

Modern History Resource Kit

**Volume 3
(American History)**

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Lionel D C Hartley

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The Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

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.

Common Sense, by Thomas Paine

INTRODUCTION

Perhaps the sentiments contained in the following pages, are not YET sufficiently fashionable to procure them general favour; a long habit of not thinking a thing WRONG, gives it a superficial appearance of being RIGHT, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason.

As a long and violent abuse of power, is generally the Means of calling the right of it in question (and in Matters too which might never have been thought of, had not the Sufferers been aggravated into the inquiry) and as the King of England hath undertaken in his OWN RIGHT, to support the Parliament in what he calls THEIRS, and as the good people of this country are grievously oppressed by the combination, they have an undoubted privilege to inquire into the pretensions of both, and equally to reject the usurpation of either.

In the following sheets, the author hath studiously avoided every thing which is personal among ourselves. Compliments as well as censure to individuals make no part thereof. The wise, and the worthy, need not the triumph of a pamphlet; and those whose sentiments are injudicious, or unfriendly, will cease of themselves unless too much pains are bestowed upon their conversion.

The cause of America is in a great measure the cause of all mankind. Many circumstances hath, and will arise, which are not local, but universal, and through which the principles of all Lovers of Mankind are affected, and in the Event of which, their Affections are interested. The laying a Country desolate with Fire and Sword, declaring War against the natural rights of all Mankind, and extirpating the Defenders thereof from the Face of the Earth, is the Concern of every Man to whom Nature hath given the Power of feeling; of which Class, regardless of Party Censure, is the AUTHOR.

P.S. The Publication of this new Edition hath been delayed, with a View of taking notice (had it been necessary) of any Attempt to refute the Doctrine of Independance: As no Answer hath yet appeared, it is now presumed that none will, the Time needful for getting such a Performance ready for the Public being considerably past.

Who the Author of this Production is, is wholly unnecessary to the Public, as the Object for Attention is the DOCTRINE ITSELF, not the MAN. Yet it may not be unnecessary to say, That he is unconnected with any Party, and under no sort of Influence public or private, but the influence of reason and principle.

Philadelphia, February 14, 1776

OF THE ORIGIN AND DESIGN OF GOVERNMENT IN GENERAL. WITH CONCISE REMARKS ON THE ENGLISH CONSTITUTION

Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our POSITIVELY by uniting our affections, the latter NEGATIVELY by restraining our vices. The one encourages intercourse, the other creates distinctions. The first a patron, the last a punisher.

Society in every state is a blessing, but government even in its best state is but a necessary evil; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries BY A GOVERNMENT, which we might expect in a country WITHOUT GOVERNMENT, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built on the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform, and irresistibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him out of two evils to choose the least. WHEREFORE, security being the true design and end of government, it unanswerably follows, that whatever FORM thereof appears most likely to ensure it to us, with the least expense and greatest benefit, is preferable to all others.

In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest, they will then represent the first peopling of any country, or of the world. In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto, the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but one man might labour out of the common period of life without accomplishing any thing; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the mean time would urge him from his work, and every different want call him a different way. Disease, nay even misfortune would be death, for though neither might be mortal, yet either would disable him from living, and reduce him to a state in which he might rather be said to perish than to die.

Thus necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which, would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each other; but as nothing but heaven is impregnable to vice, it will unavoidably happen, that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other; and this remissness will point out the necessity of establishing some form of government to supply the defect of moral virtue.

Some convenient tree will afford them a State-House, under the branches of which, the whole colony may assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of REGULATIONS, and be enforced by no other penalty than public disesteem. In this first parliament every man, by natural right, will have a seat.

But as the colony increases, the public concerns will increase likewise, and the distance at which the

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members may be separated, will render it too inconvenient for all of them to meet on every occasion as at first, when their number was small, their habitations near, and the public concerns few and trifling. This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those who appointed them, and who will act in the same manner as the whole body would act, were they present. If the colony continues increasing, it will become necessary to augment the number of the representatives, and that the interest of every part of the colony may be attended to, it will be found best to divide the whole into convenient parts, each part sending its proper number; and that the ELECTED might never form to themselves an interest separate from the ELECTORS, prudence will point out the propriety of having elections often; because as the ELECTED might by that means return and mix again with the general body of the ELECTORS in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves. And as this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this (not on the unmeaning name of king) depends the STRENGTH OF GOVERNMENT, AND THE HAPPINESS OF THE GOVERNED.

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here too is the design and end of government, viz. freedom and security. And however our eyes may be dazzled with show, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and of reason will say, it is right.

I draw my idea of the form of government from a principle in nature, which no art can overturn, viz. that the more simple any thing is, the less liable it is to be disordered; and the easier repaired when disordered; and with this maxim in view, I offer a few remarks on the so much boasted constitution of England. That it was noble for the dark and slavish times in which it was erected, is granted. When the world was overrun with tyranny the least remove thereof was a glorious rescue. But that it is imperfect, subject to convulsions, and incapable of producing what it seems to promise, is easily demonstrated.

Absolute governments (tho' the disgrace of human nature) have this advantage with them, that they are simple; if the people suffer, they know the head from which their suffering springs, know likewise the remedy, and are not bewildered by a variety of causes and cures. But the constitution of England is so exceedingly complex, that the nation may suffer for years together without being able to discover in which part the fault lies; some will say in one and some in another, and every political physician will advise a different medicine.

I know it is difficult to get over local or long standing prejudices, yet if we will suffer ourselves to examine the component parts of the English constitution, we shall find them to be the base remains of two ancient tyrannies, compounded with some new republican materials.

FIRST - The remains of monarchial tyranny in the person of the king. SECONDLY - The remains of aristocratical tyranny in the persons of the peers. THIRDLY - The new republican materials in the persons of the commons, on whose virtue depends the freedom of England.

The two first, by being hereditary, are independent of the people; wherefore in a CONSTITUTIONAL SENSE they contribute nothing towards the freedom of the state.

To say that the constitution of England is a UNION of three powers reciprocally CHECKING each other, is farcical, either the words have no meaning, or they are flat contradictions.

To say that the commons is a check upon the king, presupposes two things:

FIRST - That the king is not to be trusted without being looked after, or in other words, that a thirst for absolute power is the natural disease of monarchy.

SECONDLY - That the commons, by being appointed for that purpose, are either wiser or more worthy of confidence than the crown.

But as the same constitution which gives the commons a power to check the king by withholding the supplies, gives afterwards the king a power to check the commons, by empowering him to reject their other bills; it again supposes that the king is wiser than those whom it has already supposed to be wiser than him. A mere absurdity!

There is something exceedingly ridiculous in the composition of monarchy; it first excludes a man from the means of information, yet empowers him to act in cases where the highest judgment is required. The state of a king shuts him from the world, yet the business of a king requires him to know it thoroughly; wherefore the different parts, by unnaturally opposing and destroying each other, prove the whole character to be absurd and useless.

Some writers have explained the English constitution thus: The king, say they, is one, the people another; the peers are a house in behalf of the king, the commons in behalf of the people; but this hath all the distinctions of a house divided against itself; and though the expressions be pleasantly arranged, yet when examined, they appear idle and ambiguous; and it will always happen, that the nicest construction that words are capable of, when applied to the description of some thing which either cannot exist, or is too incomprehensible to be within the compass of description, will be words of sound only, and though they may amuse the ear, they cannot inform the mind, for this explanation includes a previous question, viz. HOW CAME THE KING BY A POWER WHICH THE PEOPLE ARE AFRAID TO TRUST, AND ALWAYS OBLIGED TO CHECK? Such a power could not be the gift of a wise people, neither can any power, WHICH NEEDS CHECKING, be from God; yet the provision, which the constitution makes, supposes such a power to exist.

But the provision is unequal to the task; the means either cannot or will not accomplish the end, and the whole affair is a *felo de se*; for as the greater weight will always carry up the less, and as all the wheels of a machine are put in motion by one, it only remains to know which power in the constitution has the most weight, for that will govern; and though the others, or a part of them, may clog, or, as the phrase is, check the rapidity of its motion, yet so long as they cannot stop it, their endeavours will be ineffectual; the first moving power will at last have its way, and what it wants in speed, is supplied by time.

That the crown is this overbearing part in the English constitution, needs not be mentioned, and that it derives its whole consequence merely from being the giver of places and pensions, is self-evident, wherefore, though we have been wise enough to shut and lock a door against absolute monarchy, we at the same time have been foolish enough to put the crown in possession of the key.

The prejudice of Englishmen in favour of their own government by king, lords, and commons, arises as much or more from national pride than reason. Individuals are undoubtedly safer in England than in some other countries, but the WILL of the king is as much the LAW of the land in Britain as in France, with this difference, that instead of proceeding directly from his mouth, it is handed to the people

under the more formidable shape of an act of parliament. For the fate of Charles the First hath only made kings more subtle - not more just.

Wherefore, laying aside all national pride and prejudice in favour of modes and forms, the plain truth is, that IT IS WHOLLY OWING TO THE CONSTITUTION OF THE PEOPLE, AND NOT TO THE CONSTITUTION OF THE GOVERNMENT, that the crown is not as oppressive in England as in Turkey.

An inquiry into the CONSTITUTIONAL ERRORS in the English form of government is at this time highly necessary; for as we are never in a proper condition of doing justice to others, while we continue under the influence of some leading partiality, so neither are we capable of doing it to ourselves while we remain fettered by any obstinate prejudice. And as a man, who is attached to a prostitute, is unfitted to choose or judge a wife, so any prepossession in favour of a rotten constitution of government will disable us from discerning a good one.

OF MONARCHY AND HEREDITARY SUCCESSION

Mankind being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance; the distinctions of rich, and poor, may in a great measure be accounted for, and that without having recourse to the harsh, ill-sounding names of oppression and avarice. Oppression is often the CONSEQUENCE, but seldom or never the MEANS of riches; and though avarice will preserve a man from being necessitously poor, it generally makes him too timorous to be wealthy.

But there is another and greater distinction, for which no truly natural or religious reason can be assigned, and that is, the distinction of men into KINGS and SUBJECTS. Male and female are the distinctions of nature, good and bad the distinctions of heaven; but how a race of men came into the world so exalted above the rest, and distinguished like some new species, is worth inquiring into, and whether they are the means of happiness or of misery to mankind.

In the early ages of the world, according to the scripture chronology, there were no kings; the consequence of which was, there were no wars; it is the pride of kings which throw mankind into confusion. Holland without a king hath enjoyed more peace for this last century than any of the monarchial governments in Europe. Antiquity favours the same remark; for the quiet and rural lives of the first patriarchs hath a happy something in them, which vanishes away when we come to the history of Jewish royalty.

Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom. It was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. The Heathens paid divine honours to their deceased kings, and the Christian world hath improved on the plan, by doing the same to their living ones. How impious is the title of sacred majesty applied to a worm, who in the midst of his splendor is crumbling into dust!

As the exalting one man so greatly above the rest cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture; for the will of the Almighty, as declared by Gideon and the prophet Samuel, expressly disapproves of government by kings. All anti-monarchical parts of scripture have been very smoothly glossed over in monarchial governments, but they undoubtedly merit the attention of countries which have their governments yet to form. RENDER UNTO CAESAR THE THINGS WHICH ARE CAESAR'S is the scripture doctrine of courts, yet it is no support of monarchial government, for the Jews at that time were without a king, and in a state of vassalage to the Romans.

Now three thousand years passed away from the Mosaic account of the creation, till the Jews under a national delusion requested a king. Till then their form of government (except in extraordinary cases, where the Almighty interposed) was a kind of republic administered by a judge and the elders of the tribes. Kings they had none, and it was held sinful to acknowledge any being under that title but the Lord of Hosts. And when a man seriously reflects on the idolatrous homage which is paid to the persons of kings, he need not wonder that the Almighty, ever jealous of his honour, should disapprove of a form of government which so impiously invades the prerogative of heaven.

Monarchy is ranked in scripture as one of the sins of the Jews, for which a curse in reserve is denounced against them. The history of that transaction is worth attending to.

The children of Israel being oppressed by the Midianites, Gideon marched against them with a small army, and victory, through the divine interposition, decided in his favour. The Jews, elate with success, and attributing it to the generalship of Gideon, proposed making him a king, saying, RULE THOU OVER US, THOU AND THY SON AND THY SON'S SON. Here was temptation in its fullest extent; not a kingdom only, but an hereditary one, but Gideon in the piety of his soul replied, I WILL NOT RULE OVER YOU, NEITHER SHALL MY SON RULE OVER YOU "THE LORD SHALL RULE OVER YOU." Words need not be more explicit; Gideon doth not decline the honour, but denieth their right to give it; neither doth he compliment them with invented declarations of his thanks, but in the positive style of a prophet charges them with disaffection to their proper Sovereign, the King of heaven.

About one hundred and thirty years after this, they fell again into the same error. The hankering which the Jews had for the idolatrous customs of the Heathens, is something exceedingly unaccountable; but so it was, that laying hold of the misconduct of Samuel's two sons, who were entrusted with some secular concerns, they came in an abrupt and clamorous manner to Samuel, saying, BEHOLD THOU ART OLD, AND THY SONS WALK NOT IN THY WAYS, NOW MAKE US A KING TO JUDGE US, LIKE ALL OTHER NATIONS. And here we cannot but observe that their motives were bad, viz. that they might be LIKE unto other nations, i.e. the Heathens, whereas their true glory laid in being as much UNLIKE them as possible. BUT THE THING DISPLEASED SAMUEL WHEN THEY SAID, GIVE US A KING TO JUDGE US; AND SAMUEL PRAYED UNTO THE LORD, AND THE LORD SAID UNTO SAMUEL, HEarken UNTO THE VOICE OF THE PEOPLE IN ALL THAT THEY SAY UNTO THEE, FOR THEY HAVE NOT REJECTED THEE, BUT THEY HAVE REJECTED ME, "THAT I SHOULD NOT REIGN OVER THEM." ACCORDING TO ALL THE WORKS WHICH THEY HAVE SINCE THE DAY THAT I BROUGHT THEM UP OUT OF EGYPT, EVEN UNTO THIS DAY; WHEREWITH THEY HAVE FORSAKEN ME AND SERVED OTHER GODS; SO DO THEY ALSO UNTO THEE. NOW THEREFORE HEarken UNTO THEIR VOICE, HOWBEIT, PROTEST SOLEMNLY UNTO THEM AND SHEW THEM THE MANNER OF THE KING THAT SHALL REIGN OVER THEM, I.E. not of any particular king, but the general manner of the kings of the earth, whom Israel was so eagerly copying after. And notwithstanding the great distance of time and difference of manners, the character is still in fashion. AND SAMUEL TOLD ALL THE WORDS OF THE LORD UNTO THE PEOPLE, THAT ASKED OF HIM A KING. AND HE SAID, THIS SHALL BE THE MANNER OF THE KING THAT SHALL REIGN OVER YOU; HE WILL TAKE YOUR SONS AND APPOINT THEM FOR HIMSELF, FOR HIS CHARIOTS, AND TO BE HIS HORSEMAN, AND SOME SHALL RUN BEFORE HIS CHARIOTS (this description agrees with the present mode of impressing

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men) AND HE WILL APPOINT HIM CAPTAINS OVER THOUSANDS AND CAPTAINS OVER FIFTIES, AND WILL SET THEM TO EAR HIS GROUND AND REAP HIS HARVEST, AND TO MAKE HIS INSTRUMENTS OF WAR, AND INSTRUMENTS OF HIS CHARIOTS; AND HE WILL TAKE YOUR DAUGHTERS TO BE CONFECTIONARIES, AND TO BE COOKS AND TO BE BAKERS (this describes the expense and luxury as well as the oppression of kings) AND HE WILL TAKE YOUR FIELDS AND YOUR OLIVE YARDS, EVEN THE BEST OF THEM, AND GIVE THEM TO HIS SERVANTS; AND HE WILL TAKE THE TENTH OF YOUR SEED, AND OF YOUR VINEYARDS, AND GIVE THEM TO HIS OFFICERS AND TO HIS SERVANTS (by which we see that bribery, corruption, and favouritism are the standing vices of kings) AND HE WILL TAKE THE TENTH OF YOUR MEN SERVANTS, AND YOUR MAID SERVANTS, AND YOUR GOODLIEST YOUNG MEN AND YOUR ASSES, AND PUT THEM TO HIS WORK; AND HE WILL TAKE THE TENTH OF YOUR SHEEP, AND YE SHALL BE HIS SERVANTS, AND YE SHALL CRY OUT IN THAT DAY BECAUSE OF YOUR KING WHICH YE SHALL HAVE CHOSEN, "AND THE LORD WILL NOT HEAR YOU IN THAT DAY." This accounts for the continuation of monarchy; neither do the characters of the few good kings which have lived since, either sanctify the title, or blot out the sinfulness of the origin; the high encomium given of David takes no notice of him OFFICIALLY AS A KING, but only as a MAN after God's own heart. NEVERTHELESS THE PEOPLE REFUSED TO OBEY THE VOICE OF SAMUEL, AND THEY SAID, NAY, BUT WE WILL HAVE A KING OVER US, THAT WE MAY BE LIKE ALL THE NATIONS, AND THAT OUR KING MAY JUDGE US, AND GO OUT BEFORE US, AND FIGHT OUR BATTLES. Samuel continued to reason with them, but to no purpose; he set before them their ingratitude, but all would not avail; and seeing them fully bent on their folly, he cried out, I WILL CALL UNTO THE LORD, AND HE SHALL SEND THUNDER AND RAIN (which then was a punishment, being in the time of wheat harvest) THAT YE MAY PERCEIVE AND SEE THAT YOUR WICKEDNESS IS GREAT WHICH YE HAVE DONE IN THE SIGHT OF THE LORD, AND THE LORD SENT THUNDER AND RAIN THAT DAY, AND ALL THE PEOPLE GREATLY FEARED THE LORD AND SAMUEL. AND ALL THE PEOPLE SAID UNTO SAMUEL, PRAY FOR THY SERVANTS UNTO THE LORD THY GOD THAT WE DIE NOT, FOR "WE HAVE ADDED UNTO OUR SINS THIS EVIL, TO ASK A KING." These portions of scripture are direct and positive. They admit of no equivocal construction. That the Almighty hath here entered his protest against monarchical government, is true, or the scripture is false. And a man hath good reason to believe that there is as much of kingcraft, as priestcraft, in withholding the scripture from the public in Popish countries. For monarchy in every instance is the Popery of government.

