the first portion of Article V:

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by 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.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

It is clear that such a system is republican in the sense that the public chose representatives at the state level who in turn represented the state in Congress. The people thus had an indirect choice in who represented them in Congress. This is a satisfactory system, because ultimately the people are able to determine the makeup of Congress, although the process is one step removed from direct election. But, if we recall the basic premise of a republic, that the views of a majority of the people will usually prevail, it is equally clear that a purely federative system such as the Articles can maintain this premise only if each state has approximately the same population. Such was not the case with the original thirteen states. As Hamilton pointed out in *The Federalist* #22, seven states (Delaware, Georgia, Maryland, New Hampshire, New Jersey, Rhode Island, and South Carolina) could constitute a majority of votes in Congress, yet their combined population was not more than a third of the entire population. On the face of it, there was no

remedy for this problem other than the hope that these states would have such diverse interests that they would not combine together, thus requiring that some other combination of states vote one way or the other, and that by this means, opinions shared by of a majority of the population could be expressed. It is true that these seven states rarely agreed, so little harm was done, but it was accidental, not by virtue of the system.

The Articles did contain one other provision that tended to mitigate this problem somewhat, at least at first glance. It is found in the second-to-last paragraph of Article IX:

The United States, in Congress assembled, shall never engage in war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

As seen here, concurrence of nine of the thirteen states was required to enact legislation on the important issues, such as treaties, coining money and issuing currency, and military expenditures. In this way, the defect mentioned earlier was avoided: any nine states, including the seven whose population totaled only one-third, would likely constitute a majority of the people. Secondly, history shows that requiring a supermajority on important issues having a great impact on the whole is an excellent idea. But the wide diversity of state populations, the provincial outlook of many states, and the nine-of-thirteen rule sometimes led to a pernicious defect in the operation of the Articles when taken together. For, if nine states were required to pass significant legislation, a combination of five states, whose combined population may total only 20% of the entire American population, could prevent necessary legislation from being passed – rule by the minority, contrary to the basic goal of a republic. It was similar to, but not quite as bad as the Polish system, which required unanimity on every issue.

Two examples illustrate the problem. In 1784, Congress was deprived of a quorum to do business from 11 Aug to 30 Nov because three New England states decided not to attend. An even worse example was a vote taken on 23 Apr 1784 regarding the administration of western lands. The issue was whether slavery would be allowed in those territories. Because not all the states were present this vote required 7 of 10 states to retain a previous resolution that prohibited slavery. New Jersey's lone delegate refused to vote, and the delegation from North Carolina was divided. So, the previous resolution was repealed by the votes of three states: Virginia, South Carolina, and Maryland; thus three states, with a combined population very much in the minority compared to the whole, was able to re-institute slavery in all the western territories. Fortunately, this act of 1784 was superseded by the Northwest Ordinance of 13 Jul 1787.

The U. S. Constitution as proposed in 1787 preserved the excellent feature of a two-thirds requirement to confirm treaties in the Senate, which represented the states in their sovereign capacity. But to avoid the main representative defect discussed here, most other legislation was to be decided by a simple majority in both branches of Congress: the House, which represents the people through their directly-elected representatives, and the Senate representing the states. In this way, the sentiments of a majority of the people, through representation in the House, are always guaranteed a voice in every vote. These provisions lay out a workable framework by cannot address the case wherein the interests of the members of Congress diverge from the interests of the people; there is no cure for that except elections.