To the evil of monarchy we have added that of hereditary succession; and as the first is a degradation and lessening of ourselves, so the second, claimed as a matter of right, is an insult and an imposition on posterity. For all men being originally equals, no ONE by BIRTH could have a right to set up his own family in perpetual preference to all others for ever, and though himself might deserve SOME decent degree of honours of his contemporaries, yet his descendants might be far too unworthy to inherit them. One of the strongest NATURAL proofs of the folly of hereditary right in kings, is, that nature disapproves it, otherwise she would not so frequently turn it into ridicule by giving mankind an ASS FOR A LION.

Secondly, as no man at first could possess any other public honours than were bestowed upon him, so the givers of those honours could have no power to give away the right of posterity. And though they might say, "We choose you for OUR head," they could not, without manifest injustice to their children, say, "that your children and your children's children shall reign over OURS for ever." Because such an unwise, unjust, unnatural compact might (perhaps) in the next succession put them under the government of a rogue or a fool. Most wise men, in their private sentiments, have ever treated hereditary right with contempt; yet it is one of those evils, which when once established is not easily removed; many submit from fear, others from superstition, and the more powerful part shares with the king the plunder of the rest.

This is supposing the present race of kings in the world to have had an honourable origin; whereas it is more than probable, that could we take off the dark covering of antiquities, and trace them to their first rise, that we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners or preeminence in subtlety obtained the title of chief among plunderers; and who by increasing in power, and extending his depredations, overawed the quiet and defenceless to purchase their safety by frequent contributions. Yet his electors could have no idea of giving hereditary right to his descendants, because such a perpetual exclusion of themselves was incompatible with the free and unrestrained principles they professed to live by. Wherefore, hereditary succession in the early ages of monarchy could not take place as a matter of claim, but as something casual or complementary; but as few or no records were extant in those days, and traditional history stuffed with fables, it was very easy, after the lapse of a few generations, to trump up some superstitious tale, conveniently timed, Mahomet like, to cram hereditary right down the throats of the vulgar. Perhaps the disorders which threatened, or seemed to threaten, on the decease of a leader and the choice of a new one (for elections among ruffians could not be very orderly) induced many at first to favour hereditary pretensions; by which means it happened, as it hath happened since, that what at first was submitted to as a convenience, was afterwards claimed as a right.

England, since the conquest, hath known some few good monarchs, but groaned beneath a much larger number of bad ones; yet no man in his senses can say that their claim under William the Conqueror is a very honourable one. A French bastard landing with an armed banditti, and establishing himself king of England against the consent of the natives, is in plain terms a very paltry rascally original. It certainly hath no divinity in it. However, it is needless to spend much time in exposing the folly of hereditary right; if there are any so weak as to believe it, let them promiscuously worship the ass and lion, and welcome. I shall neither copy their humility, nor disturb their devotion.

Yet I should be glad to ask how they suppose kings came at first? The question admits but of three answers, viz. either by lot, by election, or by usurpation. If the first king was taken by lot, it establishes a precedent for the next, which excludes hereditary succession. Saul was by lot, yet the succession was not hereditary, neither does it appear from that transaction there was any intention it ever should be. If the first king of any country was by election, that likewise establishes a precedent for the next: for to say, that the RIGHT of all future generations is taken away, by the act of the first electors, in their choice not only of a king, but of a family of kings for ever, hath no parallel in or out of scripture but the doctrine of original sin, which supposes the free will of all men lost in Adam; and from such comparison, and it will admit of no other, hereditary succession can derive no glory. For as in Adam all sinned, and as in the first electors all men obeyed; as in the one all mankind were subjected to Satan, and in the other to Sovereignty; as our innocence was lost in the first, and our authority in the last; and as both disable us from reassuming some former state and privilege, it unanswerably follows that original sin and hereditary succession are parallels. Dishonourable rank! Inglorious connection! Yet the most subtle sophist cannot produce a juster simile.

As to usurpation, no man will be so hardy as to defend it; and that William the Conqueror was an usurper is a fact not to be contradicted. The plain truth is, that the antiquity of English monarchy will not bear looking into.

But it is not so much the absurdity as the evil of hereditary succession which concerns mankind. Did it ensure a race of good and wise men it would have the seal of divine authority, but as it opens a door to the FOOLISH, the WICKED, and the IMPROPER, it hath in it the nature of oppression. Men who look

upon themselves born to reign, and others to obey, soon grow insolent; selected from the rest of mankind their minds are early poisoned by importance; and the world they act in differs so materially from the world at large, that they have but little opportunity of knowing its true interests, and when they succeed to the government are frequently the most ignorant and unfit of any throughout the dominions.

Another evil which attends hereditary succession is, that the throne is subject to be possessed by a minor at any age; all which time the regency, acting under the cover a king, have every opportunity and inducement to betray their trust. The same national misfortune happens, when a king, worn out with age and infirmity, enters the last stage of human weakness. In both these cases the public becomes a prey to every miscreant, who can tamper successfully with the follies either of age or infancy.

The most plausible plea, which hath ever been offered in favour of hereditary succession, is, that it preserves a nation from civil wars; and were this true, it would be weighty; whereas, it is the most barefaced falsity ever imposed upon mankind. The whole history of England disowns the fact. Thirty kings and two minors have reigned in that distracted kingdom since the conquest, in which time there have been (including the Revolution) no less than eight civil wars and nineteen rebellions. Wherefore instead of making for peace, it makes against it, and destroys the very foundation it seems to stand on.

The contest for monarchy and succession, between the houses of York and Lancaster, laid England in a scene of blood for many years. Twelve pitched battles, besides skirmishes and sieges, were fought between Henry and Edward. Twice was Henry prisoner to Edward, who in his turn was prisoner to Henry. And so uncertain is the fate of war and the temper of a nation, when nothing but personal matters are the ground of a quarrel, that Henry was taken in triumph from a prison to a palace, and Edward obliged to fly from a palace to a foreign land; yet, as sudden transitions of temper are seldom lasting, Henry in his turn was driven from the throne, and Edward recalled to succeed him. The parliament always following the strongest side.

This contest began in the reign of Henry the Sixth, and was not entirely extinguished till Henry the Seventh, in whom the families were united. Including a period of 67 years, viz. from 1422 to 1489.

In short, monarchy and succession have laid (not this or that kingdom only) but the world in blood and ashes. 'Tis a form of government which the word of God bears testimony against, and blood will attend it.

If we inquire into the business of a king, we shall find that in some countries they have none; and after sauntering away their lives without pleasure to themselves or advantage to the nation, withdraw from the scene, and leave their successors to tread the same idle ground. In absolute monarchies the whole weight of business, civil and military, lies on the king; the children of Israel in their request for a king, urged this plea "that he may judge us, and go out before us and fight our battles." But in countries where he is neither a judge nor a general, as in England, a man would be puzzled to know what IS his business.

The nearer any government approaches to a republic the less business there is for a king. It is somewhat difficult to find a proper name for the government of England. Sir William Meredith calls it a republic; but in its present state it is unworthy of the name, because the corrupt influence of the crown, by having all the places in its disposal, hath so effectually swallowed up the power, and eaten out the virtue of the house of commons (the republican part in the constitution) that the government of England is nearly as monarchical as that of France or Spain. Men fall out with names without understanding them. For it is the republican and not the monarchical part of the constitution of England which Englishmen glory in, viz. the liberty of choosing an house of commons from out of their own body - and it is easy to see that when republican virtue fails, slavery ensues. Why is the constitution of England sickly, but because monarchy hath poisoned the republic, the crown hath engrossed the commons?

In England a king hath little more to do than to make war and give away places; which in plain terms, is to impoverish the nation and set it together by the ears. A pretty business indeed for a man to be allowed eight hundred thousand sterling a year for, and worshipped into the bargain! Of more worth is one honest man to society and in the sight of God, than all the crowned ruffians that ever lived.

THOUGHTS ON THE PRESENT STATE OF AMERICAN AFFAIRS

In the following pages I offer nothing more than simple facts, plain arguments, and common sense; and have no other Preliminaries to settle with the reader, than that he will divest himself of prejudice and prepossession, and suffer his reason and his feelings to determine for themselves; that he will put ON, or rather that he will not put OFF the true character of a man, and generously enlarge his views beyond the present day.

Volumes have been written on the subject of the struggle between England and America. Men of all ranks have embarked in the controversy, from different motives, and with various designs; but all have been ineffectual, and the period of debate is closed. Arms, as the last resource, decide this contest; the appeal was the choice of the king, and the continent hath accepted the challenge.

It hath been reported of the late Mr. Pelham (who tho' an able minister was not without his faults) that on his being attacked in the house of commons, on the score, that his measures were only of a temporary kind, replied "THEY WILL LAST MY TIME." Should a thought so fatal and unmanly possess the colonies in the present contest, the name of ancestors will be remembered by future generations with detestation.

The sun never shined on a cause of greater worth. 'Tis not the affair of a city, a county, a province, or a kingdom, but of a continent - of at least one eighth part of the habitable globe. 'Tis not the concern of a day, a year, or an age; posterity are virtually involved in the contest, and will be more or less affected, even to the end of time, by the proceedings now. Now is the seed-time of continental union, faith and honour. The least fracture now will be like a name engraved with the point of a pin on the tender rind of a young oak; the wound will enlarge with the tree, and posterity read it in full grown characters.

By referring the matter from argument to arms, a new aera for politics is struck; a new method of thinking hath arisen. All plans, proposals, &c. prior to the nineteenth of April, i. e. to the commencement of hostilities, are like the almanacs of the last year; which, though proper then are superseded and useless now. Whatever was advanced by the advocates on either side of the question then, terminated in one and the same point. viz. a union with Great-Britain: the only difference between the parties was the method of effecting it; the one proposing force, the other friendship; but it hath so far happened that the first hath failed, and the second hath withdrawn her influence.

As much hath been said of the advantages of reconciliation which, like an agreeable dream, hath passed away and left us as we were, it is but right, that we should examine the contrary side of the argument, and inquire into some of the many material injuries which these colonies sustain, and always will sustain, by being connected with, and dependent on Great Britain: To examine that connection and dependence, on the principles of nature and common sense, to see what we have to

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trust to, if separated, and what we are to expect, if dependant.

I have heard it asserted by some, that as America hath flourished under her former connection with Great Britain that the same connection is necessary towards her future happiness, and will always have the same effect. Nothing can be more fallacious than this kind of argument. We may as well assert that because a child has thrived upon milk that it is never to have meat, or that the first twenty years of our lives is to become a precedent for the next twenty. But even this is admitting more than is true, for I answer roundly, that America would have flourished as much, and probably much more, had no European power had any thing to do with her. The commerce, by which she hath enriched herself, are the necessities of life, and will always have a market while eating is the custom of Europe.

But she has protected us, say some. That she has engrossed us is true, and defended the continent at our expense as well as her own is admitted, and she would have defended Turkey from the same motive, viz. the sake of trade and dominion.

Alas, we have been long led away by ancient prejudices, and made large sacrifices to superstition. We have boasted the protection of Great Britain, without considering, that her motive was INTEREST not ATTACHMENT; that she did not protect us from OUR ENEMIES on OUR ACCOUNT, but from HER ENEMIES on HER OWN ACCOUNT, from those who had no quarrel with us on any OTHER ACCOUNT, and who will always be our enemies on the SAME ACCOUNT. Let Britain wave her pretensions to the continent, or the continent throw off the dependence, and we should be at peace with France and Spain were they at war with Britain. The miseries of Hanover last war ought to warn us against connections.

It has lately been asserted in parliament, that the colonies have no relation to each other but through the parent country, i. e. that Pennsylvania and the Jerseys, and so on for the rest, are sister colonies by the way of England; this is certainly a very round-about way of proving relationship, but it is the nearest and only true way of proving enemyship, if I may so call it. France and Spain never were. nor perhaps ever will be our enemies as AMERICANS, but as our being the subjects of GREAT BRITAIN.

But Britain is the parent country, say some. Then the more shame upon her conduct. Even brutes do not devour their young, nor savages make war upon their families; wherefore the assertion, if true, turns to her reproach; but it happens not to be true, or only partly so and the phrase PARENT or MOTHER COUNTRY hath been jesuitically adopted by the king and his parasites, with a low papistical design of gaining an unfair bias on the credulous weakness of our minds. Europe, and not England, is the parent country of America. This new world hath been the asylum for the persecuted lovers of civil and religious liberty from EVERY PART of Europe. Hither have they fled, not from the tender embraces of the mother, but from the cruelty of the monster; and it is so far true of England, that the same tyranny which drove the first emigrants from home, pursues their descendants still.

In this extensive quarter of the globe, we forget the narrow limits of three hundred and sixty miles (the extent of England) and carry our friendship on a larger scale; we claim brotherhood with every European Christian, and triumph in the generosity of the sentiment.

It is pleasant to observe by what regular gradations we surmount the force of local prejudice, as we enlarge our acquaintance with the world. A man born in any town in England divided into parishes, will naturally associate most with his fellow-parishioners (because their interests in many cases will be common) and distinguish him by the name of NEIGHBOUR; if he meet him but a few miles from home, he drops the narrow idea of a street, and salutes him by the name of TOWNSMAN; if he travel out of the county, and meet him in any other, he forgets the minor divisions of street and town, and calls him COUNTRYMAN, i. e. COUNTRYMAN; but if in their foreign excursions they should associate in France or any other part of EUROPE, their local remembrance would be enlarged into that of ENGLISHMEN. And by a just parity of reasoning, all Europeans meeting in America, or any other quarter of the globe, are COUNTRYMEN; for England, Holland, Germany, or Sweden, when compared with the whole, stand in the same places on the larger scale, which the divisions of street, town, and county do on the smaller ones; distinctions too limited for continental minds. Not one third of the inhabitants, even of this province, are of English descent. Wherefore I reprobate the phrase of parent or mother country applied to England only, as being false, selfish, narrow and ungenerous.

But admitting, that we were all of English descent, what does it amount to? Nothing. Britain, being now an open enemy, extinguishes every other name and title: And to say that reconciliation is our duty, is truly farcical. The first king of England, of the present line (William the Conqueror) was a Frenchman, and half the Peers of England are descendants from the same country; therefore, by the same method of reasoning, England ought to be governed by France.

Much hath been said of the united strength of Britain and the colonies, that in conjunction they might bid defiance to the world. But this is mere presumption; the fate of war is uncertain, neither do the expressions mean any thing; for this continent would never suffer itself to be drained of inhabitants, to support the British arms in either Asia, Africa, or Europe.

Besides what have we to do with setting the world at defiance? Our plan is commerce, and that, well attended to, will secure us the peace and friendship of all Europe; because, it is the interest of all Europe to have America a FREE PORT. Her trade will always be a protection, and her barrenness of gold and silver secure her from invaders.

I challenge the warmest advocate for reconciliation, to shew, a single advantage that this continent can reap, by being connected with Great Britain. I repeat the challenge, not a single advantage is derived. Our corn will fetch its price in any market in Europe, and our imported goods must be paid for, buy them where we will.

But the injuries and disadvantages we sustain by that connection, are without number; and our duty to mankind at large, as well as to ourselves, instruct us to renounce the alliance: Because, any submission to, or dependence on Great Britain, tends directly to involve this continent in European wars and quarrels; and sets us at variance with nations, who would otherwise seek our friendship, and against whom, we have neither anger nor complaint. As Europe is our market for trade, we ought to form no partial connection with any part of it. It is the true interest of America to steer clear of European contentions, which she never can do, while by her dependence on Britain, she is made the make-weight in the scale of British politics.

Europe is too thickly planted with kingdoms to be long at peace, and whenever a war breaks out between England and any foreign power, the trade of America goes to ruin, BECAUSE OF HER CONNECTION WITH ENGLAND. The next war may not turn out like the last, and should it not, the advocates for reconciliation now, will be wishing for separation then, because, neutrality in that case, would be a safer convoy than a man of war. Every thing that is right or natural pleads for separation. The blood of the slain, the weeping voice of nature cries, 'TIS TIME TO PART. Even the distance at which the Almighty hath placed England and America, is a strong and natural proof, that the authority of the one, over the other, was never the design of Heaven. The time likewise at which the continent was discovered, adds weight to the argument, and the manner in which it was peopled increases the force of it. The reformation was preceded by the discovery of America, as if the Almighty graciously

meant to open a sanctuary to the Persecuted in future years, when home should afford neither friendship nor safety.

The authority of Great Britain over this continent, is a form of government, which sooner or later must have an end: And a serious mind can draw no true pleasure by looking forward under the painful and positive conviction, that what he calls "the present constitution" is merely temporary. As parents, we can have no joy, knowing that THIS GOVERNMENT is not sufficiently lasting to ensure any thing which we may bequeath to posterity: And by a plain method of argument, as we are running the next generation into debt, we ought to do the work of it, otherwise we use them meanly and pitifully. In order to discover the line of our duty rightly, we should take our children in our hand, and fix our station a few years farther into life; that eminence will present a prospect, which a few present fears and prejudices conceal from our sight.

Though I would carefully avoid giving unnecessary offense, yet I am inclined to believe, that all those who espouse the doctrine of reconciliation, may be included within the following descriptions. Interested men, who are not to be trusted; weak men, who CANNOT see; prejudiced men, who WILL NOT see; and a certain set of moderate men, who think better of the European world than it deserves; and this last class, by an ill-judged deliberation, will be the cause of more calamities to this continent, than all the other three.

It is the good fortune of many to live distant from the scene of sorrow; the evil is not sufficient brought to their doors to make THEM feel the precariousness with which all American property is possessed. But let our imaginations transport us far a few moments to Boston, that seat of wretchedness will teach us wisdom, and instruct us for ever to renounce a power in whom we can have no trust. The inhabitants of that unfortunate city, who but a few months ago were in ease and affluence, have now, no other alternative than to stay and starve, or turn and beg. Endangered by the fire of their friends if they continue within the city, and plundered by the soldiery if they leave it. In their present condition they are prisoners without the hope of redemption, and in a general attack for their relief, they would be exposed to the fury of both armies.

Men of passive tempers look somewhat lightly over the offenses of Britain, and, still hoping for the best, are apt to call out, "COME, COME, WE SHALL BE FRIENDS AGAIN, FOR ALL THIS." But examine the passions and feelings of mankind, Bring the doctrine of reconciliation to the touchstone of nature, and then tell me, whether you can hereafter love, honor, and faithfully serve the power that hath carried fire and sword into your land? If you cannot do all these, then are you only deceiving yourselves, and by your delay bringing ruin upon posterity. Your future connection with Britain, whom you can neither love nor honor will be forced and unnatural, and being formed only on the plan of present convenience, will in a little time fall into a relapse more wretched than the first. But if you say, you can still pass the violations over, then I ask, Hath your house been burnt? Hath your property been destroyed before your face! Are your wife and children destitute of a bed to lie on, or bread to live on? Have you lost a parent or a child by their hands, and yourself the ruined and wretched survivor! If you have not, then are you not a judge of those who have. But if you have, and still can shake hands with the murderers, then are you unworthy the name of husband, father, friend, or lover, and whatever may be your rank or title in life, you have the heart of a coward, and the spirit of a sycophant.

This is not inflaming or exaggerating matters, but trying them by those feelings and affections which nature justifies, and without which, we should be incapable of discharging the social duties of life, or enjoying the felicities of it. I mean not to exhibit horror for the purpose of provoking revenge, but to awaken us from fatal and unmanly slumbers, that we may pursue determinately some fixed object. It is not in the power of Britain or of Europe to conquer America, if she do not conquer herself by DELAY and TIMIDITY. The present winter is worth an age if rightly employed, but if lost or neglected, the whole continent will partake of the misfortune; and there is no punishment which that man will not deserve, be he who, or what, or where he will, that may be the means of sacrificing a season so precious and useful.

It is repugnant to reason, to the universal order of things, to all examples from former ages, to suppose, that this continent can longer remain subject to any external power. The most sanguine in Britain does not think so. The utmost stretch of human wisdom cannot, at this time, compass a plan short of separation, which can promise the continent even a year's security. Reconciliation is NOW a fallacious dream. Nature hath deserted the connection, and Art cannot supply her place. For, as Milton wisely expresses, "never can true reconciliation grow, where wounds of deadly hate have pierced so deep."

Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and only tended to convince us, that nothing Batters vanity, or confirms obstinacy in Kings more than repeated petitioning—and nothing hath contributed more than that very measure to make the Kings of Europe absolute: Witness Denmark and Sweden. Wherefore, since nothing but blows will do, for God's sake, let us come to a final separation, and not leave the next generation to be cutting throats, under the violated unmeaning names of parent and child.

To say, they will never attempt it again is idle and visionary, we thought so at the repeal of the stamp-act, yet a year or two undecieved us; as well may we suppose that nations, which have been once defeated, will never renew the quarrel.

As to government matters, it is not in the power of Britain to do this continent justice: The business of it will soon be too weighty, and intricate, to be managed with any tolerable degree of convenience, by a power so distant from us, and so very ignorant of us; for if they cannot conquer us, they cannot govern us. To be always running three or four thousand miles with a tale or a petition, waiting four or five months for an answer, which when obtained requires five or six more to explain it in, will in a few years be looked upon as folly and childishness—There was a time when it was proper, and there is a proper time for it to cease.

Small islands not capable of protecting themselves, are the proper objects for kingdoms to take under their care; but there is something very absurd, in supposing a continent to be perpetually governed by an island. In no instance hath nature made the satellite larger than its primary planet, and as England and America, with respect to each other, reverses the common order of nature, it is evident they belong to different systems; England to Europe, America to itself.

I am not induced by motives of pride, party, or resentment to espouse the doctrine of separation and independence; I am clearly, positively, and conscientiously persuaded that it is the true interest of this continent to be so; that every thing short of THAT is mere patchwork, that it can afford no lasting felicity, —that it is leaving the sword to our children, and shrinking back at a time, when, a little more, a little farther, would have rendered this continent the glory of the earth.

As Britain hath not manifested the least inclination towards a compromise, we may be assured that no terms can be obtained worthy the acceptance of the continent, or any ways equal to the expense of blood and treasure we have been already put to.

The object, contended for, ought always to bear some just proportion to the expense. The removal of

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North, or the whole detestable junto, is a matter unworthy the millions we have expended. A temporary stoppage of trade, was an inconvenience, which would have sufficiently balanced the repeal of all the acts complained of, had such repeals been obtained; but if the whole continent must take up arms, if every man must be a soldier, it is scarcely worth our while to fight against a contemptible ministry only. Dearly, dearly, do we pay for the repeal of the acts, if that is all we fight for; for in a just estimation, it is as great a folly to pay a Bunker-hill price for law, as for land. As I have always considered the independency of this continent, as an event, which sooner or later must arrive, so from the late rapid progress of the continent to maturity, the event could not be far off. Wherefore, on the breaking out of hostilities, it was not worth while to have disputed a matter, which time would have finally redressed, unless we meant to be in earnest; otherwise, it is like wasting an estate on a suit at law, to regulate the trespasses of a tenant, whose lease is just expiring. No man was a warmer wisher for reconciliation than myself, before the fatal nineteenth of April 1775, but the moment the event of that day was made known, I rejected the hardened, sullen tempered Pharaoh of England for ever; and disdain the wretch, that with the pretended title of FATHER OF HIS PEOPLE an unfeelingly hear of their slaughter, and composedly sleep with their blood upon his soul.

But admitting that matters were now made up, what would be the event? I answer, the ruin of the continent. And that for several reasons.

FIRST. The powers of governing still remaining in the hands of the king, he will have a negative over the whole legislation of this continent. And as he hath shewn himself such an inveterate enemy to liberty. and discovered such a thirst for arbitrary power; is he, or is he not, a proper man to say to these colonies, "YOU SHALL MAKE NO LAWS BUT WHAT I PLEASE." And is there any inhabitant in America so ignorant as not to know, that according to what is called the PRESENT CONSTITUTION, that this continent can make no laws but what the king gives leave to; and is there any man so unwise, as not to see, that (considering what has happened) he will suffer no law to be made here, but such as suit HIS purpose. We may be as effectually enslaved by the want of laws in America, as by submitting to laws made for us in England. After matters are made up (as it is called) can there be any doubt, but the whole power of the crown will be exerted, to keep this continent as low and humble as possible? Instead of going forward we shall go backward, or be perpetually quarrelling or ridiculously petitioning. —WE are already greater than the king wishes us to be, and will he not hereafter endeavour to make us less? To bring the matter to one point. Is the power who is jealous of our prosperity, a proper power to govern us? Whoever says No to this question, is an INDEPENDANT, for independency means no more, than, whether we shall make our own laws, or whether the king, the greatest enemy this continent hath, or can have, shall tell us "THERE SHALL BE NO LAWS BUT SUCH AS I LIKE."

But the king you will say has a negative in England; the people there can make no laws without his consent. In point of right and good order, there is something very ridiculous, that a youth of twenty-one (which hath often happened) shall say to several millions of people, older and wiser than himself, I forbid this or that act of yours to be law. But in this place I decline this sort of reply, though I will never cease to expose the absurdity of it, and only answer, that England being the King's residence, and America not so, makes quite another case. The king's negative HERE is ten times more dangerous and fatal than it can be in England, for THERE he will scarcely refuse his consent to a bill for putting England into as strong a state of defense as possible, and in America he would never suffer such a bill to be passed.

America is only a secondary object in the system of British politics, England consults the good of THIS country, no farther than it answers her OWN purpose. Wherefore, her own interest leads her to suppress the growth of OURS in every case which doth not promote her advantage, or in the least interferes with it. A pretty state we should soon be in under such a secondhand government, considering what has happened! Men do not change from enemies to friends by the alteration of a name: And in order to shew that reconciliation now is a dangerous doctrine, I affirm, THAT IT WOULD BE POLICY IN THE KING AT THIS TIME, TO REPEAL THE ACTS FOR THE SAKE OF REINSTATING HIMSELF IN THE GOVERNMENT OF THE PROVINCES; in order, that HE MAY ACCOMPLISH BY CRAFT AND SUBTLETY, IN THE LONG RUN, WHAT HE CANNOT DO BY FORCE AND VIOLENCE IN THE SHORT ONE. Reconciliation and ruin are nearly related.

SECONDLY. That as even the best terms, which we can expect to obtain, can amount to no more than a temporary expedient, or a kind of government by guardianship, which can last no longer than till the colonies come of age, so the general face and state of things, in the interim, will be unsettled and unpromising. Emigrants of property will not choose to come to a country whose form of government hangs but by a thread, and who is every day tottering on the brink of commotion and disturbance; and numbers of the present inhabitants would lay hold of the interval, to dispense of their effects, and quit the continent.

But the most powerful of all arguments, is, that nothing but independence, i.e. a continental form of government, can keep the peace of the continent and preserve it inviolate from civil wars. I dread the event of a reconciliation with Britain now, as it is more than probable, that it will be followed by a revolt somewhere or other, the consequences of which may be far more fatal than all the malice of Britain.

Thousands are already ruined by British barbarity; (thousands more will probably suffer the same fate) Those men have other feelings than us who have nothing suffered. All they NOW possess is liberty, what they before enjoyed is sacrificed to its service, and having nothing more to lose, they disdain submission. Besides, the general temper of the colonies, towards a British government, will be like that of a youth, who is nearly out of his time; they will care very little about her. And a government which cannot preserve the peace, is no government at all, and in that case we pay our money for nothing; and pray what is it that Britain can do, whose power will be wholly on paper. should a civil tumult break out the very day after reconciliation! I have heard some men say, many of whom I believe spoke without thinking, that they dreaded an independence, fearing that it would produce civil wars. It is but seldom that our first thoughts are truly correct, and that is the case here; for there are ten times more to dread from a patched up connection than from independence. I make the sufferers case my own, and I protest, that were I driven from house and home, my property destroyed, and my circumstances ruined, that as man, sensible of injuries, I could never relish the doctrine of reconciliation, or consider myself bound thereby.

The colonies have manifested such a spirit of good order and obedience to continental government, as is sufficient to make every reasonable person easy and happy on that head. No man can assign the least pretence for his fears, on any other grounds, than such as are truly childish and ridiculous, viz. that one colony will be striving for superiority over another.

Where there are no distinctions there can be no superiority, perfect equality affords no temptation. The republics of Europe are all (and we may say always) in peace. Holland and Switzerland are without wars, foreign or domestic: Monarchical governments, it is true, are never long at rest; the crown itself is a temptation to enterprising ruffians at HOME; and that degree of pride and insolence ever attendant on regal authority, swells into a rupture with foreign powers, in instances, where a republican government, by being formed on more natural principles, would negotiate the mistake.

If there is any true cause of fear respecting independence, it is because no plan is yet laid down. Men do not see their way out— Wherefore, as an opening into that business, I offer the following hints; at the same time modestly affirming, that I have no other opinion of them myself, than that they may be the means of giving rise to something better. Could the straggling thoughts of individuals be collected, they would frequently form materials for wise and able men to improve into useful matter.

LET the assemblies be annual, with a President only. The representation more equal. Their business wholly domestic, and subject to the authority of a Continental Congress.

Let each colony be divided into six, eight, or ten, convenient districts, each district to send a proper number of delegates to Congress, so that each colony send at least thirty. The whole number in Congress will be at least 390. Each Congress to sit and to choose a president by the following method. When the delegates are met, let a colony be taken from the whole thirteen colonies by lot, after which, let the whole Congress choose (by ballot) a president from out of the delegates of that province. In the next Congress, let a colony be taken by lot from twelve only, omitting that colony from which the president was taken in the former Congress, and so proceeding on till the whole thirteen shall have had their proper rotation. And in order that nothing may pass into a law but what is satisfactorily just not less than three fifths of the Congress to be called a majority— He that will promote discord, under a government so equally formed as this, would have joined Lucifer in his revolt.

But as there is a peculiar delicacy, from whom, or in what manner, this business must first arise, and as it seems most agreeable and consistent, that it should come from some intermediate body between the governed and the governors, that is, between the Congress and the people. let a CONTINENTAL CONFERENCE be held, in the following manner, and for the following purpose.

A committee of twenty-six members of Congress, viz. two for each colony. Two Members from each House of Assembly, or Provincial Convention; and five representatives of the people at large, to be chosen in the capital city or town of each province, for and in behalf of the whole province, by as many qualified voters as shall think proper to attend from all parts of the province for that purpose; or, if more convenient, the representatives may be chosen in two or three of the most populous parts thereof. In this conference, thus assembled, will be united, the two grand principles of business KNOWLEDGE and POWER. The members of Congress, Assemblies, or Conventions, by having had experience in national concerns, will be able and useful counsellors, and the whole, being empowered by the people, will have a truly legal authority.

The conferring members being met, let their business be to frame a CONTINENTAL CHARTER, Or Charter of the United Colonies; (answering to what is called the Magna Carta of England) fixing the number and manner of choosing members of Congress, members of Assembly, with their date of sitting, and drawing the line of business and jurisdiction between them: (Always remembering, that our strength is continental, not provincial.) Securing freedom and property to all men, and above all things, the free exercise of religion, according to the dictates of conscience; with such other matter as is necessary for a charter to contain. Immediately after which, the said Conference to dissolve, and the bodies which shall be chosen conformable to the said charter, to be the legislators and governors of this continent for the time being: Whose peace and happiness may God preserve, Amen.

Should any body of men be hereafter delegated for this or some similar purpose, I offer them the following extracts or that wise observer on governments DRAGONETTI. "The science" says he "of the politician consists in fixing the true point of happiness and freedom. Those men would deserve the gratitude of ages, who should discover a mode of government that contained the greatest sum of individual happiness, with the least national expense. [Dragonetti on virtue and rewards]

But where, says some, is the King of America? I'll tell you. Friend, he reigns above, and doth not make havoc of mankind like the Royal Brute of Britain. Yet that we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far we approve of monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law OUGHT to be King; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony, be demolished, and scattered among the people whose right it is.

A government of our own is our natural right: And when a man seriously reacts on the precariousness of human affairs, he will become convinced, that it is infinitely wiser and safer, to form a constitution of our own in a cool deliberate manner, while we have it in our power, than to trust such an interesting event to time and chance. If we omit it now, some [Thomas Anello otherwise Massanello a fisherman of Naples, who after spiriting up his countrymen in the public marketplace, against the oppressions of the Spaniards, to whom the place was then subject prompted them to revolt, and in the space of a day became king.] Massanello may hereafter arise, who laying hold of popular disquietudes, may collect together the desperate and the discontented, and by assuming to themselves the powers of government, may sweep away the liberties of the continent like a deluge. Should the government of America return again into the hands of Britain, the tottering situation of things will be a temptation for some desperate adventurer to try his fortune; and in such a case, that relief can Britain give? Ere she could hear the news, the fatal business might be done; and ourselves suffering like the wretched Britons under the oppression of the Conqueror. Ye that oppose independence now, ye know not what ye do; ye are opening a door to eternal tyranny, by keeping vacant the seat of government. There are thousands, and tens of thousands, who would think it glorious to expel from the continent that barbarous and hellish power, which hath stirred up the Indians and Negroes to destroy us; the cruelty hath a double guilt, it is dealing brutally by us, and treacherously by them.

To talk of friendship with those in whom our reason forbids us to have faith, and our affections wounded through a thousand pores instruct us to detest, is madness and folly. Every day wears out the little remains of kindred between us and them, and can there be any reason to hope, that as the relationship expires, the affection will increase, or that we shall agree better, when we have ten times more and greater concerns to quarrel over than ever?

Ye that tell us of harmony and reconciliation, can ye restore to us the time that is past? Can ye give to prostitution its former innocence? Neither can ye reconcile Britain and America. The last cord now is broken, the people of England are presenting addresses against us. There are injuries which nature cannot forgive; she would cease to be nature if she did. As well can the lover forgive the ravisher of his mistress, as the continent forgive the murders of Britain. The Almighty hath implanted in us these unextinguishable feelings for good and wise purposes. They are the guardians of his image in our hearts. They distinguish us from the herd of common animals. The social compact would dissolve, and justice be extirpated the earth, or have only a casual existence were we callous to the touches of affection. The robber, and the murderer, would often escape unpunished, did not the injuries which our tempers sustain, provoke us into justice.

O ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her—Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind.

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OF THE PRESENT 'ABILITY' OF 'AMERICA', WITH SOME MISCELLANEOUS 'REFLECTIONS'

I have never met with a man, either in England or America, who hath not confessed his opinion that a separation between the countries, would take place one time or other: And there is no instance, in which we have shewn less judgement, than in endeavouring to describe, what we call the ripeness or fitness of the Continent for independence.

As all men allow the measure, and vary only in their opinion of the time, let us, in order to remove mistakes, take a general survey of things, and endeavour, if possible, to find out the VERY time. But we need not go far, the inquiry ceases at once, for, the TIME HATH FOUND US. The general concurrence, the glorious union of all things prove the fact.

It is not in numbers, but in unity, that our great strength lies; yet our present numbers are sufficient to repel the force of all the world. The Continent hath, at this time, the largest body of armed and disciplined men of any power under Heaven; and is just arrived at that pitch of strength, in which no single colony is able to support itself, and the whole, when united, can accomplish the matter, and either more, or less than this, might be fatal in its effects. Our land force is already sufficient, and as to naval affairs, we cannot be insensible, that Britain would never suffer an American man of war to be built, while the continent remained in her hands. Wherefore, we should be no forwarder an hundred years hence in that branch, than we are now; but the truth is, we should be less so, because the timber of the country is every day diminishing, and that, which will remain at last, will be far off and difficult to procure.

Were the continent crowded with inhabitants, her sufferings under the present circumstances would be intolerable. The more seaport towns we had, the more should we have both to defend and to lose. Our present numbers are so happily proportioned to our wants, that no man need be idle. The diminution of trade affords an army, and the necessities of an army create a new trade.

Debts we have none; and whatever we may contract on this account will serve as a glorious memento of our virtue. Can we but leave posterity with a settled form of government, an independent constitution of its own, the purchase at any price will be cheap. But to expend millions for the sake of getting a few vile acts repealed, and routing the present ministry only, is unworthy the charge, and is using posterity with the utmost cruelty; because it is leaving them the great work to do, and a debt upon their backs, from which they derive no advantage. Such a thought is unworthy of a man of honor, and is the true characteristic of a narrow heart and a peddling politician.

The debt we may contract doth not deserve our regard, if the work be but accomplished. No nation ought to be without a debt. A national debt is a national bond; and when it bears no interest, is in no case a grievance. Britain is oppressed with a debt of upwards of one hundred and forty millions sterling, for which she pays upwards of four millions interest. And as a compensation for her debt, she has a large navy; America is without a debt, and without a navy; yet for the twentieth part of the English national debt, could have a navy as large again. The navy of England is not worth, at this time, more than three millions and an half sterling.

The first and second editions of this pamphlet were published without the following calculations, which are now given as a proof that the above estimation of the navy is just. [See Entic's naval history, intro. page 56.]

The charge of building a ship of each rate, and furnishing her with masts, yards, sails and rigging, together with a proportion of eight months boatswain's and carpenter's seatores, as calculated by Mr. Burchett, Secretary to the navy.

	[pounds Sterling]	For a ship of a 100 guns	- 35,553	90	-	29,886					
80	-	23,638	70	-	17,795	60	-	14,197	50	-	
10,606	-	40	-	7,558	30	-	5,846	20	-	3,710	

And from hence it is easy to sum up the value, or cost rather, of the whole British navy, which in the year 1757, when it was at its greatest glory consisted of the following ships and guns:

Ships.	Guns.	Cost of one.	Cost of all	6	-	100	-	35,553	-	213,318	12	-	90	-	29,886	-	358,632	12	-	80	-	23,638	-	283,656	43	-	70	-	17,785	-	764,755	35	-	60	-	14,197	-	496,895	40	-	50	-	10,606	-	424,240	45	-	40	-	7,558	-	340,110	58	-	20	-	3,710	-	215,180
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85 Sloops, bombs, and fireships, one	2,000	170,000	with another,	
*****	Cost 3,266,786	Remains for guns,	*****	233,214
*****	3,500,000			

No country on the globe is so happily situated, or so internally capable of raising a fleet as America. Tar, timber, iron, and cordage are her natural produce. We need go abroad for nothing. Whereas the Dutch, who make large profits by hiring out their ships of war to the Spaniards and Portuguese, are obliged to import most of their materials they use. We ought to view the building a fleet as an article of commerce, it being the natural manufactory of this country. It is the best money we can lay out. A navy when finished is worth more than it cost. And is that nice point in national policy, in which commerce and protection are united. Let us build; if we want them not, we can sell; and by that means replace our paper currency with ready gold and silver.

In point of manning a fleet, people in general run into great errors; it is not necessary that one fourth part should be sailors. The Terrible privateer, Captain Death, stood the hottest engagement of any ship last war, yet had not twenty sailors on board, though her complement of men was upwards of two hundred. A few able and social sailors will soon instruct a sufficient number of active landmen in the common work of a ship. Wherefore, we never can be more capable to begin on maritime matters than now, while our timber is standing, our fisheries blocked up, and our sailors and shipwrights out of employ. Men of war of seventy and eighty guns were built forty years ago in New-England, and why not the same now? Ship-building is America's greatest pride, and in which she will in time excel the whole world. The great empires of the east are mostly inland, and consequently excluded from the possibility of rivalling her. Africa is in a state of barbarism; and no power in Europe hath either such an extent of coast, or such an internal supply of materials. Where nature hath given the one, she has withheld the other; to America only hath she been liberal of both. The vast empire of Russia is almost shut out from the sea: wherefore, her boundless forests, her tar, iron, and cordage are only articles of commerce.

In point of safety, ought we to be without a fleet? We are not the little people now, which were sixty years ago; at that time we might have trusted our property in the streets, or fields rather; and slept securely without locks or bolts to our doors or windows. The case now is altered, and our methods of defense ought to improve with our increase of property. A common pirate, twelve months ago, might have come up the Delaware, and laid the city of Philadelphia under instant contribution, for what sum

he pleased; and the same might have happened to other places. Nay, any daring fellow, in a brig of fourteen or sixteen guns might have robbed the whole continent, and carried off half a million of money. These are circumstances which demand our attention, and point out the necessity of naval protection.

Some, perhaps, will say, that after we have made it up Britain, she will protect us. Can we be so unwise as to mean, that she shall keep a navy in our harbours for that purpose? Common sense will tell us, that the power which hath endeavoured to subdue us, is of all others the most improper to defend us. Conquest may be effected under the pretence of friendship; and ourselves after a long and brave resistance, be at last cheated into slavery. And if her ships are not to be admitted into our harbours, I would ask, how is she to protect us? A navy three or four thousand miles off can be of little use, and on sudden emergencies, none at all. Wherefore, if we must hereafter protect ourselves, why not do it for ourselves?

The English list of ships of war, is long and formidable, but not a tenth part of them are at any one time fit for service, numbers of them not in being; yet their names are pompously continued in the list, for one plank be left of the ship; and not a fifth part of such as are fit for service, can be spared on any one station at one time. The East and West Indies, Mediterranean, Africa, and other parts over which Britain extends her claim, make large demands upon her navy. From a mixture of prejudice and inattention, we have contracted a false notion respecting the navy of England, and have talked as if we should have the whole of it to encounter at once, and for that reason, supposed, that we must have one as large; which not being instantly practicable, have been made use of by a set of disguised Tories to discourage our beginning thereon. Nothing can be farther from truth than this; for if America had only a twentieth part of the naval force of Britain, she would be by far an overmatch for her; because, as we neither have, nor claim any foreign dominion, our whole force would be employed on our own coast, where we should sail, in the long run, have two to one the advantage of those who had three or four thousand miles to sail over, before they could attack us, and the same distance to return in order to refit and recruit. And although Britain, by her fleet, hath a check over our trade to Europe, we have as large a one over her trade to the West Indies, which, by laying in the neighbourhood of the continent, is entirely at her mercy.

Some method might be fallen on to keep up a naval force in time of peace, if we should not judge it necessary to support a constant navy. If premiums were to be given to merchants, to build and employ in their service ships mounted with twenty, thirty, forty or fifty guns, (the premiums to be in proportion to the loss of bulk to the merchants) fifty or sixty of those ships, with a few guardships on constant duty, would keep up a sufficient navy, and that without burdening ourselves with the evil so loudly complained of in England, of suffering their fleet, in time of peace to lie rotting in the docks. To unite the sinews of commerce and defense is sound policy; for when our strength and our riches play into each other's hand, we need fear no external enemy.

In almost every article of defense we abound. Hemp flourishes even to rankness, so that we need not want cordage. Our iron is superior to that of other countries. Our small arms equal to any in the world. Cannon we can cast at pleasure. Saltpetre and gunpowder we are every day producing. Our knowledge is hourly improving. Resolution is our inherent character, and courage hath never yet forsaken us. Wherefore, what is it that we want? Why is it that we hesitate? From Britain we can expect nothing but ruin. If she is once admitted to the government of America again, this Continent will not be worth living in. Jealousies will be always arising; insurrections will be constantly happening; and who will go forth to quell them? Who will venture his life to reduce his own countrymen to a foreign obedience? The difference between Pennsylvania and Connecticut, respecting some unlocated lands, shews the insignificance of a British government, and fully proves, that nothing but Continental authority can regulate Continental matters.

Another reason why the present time is preferable to all others, is, that the fewer our numbers are, the more land there is yet unoccupied, which instead of being lavished by the king on his worthless dependants, may be hereafter applied, not only to the discharge of the present debt, but to the constant support of government. No nation under heaven hath such an advantage at this.

The infant state of the Colonies, as it is called, so far from being against, is an argument in favour of independence. We are sufficiently numerous, and were we more so, we might be less united. It is a matter worthy of observation, that the more a country is peopled, the smaller their armies are. In military numbers, the ancients far exceeded the moderns; and the reason is evident, for trade being the consequence of population, men become too much absorbed thereby to attend to anything else. Commerce diminishes the spirit, both of patriotism and military defence. And history sufficiently informs us, that the bravest achievements were always accomplished in the non-age of a nation. With the increase of commerce, England hath lost its spirit. The city of London, notwithstanding its numbers, submits to continued insults with the patience of a coward. The more men have to lose, the less willing are they to venture. The rich are in general slaves to fear, and submit to courtly power with the trembling duplicity of a Spaniel.

Youth is the seed time of good habits, as well in nations as in individuals. It might be difficult, if not impossible, to form the Continent into one government half a century hence. The vast variety of interests, occasioned by an increase of trade and population, would create confusion. Colony would be against colony. Each being able might scorn each other's assistance: and while the proud and foolish gloried in their little distinctions, the wise would lament, that the union had not been formed before. Wherefore, the PRESENT TIME is the TRUE TIME for establishing it. The intimacy which is contracted in infancy, and the friendship which is formed in misfortune, are, of all others, the most lasting and unalterable. Our present union is marked with both these characters: we are young and we have been distressed; but our concord hath withstood our troubles, and fixes a memorable are for posterity to glory in.

The present time, likewise, is that peculiar time, which never happens to a nation but once, viz. the time of forming itself into a government. Most nations have let slip the opportunity, and by that means have been compelled to receive laws from their conquerors, instead of making laws for themselves. First, they had a king, and then a form of government; whereas, the articles or charter of government, should be formed first, and men delegated to execute them afterward but from the errors of other nations, let us learn wisdom, and lay hold of the present opportunity — TO BEGIN GOVERNMENT AT THE RIGHT END.

When William the Conqueror subdued England, he gave them law at the point of the sword; and until we consent, that the seat of government, in America, be legally and authoritatively occupied, we shall be in danger of having it filled by some fortunate ruffian, who may treat us in the same manner, and then, where will be our freedom? where our property? As to religion, I hold it to be the indispensable duty of all government, to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith. Let a man throw aside that narrowness of soul, that selfishness of principle, which the niggards of all professions are willing to part with, and he will be at delivered of his fears on that head. Suspicion is the companion of mean souls, and the bane of all good society. For myself, I fully and conscientiously believe, that it is the will of the Almighty, that there should be diversity of religious opinions among us: It affords a larger field for our Christian kindness. Were we all of one way of thinking, our religious dispositions would want matter for probation; and on

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this liberal principle, I look on the various denominations among us, to be like children of the same family, differing only, in what is called, their Christian names.

In page forty, I threw out a few thoughts on the propriety of a Continental Charter, (for I only presume to offer hints, not plans) and in this place, I take the liberty of rementioning the subject, by observing, that a charter is to be understood as a bond of solemn obligation, which the whole enters into, to support the right of every separate part, whether of religion, personal freedom, or property. A firm bargain and a right reckoning make long friends.

In a former page I likewise mentioned the necessity of a large and equal representation; and there is no political matter which more deserves our attention. A small number of electors, or a small number of representatives, are equally dangerous. But if the number of the representatives be not only small, but unequal, the danger is increased. As an instance of this, I mention the following; when the Associators petition was before the House of Assembly of Pennsylvania; twenty-eight members only were present, all the Bucks county members, being eight, voted against it, and had seven of the Chester members done the same, this whole province had been governed by two counties only, and this danger it is always exposed to. The unwarrantable stretch likewise, which that house made in their last sitting, to gain an undue authority over the delegates of that province, ought to warn the people at large, how they trust power out of their own hands. A set of instructions for the Delegates were put together, which in point of sense and business would have dishonoured a schoolboy, and after being approved by a FEW, a VERY FEW without doors, were carried into the House, and there passed IN BEHALF OF THE WHOLE COLONY; whereas, did the whole colony know, with what ill-will that House hath entered on some necessary public measures, they would not hesitate a moment to think them unworthy of such a trust.

Immediate necessity makes many things convenient, which if continued would grow into oppressions. Expedience and right are different things. When the calamities of America required a consultation, there was no method so ready, or at that time so proper, as to appoint persons from the several Houses of Assembly for that purpose; and the wisdom with which they have proceeded hath preserved this continent from ruin. But as it is more than probable that we shall never be without a CONGRESS, every well wisher to good order, must own, that the mode for choosing members of that body, deserves consideration. And I put it as a question to those, who make a study of mankind, whether representation and election is not too great a power for one and the same body of men to possess? When we are planning for posterity, we ought to remember, that virtue is not hereditary.

It is from our enemies that we often gain excellent maxims, and are frequently surprised into reason by their mistakes. Mr. Cornwall (one of the Lords of the Treasury) treated the petition of the New-York Assembly with contempt, because THAT House, he said, consisted but of twenty-six members, which trifling number, he argued, could not with decency be put for the whole. We thank him for his involuntary honesty. [Those who would fully understand of what great consequence a large and equal representation is to a state, should read Burgh's political disquisitions.]

TO CONCLUDE, however strange it may appear to some, or however unwilling they may be to think so, matters not, but many strong and striking reasons may be given, to shew, that nothing can settle our affairs so expeditiously as an open and determined declaration for independance. Some of which are,

FIRST. — It is the custom of nations, when any two are at war, for some other powers, not engaged in the quarrel, to step in as mediators, and bring about the preliminaries of a peace: hut while America calls herself the Subject of Great Britain, no power, however well disposed she may be, can offer her mediation. Wherefore, in our present state we may quarrel on for ever.

SECONDLY. — It is unreasonable to suppose, that France or Spain will give us any kind of assistance, if we mean only, to make use of that assistance for the purpose of repairing the breach, and strengthening the connection between Britain and America; because, those powers would be sufferers by the consequences.

THIRDLY. — While we profess ourselves the subjects of Britain, we must, in the eye of foreign nations, be considered as rebels. The precedent is somewhat dangerous to THEIR PEACE, for men to be in arms under the name of subjects; we, on the spot, can solve the paradox: but to unite resistance and subjection, requires an idea much too refined for common understanding.

FOURTHLY. — Were a manifesto to be published, and despatched to foreign courts, setting forth the miseries we have endured, and the peaceable methods we have ineffectually used for redress; declaring, at the same time, that not being able, any longer, to live happily or safely under the cruel disposition of the British court, we had been driven to the necessity of breaking off all connections with her; at the same time, assuring all such courts of our peaceable disposition towards them, and of our desire of entering into trade with them: Such a memorial would produce more good effects to this Continent, than if a ship were freighted with petitions to Britain.

Under our present denomination of British subjects, we can neither be received nor heard abroad: The custom of all courts is against us, and will be so, until, by an independance, we take rank with other nations.

These proceedings may at first appear strange and difficult; but, like all other steps which we have already passed over, will in a little time become familiar and agreeable; and, until an independance is declared, the Continent will feel itself like a man who continues putting off some unpleasant business from day to day, yet knows it must be done, hates to set about it, wishes it over, and is continually haunted with the thoughts of its necessity.

APPENDIX

Since the publication of the first edition of this pamphlet, or rather, on the same day on which it came out, the King's Speech made its appearance in this city. Had the spirit of prophecy directed the birth of this production, it could not have brought it forth, at a more seasonable juncture, or a more necessary time. The bloody mindedness of the one, shew the necessity of pursuing the doctrine of the other. Men read by way of revenge. And the Speech, instead of terrifying, prepared a way for the manly principles of Independance.

Ceremony, and even, silence, from whatever motive they may arise, have a hurtful tendency, when they give the least degree of countenance to base and wicked performances; wherefore, if this maxim be admitted, it naturally follows, that the King's Speech, as being a piece of finished villany, deserved, and still deserves, a general execration both by the Congress and the people. Yet, as the domestic tranquillity of a nation, depends greatly, on the CHASTITY of what may properly be called NATIONAL MANNERS, it is often better, to pass some things over in silent disdain, than to make use of such new methods of dislike, as might introduce the least innovation, on that guardian of our peace and safety. And, perhaps, it is chiefly owing to this prudent delicacy, that the King's Speech, hath not, before now, suffered a public execution. The Speech if it may be called one, is nothing better than a wilful audacious libel against the truth, the common good, and the existence of mankind; and is a formal and

pompous method of offering up human sacrifices to the pride of tyrants. But this general massacre of mankind. is one of the privileges, and the certain consequence of Kings; for as nature knows them NOT, they know NOT HER, and although they are beings of our OWN creating, they know not US, and are become the gods of their creators. The Speech hath one good quality, which is, that it is not calculated to deceive, neither can we, even if we would, be deceived by it. Brutality and tyranny appear on the face of it. It leaves us at no loss: And every line convinces, even in the moment of reading, that He, who hunts the woods for prey, the naked and untutored Indian, is less a Savage than the King of Britain.

Sir John Dalrymple, the putative father of a whining jesuitical piece, fallaciously called, "THE ADDRESS OF THE PEOPLE OF "ENGLAND" TO THE INHABITANTS OF "AMERICA," hath, perhaps, from a vain supposition, that the people here were to be frightened at the pomp and description of a king, given, (though very unwisely on his part) the real character of the present one: "But" says this writer, "if you are inclined to pay compliments to an administration, which we do not complain of," (meaning the Marquis of Rockingham's at the repeal of the Stamp Act) "it is very unfair in you to withhold them from that prince by WHOSE "NOD ALONE" THEY WERE PERMITTED TO DO ANY THING." This is torism with a witness! Here is idolatry even without a mask: And he who can calmly hear, and digest such doctrine, hath forfeited his claim to rationality an apostate from the order of manhood; and ought to be considered as one, who hath not only given up the proper dignity of man, but sunk himself beneath the rank of animals, and contemptibly crawl through the world like a worm.

However, it matters very little now, what the king of England either says or does; he hath wickedly broken through every moral and human obligation, trampled nature and conscience beneath his feet; and by a steady and constitutional spirit of insolence and cruelty, procured for himself an universal hatred. It is NOW the interest of America to provide for herself. She hath already a large and young family, whom it is more her duty to take care of, than to be granting away her property, to support a power who is become a reproach to the names of men and christians—YE, whose office it is to watch over the morals of a nation, of whatsoever sect or denomination ye are of, as well as ye, who, are more immediately the guardians of the public liberty, if ye wish to preserve your native country uncontaminated by European corruption, ye must in secret wish a separation—But leaving the moral part to private reflection, I shall chiefly confine my farther remarks to the following heads.

First. That it is the interest of America to be separated from Britain.

Secondly. Which is the easiest and most practicable plan, RECONCILIATION OR INDEPENDANCE? With some occasional remarks.

In support of the first, I could, if I judged it proper, produce the opinion of some of the ablest and most experienced men on this continent; and whose sentiments, on that head, are not yet publicly known. It is in reality a self-evident position: For no nation in a state of foreign dependance, limited in its commerce, and cramped and fettered in its legislative powers, can ever arrive at any material eminence. America doth not yet know what opulence is; and although the progress which she hath made stands unparalleled in the history of other nations, it is but childhood, compared with what she would be capable of arriving at, had she, as she ought to have, the legislative powers in her own hands. England is, at this time, proudly coveting what would do her no good, were she to accomplish it; and the Continent hesitating on a matter, which will be her final ruin if neglected. It is the commerce and not the conquest of America, by which England is to be benefited, and that would in a great measure continue, were the countries as independant of each other as France and Spain; because in many articles, neither can go to a better market. But it is the independance of this country on Britain or any other, which is now the main and only object worthy of contention, and which, like all other truths discovered by necessity, will appear clearer and stronger every day.

First. Because it will come to that one time or other.

Secondly. Because, the longer it is delayed the harder it will be to accomplish.

I have frequently amused myself both in public and private companies, with silently remarking, the specious errors of those who speak without reflecting. And among the many which I have heard, the following seems the most general, viz. that had this rupture happened forty or fifty years hence, instead of NOW, the Continent would have been more able to have shaken off the dependance. To which I reply, that our military ability, AT THIS TIME, arises from the experience gained in the last war, and which in forty or fifty years time, would have been totally extinct. The Continent, would not, by that time, have had a General, or even a military officer left; and we, or those who may succeed us, would have been as ignorant of martial matters as the ancient Indians: And this single position, closely attended to, will unanswerably prove, that the present time is preferable to all others. The argument turns thus—at the conclusion of the last war, we had experience, but wanted numbers; and forty or fifty years hence, we should have numbers, without experience; wherefore, the proper point of time, must be some particular point between the two extremes, in which a sufficiency of the former remains, and a proper increase of the latter is obtained: And that point of time is the present time.

The reader will pardon this digression, as it does not properly come under the head I first set out with, and to which I again return by the following position, viz.

Should affairs be patched up with Britain, and she to remain the governing and sovereign power of America, (which, as matters are now circumstanced, is giving up the point entirely) we shall deprive ourselves of the very means of sinking the debt we have, or may contract. The value of the back lands which some of the provinces are clandestinely deprived of, by the unjust extension of the limits of Canada, valued only at five pounds sterling per hundred acres, amount to upwards of twenty-five millions, Pennsylvania currency; and the quit-rents at one penny sterling per acre, to two millions yearly.

It is by the sale of those lands that the debt may be sunk, without burthen to any, and the quit-rent reserved thereon, will always lessen, and in time, will wholly support the yearly expence of government. It matters not how long the debt is in paying, so that the lands when sold be applied to the discharge of it, and for the execution of which, the Congress for the time being, will be the continental trustees.

I proceed now to the second head, viz. Which is the easiest and most practicable plan, RECONCILIATION or INDEPENDANCE; With some occasional remarks.

He who takes nature for his guide is not easily beaten out of his argument, and on that ground, I answer GENERALLY—THAT "INDEPENDANCE" BEING A "SINGLE SIMPLE LINE," CONTAINED WITHIN OURSELVES; AND RECONCILIATION, A MATTER EXCEEDINGLY PERPLEXED AND COMPLICATED, AND IN WHICH, A TREACHEROUS CAPRICIOUS COURT IS TO INTERFERE, GIVES THE ANSWER WITHOUT A DOUBT.

The present state of America is truly alarming to every man who is capable of reflexion. Without law, without government, without any other mode of power than what is founded on, and granted by

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courtesy. Held together by an unexampled concurrence of sentiment, which, is nevertheless subject to change, and which, every secret enemy is endeavouring to dissolve. Our present condition, is, Legislation without law; wisdom without a plan; a constitution without a name; and, what is strangely astonishing, perfect Independence contending for dependance. The instance is without a precedent; the case never existed before; and who can tell what may be the event? The property of no man is secure in the present unbraced system of things. The mind of the multitude is left at random, and seeing no fixed object before them, they pursue such as fancy or opinion starts. Nothing is criminal; there is no such thing as treason; wherefore, every one thinks himself at liberty to act as he pleases. The Tories dared not have assembled offensively, had they known that their lives, by that act, were forfeited to the laws of the state. A line of distinction should be drawn, between, English soldiers taken in battle, and inhabitants of America taken in arms. The first are prisoners, but the latter traitors. The one forfeits his liberty, the other his head.

Notwithstanding our wisdom, there is a visible feebleness in some of our proceedings which gives encouragement to dissensions. The Continental Belt is too loosely buckled. And if something is not done in time, it will be too late to do any thing, and we shall fall into a state, in which, neither RECONCILIATION nor INDEPENDANCE will be practicable. The king and his worthless adherents are got at their old game of dividing the Continent, and there are not wanting among us, Printers, who will be busy in spreading specious falsehoods. The artful and hypocritical letter which appeared a few months ago in two of the New York papers, and likewise in two others, is an evidence that there are men who want either judgment or honesty.

It is easy getting into holes and corners and talking of reconciliation: But do such men seriously consider, how difficult the task is, and how dangerous it may prove, should the Continent divide thereon. Do they take within their view, all the various orders of men whose situation and circumstances, as well as their own, are to be considered therein. Do they put themselves in the place of the sufferer whose ALL is ALREADY gone, and of the soldier, who hath quitted ALL for the defence of his country. If their ill judged moderation be suited to their own private situations only, regardless of others, the event will convince them, that "they are reckoning without their Host."

Put us, says some, on the footing we were on in sixty-three: To which I answer, the request is not now in the power of Britain to comply with, neither will she propose it; but if it were, and even should be granted, I ask, as a reasonable question, By what means is such a corrupt and faithless court to be kept to its engagements? Another parliament, nay, even the present, may hereafter repeal the obligation, on the pretense, of its being violently obtained, or unwisely granted; and in that case, Where is our redress?—No going to law with nations; cannon are the barristers of Crowns; and the sword, not of justice, but of war, decides the suit. To be on the footing of sixty-three, it is not sufficient, that the laws only be put on the same state, but, that our circumstances, likewise, be put on the same state: Our burnt and destroyed towns repaired or built up, our private losses made good, our public debts (contracted for defence) discharged; otherwise, we shall be millions worse than we were at that enviable period. Such a request, had it been complied with a year ago, would have won the heart and soul of the Continent - but now it is too late, "The Rubicon is passed."

Besides, the taking up arms, merely to enforce the repeal of a pecuniary law, seems as unwarrantable by the divine law, and as repugnant to human feelings, as the taking up arms to enforce obedience thereto. The object, on either side, doth not justify the means; for the lives of men are too valuable to be cast away on such trifles. It is the violence which is done and threatened to our persons; the destruction of our property by an armed force; the invasion of our country by fire and sword, which conscientiously qualifies the use of arms: And the instant, in which such a mode of defence became necessary, all subjection to Britain ought to have ceased; and the independancy of America, should have been considered, as dating its aera from, and published by, THE FIRST MUSKET THAT WAS FIRED AGAINST HER. This line is a line of consistency; neither drawn by caprice, nor extended by ambition; but produced by a chain of events, of which the colonies were not the authors.

I shall conclude these remarks with the following timely and well intended hints. We ought to reflect, that there are three different ways by which an independancy may hereafter be effected; and that ONE of those THREE, will one day or other, be the fate of America, viz. By the legal voice of the people in Congress; by a military power; or by a mob—It may not always happen that OUR soldiers are citizens, and the multitude a body of reasonable men; virtue, as I have already remarked, is not hereditary, neither is it perpetual. Should an independancy be brought about by the first of those means, we have every opportunity and every encouragement before us, to form the noblest pure constitution on the face of the earth. We have it in our power to begin the world over again. A situation, similar to the present, hath not happened since the days of Noah until now. The birthday of a new world is at hand, and a race of men, perhaps as numerous as all Europe contains, are to receive their portion of freedom from the event of a few months. The Reflexion is awful—and in this point of view, How trifling, how ridiculous, do the little, paltry cavillings, of a few weak or interested men appear, when weighed against the business of a world.

Should we neglect the present favourable and inviting period, and an Independance be hereafter effected by any other means, we must charge the consequence to ourselves, or to those rather, whose narrow and prejudiced souls, are habitually opposing the measure, without either inquiring or reflecting. There are reasons to be given in support of Independance, which men should rather privately think of, than be publicly told of. We ought not now to be debating whether we shall be independant or not, but, anxious to accomplish it on a firm, secure, and honorable basis, and uneasy rather that it is not yet begun upon. Every day convinces us of its necessity. Even the Tories (if such beings yet remain among us) should, of all men, be the most solicitous to promote it; for, as the appointment of committees at first, protected them from popular rage, so, a wise and well established form of government, will be the only certain means of continuing it securely to them. WHEREFORE, if they have not virtue enough to be WHIGS, they ought to have prudence enough to wish for Independance.

In short, Independance is the only BOND that can tie and keep us together. We shall then see our object, and our ears will be legally shut against the schemes of an intriguing, as well, as a cruel enemy. We shall then too, be on a proper footing, to treat with Britain; for there is reason to conclude, that the pride of that court, will be less hurt by treating with the American states for terms of peace, than with those, whom she denominates, "rebellious subjects," for terms of accommodation. It is our delaying it that encourages her to hope for conquest, and our backwardness tends only to prolong the war. As we have, without any good effect therefrom, withheld our trade to obtain a redress of our grievances, let us now try the alternative, by independently redressing them ourselves, and then offering to open the trade. The mercantile and reasonable part in England, will be still with us; because, peace with trade, is preferable to war without it. And if this offer be not accepted, other courts may be applied to.

On these grounds I rest the matter. And as no offer hath yet been made to refute the doctrine contained in the former editions of this pamphlet, it is a negative proof, that either the doctrine cannot be refuted, or, that the party in favour of it are too numerous to be opposed. WHEREFORE, instead of gazing at each other with suspicious or doubtful curiosity; let each of us, hold out to his neighbour the hearty hand of friendship, and unite in drawing a line, which, like an act of oblivion shall bury in forgetfulness every former dissension. Let the names of Whig and Tory be extinct; and let none other be heard among us, than those of A GOOD CITIZEN, AN OPEN AND RESOLUTE FRIEND, AND A

VIRTUOUS SUPPORTER OF THE RIGHTS OF MANKIND AND OF THE "FREE AND INDEPENDANT STATES OF AMERICA".

To the Representatives of the Religious Society of the People called Quakers, or to so many of them as were concerned in publishing the late piece, entitled "THE ANCIENT TESTIMONY and PRINCIPLES of the People called QUAKERS renewed, with Respect to the KING and GOVERNMENT, and touching the COMMOTIONS now prevailing in these and other parts of AMERICA addressed to the PEOPLE IN GENERAL."

The Writer of this, is one of those few, who never dishonours religion either by ridiculing, or cavilling at any denomination whatsoever. To God, and not to man, are all men accountable on the score of religion. Wherefore, this epistle is not so properly addressed to you as a religious, but as a political body, dabbling in matters, which the professed Quietude of your Principles instruct you not to meddle with. As you have, without a proper authority for so doing, put yourselves in the place of the whole body of the Quakers, so, the writer of this, in order to be on an equal rank with yourselves, is under the necessity, of putting himself in the place of all those, who, approve the very writings and principles, against which, your testimony is directed: And he hath chosen this singular situation, in order, that you might discover in him that presumption of character which you cannot see in yourselves. For neither he nor you can have any claim or title to POLITICAL REPRESENTATION.

When men have departed from the right way, it is no wonder that they stumble and fall. And it is evident from the manner in which ye have managed your testimony, that politics, (as a religious body of men) is not your proper Walk; for however well adapted it might appear to you, it is, nevertheless, a jumble of good and bad put unwisely together, and the conclusion drawn therefrom, both unnatural and unjust.

The two first pages, (and the whole doth not make four) we give you credit for, and expect the same civility from you, because the love and desire of peace is not confined to Quakerism, it is the natural, as well the religious wish of all denominations of men. And on this ground, as men labouring to establish an Independent Constitution of our own, do we exceed all others in our hope, end, and aim. OUR PLAN IS PEACE FOR EVER. We are tired of contention with Britain, and can see no real end to it but in a final separation. We act consistently, because for the sake of introducing an endless and uninterrupted peace, do we bear the evils and burthens of the present day. We are endeavoring, and will steadily continue to endeavour, to separate and dissolve a connexion which hath already filled our land with blood; and which, while the name of it remains, will be the fatal cause of future mischiefs to both countries.

We fight neither for revenge nor conquest; neither from pride nor passion; we are not insulting the world with our fleets and armies, nor ravaging the globe for plunder. Beneath the shade of our own vines are we attacked; in our own houses, and on our own lands, is the violence committed against us. We view our enemies in the character of Highwaymen and Housebreakers, and having no defence for ourselves in the civil law, are obliged to punish them by the military one, and apply the sword, in the very case, where you have before now, applied the halter— Perhaps we feel for the ruined and insulted sufferers in all and every part of the continent, with a degree of tenderness which hath not yet made its way into some of your bosoms. But be ye sure that ye mistake not the cause and ground of your Testimony. Call not coldness of soul, religion; nor put the BIGOT in the place of the CHRISTIAN.

O ye partial ministers of your own acknowledged principles. If the bearing arms be sinful, the first going to war must be more so, by all the difference between wilful attack, and unavoidable defence. Wherefore, if ye really preach from conscience, and mean not to make a political hobbyhorse of your religion convince the world thereof, by proclaiming your doctrine to our enemies, FOR THEY LIKEWISE BEAR "ARMS". Give us proof of your sincerity by publishing it at St. James's, to the commanders in chief at Boston, to the Admirals and Captains who are piratically ravaging our coasts, and to all the murdering miscreants who are acting in authority under HIM whom ye profess to serve. Had ye the honest soul of BARCLAY ye would preach repentance to YOUR king; Ye would tell the Royal Wretch his sins, and warn him of eternal ruin. ["Thou hast tasted of prosperity and adversity; thou knowest what it is to be banished thy native country, to be over-ruled as well as to rule, and set upon the throne; and being oppressed thou hast reason to know how hateful the oppressor is both to God and man: If after all these warnings and advertisements, thou dost not turn unto the Lord with all thy heart, but forget him who remembered thee in thy distress, and give up thyself to fallow lust and vanity, surely great will be thy condemnation.— Against which snare, as well as the temptation of those who may or do feed thee, and prompt thee to evil, the most excellent and prevalent remedy will be, to apply thyself to that light of Christ which shineth in thy conscience, and which neither can, nor will flatter thee, nor suffer thee to be at ease in thy sins."—Barclay's address to Charles II.] Ye would not spend your partial invectives against the injured and the insulted only, but, like faithful ministers, would cry aloud and SPARE NONE. Say not that ye are persecuted, neither endeavour to make us the authors of that reproach, which, ye are bringing upon yourselves; for we testify unto all men, that we do not complain against you because ye are Quakers, but because ye pretend to be and are NOT Quakers.

Alas! it seems by the particular tendency of some part of your testimony, and other parts of your conduct, as if, all sin was reduced to, and comprehended in, THE ACT OF BEARING ARMS, and that by the people only. Ye appear to us, to have mistaken party for conscience; because, the general tenor of your actions wants uniformity—And it is exceedingly difficult to us to give credit to many of your pretended scruples; because, we see them made by the same men, who, in the very instant that they are exclaiming against the mammon of this world, are nevertheless, hunting after it with a step as steady as Time, and an appetite as keen as Death.

The quotation which ye have made from Proverbs, in the third page of your testimony, that, "when a man's ways please the Lord, he maketh even his enemies to be at peace with him"; is very unwisely chosen on your part; because, it amounts to a proof, that the king's ways (whom ye are desirous of supporting) do NOT please the Lord, otherwise, his reign would be in peace.

I now proceed to the latter part of your testimony, and that, for which all the foregoing seems only an introduction viz.

"It hath ever been our judgment and principle, since we were called to profess the light of Christ Jesus, manifested in our consciences unto this day, that the setting up and putting down kings and governments, is God's peculiar prerogative; for causes best known to himself: And that it is not our business to have any hand or contrivance therein; nor to be busy bodies above our station, much less to plot and contrive the ruin, or overturn of any of them, but to pray for the king, and safety of our nation. and good of all men - That we may live a peaceable and quiet life, in all godliness and honesty; UNDER THE GOVERNMENT WHICH GOD IS PLEASED TO SET OVER US" - If these are REALLY your principles why do ye not abide by them? Why do ye not leave that, which ye call God's Work, to be managed by himself? These very principles instruct you to wait with patience and humility, for the event of all public measures, and to receive that event as the divine will towards you. Wherefore, what occasion is there for your POLITICAL TESTIMONY if you fully believe what it contains? And the very publishing it proves, that either, ye do not believe what ye profess, or have not virtue enough to practise what ye believe.

The principles of Quakerism have a direct tendency to make a man the quiet and inoffensive subject of any, and every government WHICH IS SET OVER HIM. And if the setting up and putting down of kings and governments is God's peculiar prerogative, he most certainly will not be robbed thereof by us: wherefore, the principle itself leads you to approve of every thing, which ever happened, or may happen to kings as being his work. OLIVER CROMWELL thanks you. CHARLES, then, died not by the hands of man; and should the present Proud Imitator of him, come to the same untimely end, the writers and publishers of the Testimony, are bound, by the doctrine it contains, to applaud the fact. Kings are not taken away by miracles, neither are changes in governments brought about by any other means than such as are common and human; and such as we are now using. Even the dispersion of the Jews, though foretold by our Saviour, was effected by arms. Wherefore, as ye refuse to be the means on one side, ye ought not to be meddlers on the other; but to wait the issue in silence; and unless ye can produce divine authority, to prove, that the Almighty who hath created and placed this new world, at the greatest distance it could possibly stand, east and west, from every part of the old, doth, nevertheless, disapprove of its being independent of the corrupt and abandoned court of Britain, unless I say, ye can shew this, how can ye on the ground of your principles, justify the exciting and stirring up the people "firmly to unite in the abhorrence of all such writings, and measures, as evidence a desire and design to break off the happy connexion we have hitherto enjoyed, with the kingdom of Great-Britain, and our just and necessary subordination to the king, and those who are lawfully placed in authority under him." What a slap of the face is here! the men, who in the very paragraph before, have quietly and passively resigned up the ordering, altering, and disposal of kings and governments, into the hands of God, are now, recalling their principles, and putting in for a share of the business. Is it possible, that the conclusion, which is here justly quoted, can any ways follow from the doctrine laid down? The inconsistency is too glaring not to be seen; the absurdity too great not to be laughed at; and such as could only have been made by those, whose understandings were darkened by the narrow and crabby spirit of a despairing political party; for ye are not to be considered as the whole body of the Quakers but only as a factional and fractional part thereof.

Here ends the examination of your testimony; (which I call upon no man to abhor, as ye have done, but only to read and judge of fairly;) to which I subjoin the following remark: "That the setting up and putting down of kings," most certainly mean, the making him a king, who is yet not so, and the making him no king who is already one. And pray what hath this to do in the present case? We neither mean to set up nor to pull down, neither to make nor to unmake, but to have nothing to do with them. Wherefore, your testimony in whatever light it is viewed serves only to dishonor your judgement, and for many other reasons had better have been let alone than published.

First, Because it tends to the decrease and reproach of all religion whatever, and is of the utmost danger to society to make it a party in political disputes.

Secondly, Because it exhibits a body of men, numbers of whom disavow the publishing political testimonies, as being concerned therein and approvers thereof.

Thirdly, because it hath a tendency to undo that continental harmony and friendship which yourselves by your late liberal and charitable donations hath lent a hand to establish; and the preservation of which, is of the utmost consequence to us all.

And here without anger or resentment I bid you farewell. Sincerely wishing, that as men and christians, ye may always fully and uninterruptedly enjoy every civil and religious right; and be, in your turn, the means of securing it to others; but that the example which ye have unwisely set, of mingling religion with politics, may be disavowed and reprobated by every inhabitant of America.

F I N I S .

The Constitution of the United States of America

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be

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ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

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 defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

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;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

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Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states 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.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the

United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

G. Washington-Presidt. and deputy from Virginia

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: Wm: Saml. Johnson, Roger Sherman

New York: Alexander Hamilton

New Jersey: Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton

Pennsylvania: B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris

Delaware: Geo: Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco: Broom

Maryland: James McHenry, Dan of St Thos. Jenifer, Danl Carroll

Virginia: John Blair--, James Madison Jr.

North Carolina: Wm. Blount, Richd. Dobbs Spaight, Hu Williamson

South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

Georgia: William Few, Abr Baldwin

Amendments to the Constitution of the United States

Amendment I (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II (1791)

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III (1791)

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV (1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI (1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII (1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII (1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX (1791)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X (1791)

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.

Amendment XI (1798)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII (1804)

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person

have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII (1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration.

Amendment XVII (1913)

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII (1919)

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX (1933)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors

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shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII (1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII (1961)

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV (1967)

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within

four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI (1971)

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Dates of Admission of States into the Union

Alabama 1819	Louisiana 1812	Ohio 1803
Alaska 1959	Maine 1820	Oklahoma 1907
Arizona 1912	Maryland 1788	Oregon 1859
Arkansas 1836	Massachusetts 1788	Pennsylvania 1787
California 1850	Michigan 1837	Rhode Island 1790
Colorado 1876	Minnesota 1858	South Carolina 1788
Connecticut 1788	Mississippi 1817	South Dakota 1889
Delaware 1787	Missouri 1821	Tennessee 1796
Florida 1845	Montana 1889	Texas 1845
Georgia 1788	Nebraska 1867	Utah 1896
Hawaii 1959	Nevada 1864	Vermont 1791
Idaho 1890	New Hampshire 1788	Virginia 1788
Illinois 1818	New Jersey 1787	Washington 1889
Indiana 1816	New Mexico 1912	West Virginia 1863
Iowa 1846	New York 1788	Wisconsin 1848
Kansas 1861	North Carolina 1789	Wyoming 1890
Kentucky 1792	North Dakota 1889	

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The Declaration of Independence

In Congress, July 4, 1776, THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK, President
Attested, CHARLES THOMSON, Secretary
New Hampshire JOSIAH BARTLETT WILLIAM WHIPPLE MATTHEW THORNTON
Massachusetts-Bay SAMUEL ADAMS JOHN ADAMS ROBERT TREAT PAINE ELBRIDGE GERRY
Rhode Island STEPHEN HOPKINS WILLIAM ELLERY
Connecticut ROGER SHERMAN SAMUEL HUNTINGTON WILLIAM WILLIAMS OLIVER WOLCOTT
Georgia BUTTON GWINNETT LYMAN HALL GEO. WALTON
Maryland SAMUEL CHASE WILLIAM PACA THOMAS STONE CHARLES CARROLL OF CARROLLTON
Virginia GEORGE WYTHE RICHARD HENRY LEE THOMAS JEFFERSON BENJAMIN HARRISON THOMAS NELSON, JR. FRANCIS LIGHTFOOT LEE CARTER BRAXTON.
New York WILLIAM FLOYD PHILIP LIVINGSTON FRANCIS LEWIS LEWIS MORRIS
Pennsylvania ROBERT MORRIS BENJAMIN RUSH BENJAMIN FRANKLIN JOHN MORTON
GEORGE CLYMER JAMES SMITH GEORGE TAYLOR JAMES WILSON GEORGE ROSS
Delaware CAESAR RODNEY GEORGE READ THOMAS M'KEAN
North Carolina WILLIAM HOOPER JOSEPH HEWES JOHN PENN
South Carolina EDWARD RUTLEDGE THOMAS HEYWARD, JR. THOMAS LYNCH, JR. ARTHUR MIDDLETON
New Jersey RICHARD STOCKTON JOHN WITHERSPOON FRANCIS HOPKINS JOHN HART ABRAHAM CLARK

Emancipation Proclamation

By the President of the United States of America:

A PROCLAMATION

Whereas on the 22nd day of September, A.D. 1862, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the 1st day of January, A.D. 1863, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the executive will on the 1st day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this 1st day of January, A.D. 1863, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the first day above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States the following, to wit:

Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Palquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terrebone, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Morthampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enforce upon the people so declared to be free to abstain from all violence, unless in necessary self-defense; and I recommend to them that, in all case when allowed, they labor faithfully for reasonable wages.

And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

Note: On Jan. 1, 1863, U.S. President Abraham Lincoln declared free all slaves residing in territory in rebellion against the federal government. This Emancipation Proclamation actually freed few people. It did not apply to slaves in border states fighting on the Union side; nor did it affect slaves in southern areas already under Union control. Naturally, the states in rebellion did not act on Lincoln's order. But the proclamation did show Americans—and the world—that the civil war was now being fought to end slavery.

Lincoln had been reluctant to come to this position. A believer in white supremacy, he initially viewed the war only in terms of preserving the Union. As pressure for abolition mounted in Congress and the country, however, Lincoln became more sympathetic to the idea. On Sept. 22, 1862, he issued a preliminary proclamation announcing that emancipation would become effective on Jan. 1, 1863, in those states still in rebellion. Although the Emancipation Proclamation did not end slavery in America—this was achieved by the passage of the 13TH Amendment to the Constitution on Dec. 18, 1865—it did make that accomplishment a basic war goal and a virtual certainty.

DOUGLAS T. MILLER

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Federalist Papers

FEDERALIST. No. 1

General Introduction For the Independent Journal.

HAMILTON

To the People of the State of New York: AFTER an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favorable to the discovery of truth. Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government. It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least, if not respectable—the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those who are ever so much persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution. And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of the public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of love, and that the noble enthusiasm of liberty is apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidden appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants. In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth. I propose, in a series of papers, to discuss the following interesting particulars: THE UTILITY OF THE UNION TO YOUR POLITICAL PROSPERITY THE INSUFFICIENCY OF THE PRESENT CONFEDERATION TO PRESERVE THAT UNION THE NECESSITY OF A GOVERNMENT AT LEAST EQUALLY ENERGETIC WITH THE ONE PROPOSED, TO THE ATTAINMENT OF THIS OBJECT THE CONFORMITY OF THE PROPOSED CONSTITUTION TO THE TRUE PRINCIPLES OF REPUBLICAN GOVERNMENT ITS ANALOGY TO YOUR OWN STATE CONSTITUTION and lastly, THE ADDITIONAL SECURITY WHICH ITS ADOPTION WILL AFFORD TO THE PRESERVATION OF THAT SPECIES OF GOVERNMENT, TO LIBERTY, AND TO PROPERTY. In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention. It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the

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people in every State, and one, which it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address. PUBLIUS. I The same idea, tracing the arguments to their consequences, is held out in several of the late publications against the new Constitution.

FEDERALIST No. 2

Concerning Dangers from Foreign Force and Influence For the Independent Journal.

JAY

To the People of the State of New York: WHEN the people of America reflect that they are now called upon to decide a question, which, in its consequences, must prove one of the most important that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it, will be evident. Nothing is more certain than the indispensable necessity of government, and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights in order to vest it with requisite powers. It is well worthy of consideration therefore, whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, or that they should divide themselves into separate confederacies, and give to the head of each the same kind of powers which they are advised to place in one national government. It has until lately been a received and uncontradicted opinion that the prosperity of the people of America depended on their continuing firmly united, and the wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that instead of looking for safety and happiness in union, we ought to seek it in a division of the States into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it nevertheless has its advocates; and certain characters who were much opposed to it formerly, are at present of the number. Whatever may be the arguments or inducements which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new political tenets without being fully convinced that they are founded in truth and sound policy. It has often given me pleasure to observe that independent America was not composed of detached and distant territories, but that one connected, fertile, widespread country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities. With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people--a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence. This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties. Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes we have uniformly been one people each individual citizen everywhere enjoying the same national rights, privileges, and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states. A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time when their habitations were in flames, when many of their citizens were bleeding, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections which must ever precede the formation of a wise and wellbalanced government for a free people. It is not to be wondered at, that a government instituted in times so inauspicious, should on experiment be found greatly deficient and inadequate to the purpose it was intended to answer. This intelligent people perceived and regretted these defects. Still continuing no less attached to union than enamored of liberty, they observed the danger which immediately threatened the former and more remotely the latter; and being persuaded that ample security for both could only be found in a national government more wisely framed, they as with one voice, convened the late convention at Philadelphia, to take that important subject under consideration. This convention composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue and wisdom, in times which tried the minds and hearts of men, undertook the arduous task. In the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool, uninterrupted, and daily consultation; and finally, without having been awed by power, or influenced by any passions except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils. Admit, for so is the fact, that this plan is only RECOMMENDED, not imposed, yet let it be remembered that it is neither recommended to BLIND approbation, nor to BLIND reprobation; but to that sedate and candid consideration which the magnitude and importance of the subject demand, and which it certainly ought to receive. But this (as was remarked in the foregoing number of this paper) is more to be wished than expected, that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten that well-grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of 1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government, who obeyed the dictates of personal interest, but others, from a mistaken estimate of consequences, or the undue influence of former attachments, or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their efforts to persuade the people to reject the advice of that patriotic Congress. Many, indeed, were deceived and deluded, but the great majority of the people reasoned and decided judiciously; and happy they are in reflecting that they did so. They considered that the Congress was composed of many wise and experienced men. That, being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That, in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination than their duty to recommend only such measures as, after the most mature deliberation,

they really thought prudent and advisable. These and similar considerations then induced the people to rely greatly on the judgment and integrity of the Congress; and they took their advice, notwithstanding the various arts and endeavors used to deter them from it. But if the people at large had reason to confide in the men of that Congress, few of whom had been fully tried or generally known, still greater reason have they now to respect the judgment and advice of the convention, for it is well known that some of the most distinguished members of that Congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this convention, and carried into it their accumulated knowledge and experience. It is worthy of remark that not only the first, but every succeeding Congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good purposes, are attempts at this particular period made by some men to depreciate the importance of the Union? Or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the Union rests on great and weighty reasons, which I shall endeavor to develop and explain in some ensuing papers. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. That certainly would be the case, and I sincerely wish that it may be as clearly foreseen by every good citizen, that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet: "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS." PUBLIUS.

FEDERALIST No. 3

The Same Subject Continued (Concerning Dangers From Foreign Force and Influence) For the Independent Journal.

JAY

To the People of the State of New York: IT IS not a new observation that the people of any country (if, like the Americans, intelligent and wellinformed) seldom adopt and steadily persevere for many years in an erroneous opinion respecting their interests. That consideration naturally tends to create great respect for the high opinion which the people of America have so long and uniformly entertained of the importance of their continuing firmly united under one federal government, vested with sufficient powers for all general and national purposes. The more attentively I consider and investigate the reasons which appear to have given birth to this opinion, the more I become convinced that they are cogent and conclusive. Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their SAFETY seems to be the first. The SAFETY of the people doubtless has relation to a great variety of circumstances and considerations, and consequently affords great latitude to those who wish to define it precisely and comprehensively. At present I mean only to consider it as it respects security for the preservation of peace and tranquillity, as well as against dangers from FOREIGN ARMS AND INFLUENCE, as from dangers of the LIKE KIND arising from domestic causes. As the former of these comes first in order, it is proper it should be the first discussed. Let us therefore proceed to examine whether the people are not right in their opinion that a cordial Union, under an efficient national government, affords them the best security that can be devised against HOSTILITIES from abroad. The number of wars which have happened or will happen in the world will always be found to be in proportion to the number and weight of the causes, whether REAL or PRETENDED, which PROVOKE or INVITE them. If this remark be just, it becomes useful to inquire whether so many JUST causes of war are likely to be given by UNITED AMERICA as by DISUNITED America; for if it should turn out that United America will probably give the fewest, then it will follow that in this respect the Union tends most to preserve the people in a state of peace with other nations. The JUST causes of war, for the most part, arise either from violation of treaties or from direct violence. America has already formed treaties with no less than six foreign nations, and all of them, except Prussia, are maritime, and therefore able to annoy and injure us. She has also extensive commerce with Portugal, Spain, and Britain, and, with respect to the two latter, has, in addition, the circumstance of neighborhood to attend to. It is of high importance to the peace of America that she observe the laws of nations towards all these powers, and to me it appears evident that this will be more perfectly and punctually done by one national government than it could be either by thirteen separate States or by three or four distinct confederacies. Because when once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it; for, although town or country, or other contracted influence, may place men in State assemblies, or senates, or courts of justice, or executive departments, yet more general and extensive reputation for talents and other qualifications will be necessary to recommend men to offices under the national government,--especially as it will have the widest field for choice, and never experience that want of proper persons which is not uncommon in some of the States. Hence, it will result that the administration, the political counsels, and the judicial decisions of the national government will be more wise, systematical, and judicious than those of individual States, and consequently more satisfactory with respect to other nations, as well as more SAFE with respect to us. Because, under the national government, treaties and articles of treaties, as well as the laws of nations, will always be expounded in one sense and executed in the same manner,--whereas, adjudications on the same points and questions, in thirteen States, or in three or four confederacies, will not always accord or be consistent; and that, as well from the variety of independent courts and judges appointed by different and independent governments, as from the different local laws and interests which may affect and influence them. The wisdom of the convention, in committing such questions to the jurisdiction and judgment of courts appointed by and responsible only to one national government, cannot be too much commended. Because the prospect of present loss or advantage may often tempt the governing party in one or two States to swerve from good faith and justice; but those temptations, not reaching the other States, and consequently having little or no influence on the national government, the temptation will be fruitless, and good faith and justice be preserved. The case of the treaty of peace with Britain adds great weight to this reasoning. Because, even if the governing party in a State should be disposed to resist such temptations, yet as such temptations may, and commonly do, result from circumstances peculiar to the State, and may affect a great number of the inhabitants, the governing party may not always be able, if willing, to prevent the injustice meditated, or to punish the aggressors. But the national government, not being affected by those local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent or punish its commission by others. So far, therefore, as either designed or accidental violations of treaties and the laws of nations afford JUST causes of war, they are less to be apprehended under one general government than under several lesser ones, and in that respect the former most favors the SAFETY of the people. As to those just causes of war which proceed from direct and unlawful violence, it appears equally clear to me that one good national government affords vastly more security against dangers of that sort than can be derived from any other quarter. Because such violences are more frequently caused by the passions and interests of a part than of the whole; of one or two States than of the Union. Not a single Indian war has yet been occasioned by aggressions of the present federal government, feeble as it is; but there are several instances of Indian hostilities having been provoked by the improper conduct of individual States, who, either unable or unwilling to restrain or punish offenses, have given occasion to the slaughter of many innocent inhabitants. The neighborhood of Spanish and British territories, bordering on some States and not

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on others, naturally confines the causes of quarrel more immediately to the borderers. The bordering States, if any, will be those who, under the impulse of sudden irritation, and a quick sense of apparent interest or injury, will be most likely, by direct violence, to excite war with these nations; and nothing can so effectually obviate that danger as a national government, whose wisdom and prudence will not be diminished by the passions which actuate the parties immediately interested. But not only fewer just causes of war will be given by the national government, but it will also be more in their power to accommodate and settle them amicably. They will be more temperate and cool, and in that respect, as well as in others, will be more in capacity to act advisedly than the offending State. The pride of states, as well as of men, naturally disposes them to justify all their actions, and opposes their acknowledging, correcting, or repairing their errors and offenses. The national government, in such cases, will not be affected by this pride, but will proceed with moderation and candor to consider and decide on the means most proper to extricate them from the difficulties which threaten them. Besides, it is well known that acknowledgments, explanations, and compensations are often accepted as satisfactory from a strong united nation, which would be rejected as unsatisfactory if offered by a State or confederacy of little consideration or power. In the year 1685, the state of Genoa having offended Louis XIV., endeavored to appease him. He demanded that they should send their Doge, or chief magistrate, accompanied by four of their senators, to FRANCE, to ask his pardon and receive his terms. They were obliged to submit to it for the sake of peace. Would he on any occasion either have demanded or have received the like humiliation from Spain, or Britain, or any other POWERFUL nation? PUBLIUS.

FEDERALIST No. 4

The Same Subject Continued (Concerning Dangers From Foreign Force and Influence) For the Independent Journal.

JAY

To the People of the State of New York: MY LAST paper assigned several reasons why the safety of the people would be best secured by union against the danger it may be exposed to by JUST causes of war given to other nations; and those reasons show that such causes would not only be more rarely given, but would also be more easily accommodated, by a national government than either by the State governments or the proposed little confederacies. But the safety of the people of America against dangers from FOREIGN force depends not only on their forbearing to give JUST causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to INVITE hostility or insult; for it need not be observed that there are PRETENDED as well as just causes of war. It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for the purposes and objects merely personal, such as thirst for military glory, revenge for personal affronts, ambition, or private content to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people. But, independent of these inducements to war, which are more prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings; and some of them will on examination be found to grow out of our relative situation and circumstances. With France and with Britain we are rivals in the fisheries, and can supply their markets cheaper than they can themselves, notwithstanding any efforts to prevent it by bounties on their own or duties on foreign fish. With them and with most other European nations we are rivals in navigation and the carrying trade; and we shall deceive ourselves if we suppose that any of them will rejoice to see it flourish; for, as our carrying trade cannot increase without in some degree diminishing theirs, it is more their interest, and will be more their policy, to restrain than to promote it. In the trade to China and India, we interfere with more than one nation, inasmuch as it enables us to partake in advantages which they had in a manner monopolized, and as we thereby supply ourselves with commodities which we used to purchase from them. The extension of our own commerce in our own vessels cannot give pleasure to any nations who possess territories on or near this continent, because the cheapness and excellence of our productions, added to the circumstance of vicinity, and the enterprise and address of our merchants and navigators, will give us a greater share in the advantages which those territories afford, than consists with the wishes or policy of their respective sovereigns. Spain thinks it convenient to shut the Mississippi against us on the one side, and Britain excludes us from the Saint Lawrence on the other; nor will either of them permit the other waters which are between them and us to become the means of mutual intercourse and traffic. From these and such like considerations, which might, if consistent with prudence, be more amplified and detailed, it is easy to see that jealousies and uneasinesses may gradually slide into the minds and cabinets of other nations, and that we are not to expect that they should regard our advancement in union, in power and consequence by land and by sea, with an eye of indifference and composure. The people of America are aware that inducements to war may arise out of these circumstances, as well as from others not so obvious at present, and that whenever such inducements may find fit time and opportunity for operation, pretenses to color and justify them will not be wanting. Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in SUCH A SITUATION as, instead of INVITING war, will tend to repress and discourage it. That situation consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country. As the safety of the whole is the interest of the whole, and cannot be provided for without government, either one or more or many, let us inquire whether one good government is not, relative to the object in question, more competent than any other given number whatever. One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defense of any particular part, and that more easily and expeditiously than State governments or separate confederacies can possibly do, for want of concert and unity of system. It can place the militia under one plan of discipline, and, by putting their officers in a proper line of subordination to the Chief Magistrate, will, as it were, consolidate them into one corps, and thereby render them more efficient than if divided into thirteen or into three or four distinct independent companies. What would the militia of Britain be if the English militia obeyed the government of England, if the Scotch militia obeyed the government of Scotland, and if the Welsh militia obeyed the government of Wales? Suppose an invasion; would those three governments (if they agreed at all) be able, with all their respective forces, to operate against the enemy so effectually as the single government of Great Britain would? We have heard much of the fleets of Britain, and the time may come, if we are wise, when the fleets of America may engage attention. But if one national government, had not so regulated the navigation of Britain as to make it a nursery for seamen--if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated. Let England have its navigation and fleet--let Scotland have its navigation and fleet--let Wales have its navigation and fleet--let Ireland have its navigation and fleet--let those four of the constituent parts of the British empire be under four independent governments, and it is easy to perceive how soon they would each dwindle into comparative insignificance. Apply these facts to our own case. Leave America divided into thirteen or, if you please, into three or four independent governments--what armies could they raise and pay--what fleets could they ever hope to have? If one was attacked, would the others fly to its succor, and

spend their blood and money in its defense? Would there be no danger of their being flattered into neutrality by its specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbors, of whom perhaps they have been jealous, and whose importance they are content to see diminished? Although such conduct would not be wise, it would, nevertheless, be natural. The history of the states of Greece, and of other countries, abounds with such instances, and it is not improbable that what has so often happened would, under similar circumstances, happen again. But admit that they might be willing to help the invaded State or confederacy. How, and when, and in what proportion shall aids of men and money be afforded? Who shall command the allied armies, and from which of them shall he receive his orders? Who shall settle the terms of peace, and in case of disputes what umpire shall decide between them and compel acquiescence? Various difficulties and inconveniences would be inseparable from such a situation; whereas one government, watching over the general and common interests, and combining and directing the powers and resources of the whole, would be free from all these embarrassments, and conduce far more to the safety of the people. But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is, that foreign nations will know and view it exactly as it is; and they will act toward us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each State doing right or wrong, as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves. PUBLIUS.

FEDERALIST No. 5

The Same Subject Continued (Concerning Dangers From Foreign Force and Influence) For the Independent Journal.

JAY

To the People of the State of New York: QUEEN ANNE, in her letter of the 1st July, 1706, to the Scotch Parliament, makes some observations on the importance of the UNION then forming between England and Scotland, which merit our attention. I shall present the public with one or two extracts from it: "An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches, and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be ENABLED TO RESIST ALL ITS ENEMIES." "We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only EFFECTUAL way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will doubtless, on this occasion, USE THEIR UTMOST ENDEAVORS TO PREVENT OR DELAY THIS UNION." It was remarked in the preceding paper, that weakness and divisions at home would invite dangers from abroad; and that nothing would tend more to secure us from them than union, strength, and good government within ourselves. This subject is copious and cannot easily be exhausted. The history of Great Britain is the one with which we are in general the best acquainted, and it gives us many useful lessons. We may profit by their experience without paying the price which it cost them. Although it seems obvious to common sense that the people of such an island should be but one nation, yet we find that they were for ages divided into three, and that those three were almost constantly embroiled in quarrels and wars with one another. Notwithstanding their true interest with respect to the continental nations was really the same, yet by the arts and policy and practices of those nations, their mutual jealousies were perpetually kept inflamed, and for a long series of years they were far more inconvenient and troublesome than they were useful and assisting to each other. Should the people of America divide themselves into three or four nations, would not the same thing happen? Would not similar jealousies arise, and be in like manner cherished? Instead of their being "joined in affection" and free from all apprehension of different "interests," envy and jealousy would soon extinguish confidence and affection, and the partial interests of each confederacy, instead of the general interests of all America, would be the only objects of their policy and pursuits. Hence, like most other BORDERING nations, they would always be either involved in disputes and war, or live in the constant apprehension of them. The most sanguine advocates for three or four confederacies cannot reasonably suppose that they would long remain exactly on an equal footing in point of strength, even if it was possible to form them so at first; but, admitting that to be practicable, yet what human contrivance can secure the continuance of such equality? Independent of those local circumstances which tend to beget and increase power in one part and to impede its progress in another, we must advert to the effects of that superior policy and good management which would probably distinguish the government of one above the rest, and by which their relative equality in strength and consideration would be destroyed. For it cannot be presumed that the same degree of sound policy, prudence, and foresight would uniformly be observed by each of these confederacies for a long succession of years. Whenever, and from whatever causes, it might happen, and happen it would, that any one of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbors, that moment would those neighbors behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote, whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance or even to secure her prosperity. Much time would not be necessary to enable her to discern these unfriendly dispositions. She would soon begin, not only to lose confidence in her neighbors, but also to feel a disposition equally unfavorable to them. Distrust naturally creates distrust, and by nothing is good-will and kind conduct more speedily changed than by invidious jealousies and uncandid imputations, whether expressed or implied. The North is generally the region of strength, and many local circumstances render it probable that the most Northern of the proposed confederacies would, at a period not very distant, be unquestionably more formidable than any of the others. No sooner would this become evident than the NORTHERN HIVE would excite the same ideas and sensations in the more southern parts of America which it formerly did in the southern parts of Europe. Nor does it appear to be a rash conjecture that its young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbors. They who well consider the history of similar divisions and confederacies will find abundant reason to apprehend that those in contemplation would in no other sense be neighbors than as they would be borderers; that they would neither love nor trust one another, but on the contrary would be a prey to discord, jealousy, and mutual injuries; in short, that they would place us exactly in the situations in which some nations doubtless wish to see us, viz., FORMIDABLE ONLY TO EACH OTHER. From these considerations it appears that those gentlemen are greatly mistaken who suppose that alliances offensive and defensive might be formed between these confederacies, and would produce that combination and union of wills of arms and of resources, which would be necessary to put and keep them in a formidable state of defense against foreign enemies. When did the independent states, into which Britain and Spain were formerly divided, combine in such alliance, or unite their forces against a foreign enemy? The proposed confederacies will be DISTINCT NATIONS. Each of them would have its commerce with

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foreigners to regulate by distinct treaties; and as their productions and commodities are different and proper for different markets, so would those treaties be essentially different. Different commercial concerns must create different interests, and of course different degrees of political attachment to and connection with different foreign nations. Hence it might and probably would happen that the foreign nation with whom the SOUTHERN confederacy might be at war would be the one with whom the NORTHERN confederacy would be the most desirous of preserving peace and friendship. An alliance so contrary to their immediate interest would not therefore be easy to form, nor, if formed, would it be observed and fulfilled with perfect good faith. Nay, it is far more probable that in America, as in Europe, neighboring nations, acting under the impulse of opposite interests and unfriendly passions, would frequently be found taking different sides. Considering our distance from Europe, it would be more natural for these confederacies to apprehend danger from one another than from distant nations, and therefore that each of them should be more desirous to guard against the others by the aid of foreign alliances, than to guard against foreign dangers by alliances between themselves. And here let us not forget how much more easy it is to receive foreign fleets into our ports, and foreign armies into our country, than it is to persuade or compel them to depart. How many conquests did the Romans and others make in the characters of allies, and what innovations did they under the same character introduce into the governments of those whom they pretended to protect. Let candid men judge, then, whether the division of America into any given number of independent sovereignties would tend to secure us against the hostilities and improper interference of foreign nations.

PUBLIUS.

FEDERALIST No. 6

Concerning Dangers from Dissensions Between the States For the Independent Journal.

HAMILTON

To the People of the State of New York: THE three last numbers of this paper have been dedicated to an enumeration of the dangers to which we should be exposed, in a state of disunion, from the arms and arts of foreign nations. I shall now proceed to delineate dangers of a different and, perhaps, still more alarming kind--those which will in all probability flow from dissensions between the States themselves, and from domestic factions and convulsions. These have been already in some instances slightly anticipated; but they deserve a more particular and more full investigation. A man must be far gone in Utopian speculations who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages. The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power or the desire of pre-eminence and dominion--the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed though an equally operative influence within their spheres. Such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage or personal gratification. The celebrated Pericles, in compliance with the resentment of a prostitute,¹ at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the SAMNIANS. The same man, stimulated by private pique against the MEGARENSIANS,² another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice of a supposed theft of the statuary Phidias,³ or to get rid of the accusations prepared to be brought against him for dissipating the funds of the state in the purchase of popularity,⁴ or from a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the PELOPONNESIAN war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian commonwealth. The ambitious cardinal, who was prime minister to Henry VIII., permitting his vanity to aspire to the triple crown,⁵ entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the Emperor Charles V. To secure the favor and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in general. For if there ever was a sovereign who bid fair to realize the project of universal monarchy, it was the Emperor Charles V., of whose intrigues Wolsey was at once the instrument and the dupe. The influence which the bigotry of one female,⁶ the petulance of another,⁷ and the cabals of a third,⁸ had in the contemporary policy, ferments, and pacifications, of a considerable part of Europe, are topics that have been too often descanted upon not to be generally known. To multiply examples of the agency of personal considerations in the production of great national events, either foreign or domestic, according to their direction, would be an unnecessary waste of time. Those who have but a superficial acquaintance with the sources from which they are to be drawn, will themselves recollect a variety of instances; and those who have a tolerable knowledge of human nature will not stand in need of such lights to form their opinion either of the reality or extent of that agency. Perhaps, however, a reference, tending to illustrate the general principle, may with propriety be made to a case which has lately happened among ourselves. If Shays had not been a DESPERATE DEBTOR, it is much to be doubted whether Massachusetts would have been plunged into a civil war. But notwithstanding the concurring testimony of experience, in this particular, there are still to be found visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other. The genius of republics (say they) is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humors which have so often kindled into wars. Commercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord. Is it not (we may ask these projectors in politics) the true interest of all nations to cultivate the same benevolent and philosophic spirit? If this be their true interest, have they in fact pursued it? Has it not, on the contrary, invariably been found that momentary passions, and immediate interest, have a more active and imperious control over human conduct than general or remote considerations of policy, utility or justice? Have republics in practice been less addicted to war than monarchies? Are not the former administered by MEN as well as the latter? Are there not aversions, predilections, rivalships, and desires of unjust acquisitions, that affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and are, of course, liable to be tainted by the passions and views of those individuals? Has commerce hitherto done anything more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite, both

for the one and for the other? Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries. Sparta, Athens, Rome, and Carthage were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as the neighboring monarchies of the same times. Sparta was little better than a wellregulated camp; and Rome was never sated of carnage and conquest. Carthage, though a commercial republic, was the aggressor in the very war that ended in her destruction. Hannibal had carried her arms into the heart of Italy and to the gates of Rome, before Scipio, in turn, gave him an overthrow in the territories of Carthage, and made a conquest of the commonwealth. Venice, in later times, figured more than once in wars of ambition, till, becoming an object to the other Italian states, Pope Julius II. found means to accomplish that formidable league,⁹ which gave a deadly blow to the power and pride of this haughty republic. The provinces of Holland, till they were overwhelmed in debts and taxes, took a leading and conspicuous part in the wars of Europe. They had furious contests with England for the dominion of the sea, and were among the most persevering and most implacable of the opponents of Louis XIV. In the government of Britain the representatives of the people compose one branch of the national legislature. Commerce has been for ages the predominant pursuit of that country. Few nations, nevertheless, have been more frequently engaged in war; and the wars in which that kingdom has been engaged have, in numerous instances, proceeded from the people. There have been, if I may so express it, almost as many popular as royal wars. The cries of the nation and the importunities of their representatives have, upon various occasions, dragged their monarchs into war, or continued them in it, contrary to their inclinations, and sometimes contrary to the real interests of the State. In that memorable struggle for superiority between the rival houses of AUSTRIA and BOURBON, which so long kept Europe in a flame, it is well known that the antipathies of the English against the French, seconding the ambition, or rather the avarice, of a favorite leader,¹⁰ protracted the war beyond the limits marked out by sound policy, and for a considerable time in opposition to the views of the court. The wars of these two last-mentioned nations have in a great measure grown out of commercial considerations--the desire of supplanting and the fear of being supplanted, either in particular branches of traffic or in the general advantages of trade and navigation. From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries which would seduce us into an expectation of peace and cordiality between the members of the present confederacy, in a state of separation? Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue? Let the point of extreme depression to which our national dignity and credit have sunk, let the inconveniences felt everywhere from a lax and ill administration of government, let the revolt of a part of the State of North Carolina, the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare--! So far is the general sense of mankind from corresponding with the tenets of those who endeavor to lull asleep our apprehensions of discord and hostility between the States, in the event of disunion, that it has from long observation of the progress of society become a sort of axiom in politics, that vicinity or nearness of situation, constitutes nations natural enemies. An intelligent writer expresses himself on this subject to this effect: "NEIGHBORING NATIONS (says he) are naturally enemies of each other unless their common weakness forces them to league in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that neighborhood occasions, extinguishing that secret jealousy which disposes all states to aggrandize themselves at the expense of their neighbors."¹¹ This passage, at the same time, points out the EVIL and suggests the REMEDY. PUBLIUS. 1 Aspasia, vide "Plutarch's Life of Pericles." 2 Ibid. 3 Ibid. 4] Ibid. Phidias was supposed to have stolen some public gold, with the connivance of Pericles, for the embellishment of the statue of Minerva. 5 P Worn by the popes. 6 Madame de Maintenon. 7 Duchess of Marlborough. 8 Madame de Pompadour. 9 The League of Cambray, comprehending the Emperor, the King of France, the King of Aragon, and most of the Italian princes and states. 10 The Duke of Marlborough. 11 Vide "Principes des Negotiations" par l'Abbe de Mably.

FEDERALIST. No. 7

The Same Subject Continued (Concerning Dangers from Dissensions Between the States) For the Independent Journal.

HAMILTON

To the People of the State of New York: IT IS sometimes asked, with an air of seeming triumph, what inducements could the States have, if disunited, to make war upon each other? It would be a full answer to this question to say--precisely the same inducements which have, at different times, deluged in blood all the nations in the world. But, unfortunately for us, the question admits of a more particular answer. There are causes of differences within our immediate contemplation, of the tendency of which, even under the restraints of a federal constitution, we have had sufficient experience to enable us to form a judgment of what might be expected if those restraints were removed. Territorial disputes have at all times been found one of the most fertile sources of hostility among nations. Perhaps the greatest proportion of wars that have desolated the earth have sprung from this origin. This cause would exist among us in full force. We have a vast tract of unsettled territory within the boundaries of the United States. There still are discordant and undecided claims between several of them, and the dissolution of the Union would lay a foundation for similar claims between them all. It is well known that they have heretofore had serious and animated discussion concerning the rights to the lands which were ungranted at the time of the Revolution, and which usually went under the name of crown lands. The States within the limits of whose colonial governments they were comprised have claimed them as their property, the others have contended that the rights of the crown in this article devolved upon the Union; especially as to all that part of the Western territory which, either by actual possession, or through the submission of the Indian proprietors, was subjected to the jurisdiction of the king of Great Britain, till it was relinquished in the treaty of peace. This, it has been said, was at all events an acquisition to the Confederacy by compact with a foreign power. It has been the prudent policy of Congress to appease this controversy, by prevailing upon the States to make cessions to the United States for the benefit of the whole. This has been so far accomplished as, under a continuation of the Union, to afford a decided prospect of an amicable termination of the dispute. A dismemberment of the Confederacy, however, would revive this dispute, and would create others on the same subject. At present, a large part of the vacant Western territory is, by cession at least, if not by any anterior right, the common property of the Union. If that were at an end, the States which made the cession, on a principle of federal compromise, would be apt when the motive of the grant had ceased, to reclaim the lands as a reversion. The other States would no doubt insist on a proportion, by right of representation. Their argument would be, that a grant, once made, could not be revoked; and that the justice of participating in territory acquired or secured by the joint efforts of the Confederacy, remained undiminished. If, contrary to probability, it should be admitted by all the States, that each had a right to a share of this common stock, there would still be a difficulty to be surmounted, as to a proper rule of apportionment. Different principles would be set up by different States for this purpose; and as they would affect the opposite interests of the parties, they might not easily be susceptible of a pacific adjustment. In the wide field of Western territory, therefore, we perceive an ample theatre for hostile pretensions, without any umpire or common judge to interpose between the contending parties. To

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reason from the past to the future, we shall have good ground to apprehend, that the sword would sometimes be appealed to as the arbiter of their differences. The circumstances of the dispute between Connecticut and Pennsylvania, respecting the land at Wyoming, admonish us not to be sanguine in expecting an easy accommodation of such differences. The articles of confederation obliged the parties to submit the matter to the decision of a federal court. The submission was made, and the court decided in favor of Pennsylvania. But Connecticut gave strong indications of dissatisfaction with that determination; nor did she appear to be entirely resigned to it, till, by negotiation and management, something like an equivalent was found for the loss she supposed herself to have sustained. Nothing here said is intended to convey the slightest censure on the conduct of that State. She no doubt sincerely believed herself to have been injured by the decision; and States, like individuals, acquiesce with great reluctance in determinations to their disadvantage. Those who had an opportunity of seeing the inside of the transactions which attended the progress of the controversy between this State and the district of Vermont, can vouch the opposition we experienced, as well from States not interested as from those which were interested in the claim; and can attest the danger to which the peace of the Confederacy might have been exposed, had this State attempted to assert its rights by force. Two motives preponderated in that opposition: one, a jealousy entertained of our future power; and the other, the interest of certain individuals of influence in the neighboring States, who had obtained grants of lands under the actual government of that district. Even the States which brought forward claims, in contradiction to ours, seemed more solicitous to dismember this State, than to establish their own pretensions. These were New Hampshire, Massachusetts, and Connecticut. New Jersey and Rhode Island, upon all occasions, discovered a warm zeal for the independence of Vermont; and Maryland, till alarmed by the appearance of a connection between Canada and that State, entered deeply into the same views. These being small States, saw with an unfriendly eye the perspective of our growing greatness. In a review of these transactions we may trace some of the causes which would be likely to embroil the States with each other, if it should be their unpropitious destiny to become disunited. The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed since the earliest settlement of the country, would give a keener edge to those causes of discontent than they would naturally have independent of this circumstance. WE SHOULD BE READY TO DENOMINATE INJURIES THOSE THINGS WHICH WERE IN REALITY THE JUSTIFIABLE ACTS OF INDEPENDENT SOVEREIGNTIES CONSULTING A DISTINCT INTEREST. The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations, on one side, the efforts to prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars. The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States. The relative situation of New York, Connecticut, and New Jersey would afford an example of this kind. New York, from the necessities of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other States in the capacity of consumers of what we import. New York would neither be willing nor able to forego this advantage. Her citizens would not consent that a duty paid by them should be remitted in favor of the citizens of her neighbors; nor would it be practicable, if there were not this impediment in the way, to distinguish the customers in our own markets. Would Connecticut and New Jersey long submit to be taxed by New York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbors, and, in their opinion, so oppressive? Should we be able to preserve it against the incumbent weight of Connecticut on the one side, and the co-operating pressure of New Jersey on the other? These are questions that temerity alone will answer in the affirmative. The public debt of the Union would be a further cause of collision between the separate States or confederacies. The apportionment, in the first instance, and the progressive extinguishment afterward, would be alike productive of ill-humor and animosity. How would it be possible to agree upon a rule of apportionment satisfactory to all? There is scarcely any that can be proposed which is entirely free from real objections. These, as usual, would be exaggerated by the adverse interest of the parties. There are even dissimilar views among the States as to the general principle of discharging the public debt. Some of them, either less impressed with the importance of national credit, or because their citizens have little, if any, immediate interest in the question, feel an indifference, if not a repugnance, to the payment of the domestic debt at any rate. These would be inclined to magnify the difficulties of a distribution. Others of them, a numerous body of whose citizens are creditors to the public beyond proportion of the State in the total amount of the national debt, would be strenuous for some equitable and effective provision. The procrastinations of the former would excite the resentments of the latter. The settlement of a rule would, in the meantime, be postponed by real differences of opinion and affected delays. The citizens of the States interested would clamour; foreign powers would urge for the satisfaction of their just demands, and the peace of the States would be hazarded to the double contingency of external invasion and internal contention. Suppose the difficulties of agreeing upon a rule surmounted, and the apportionment made. Still there is great room to suppose that the rule agreed upon would, upon experiment, be found to bear harder upon some States than upon others. Those which were sufferers by it would naturally seek for a mitigation of the burden. The others would as naturally be disinclined to a revision, which was likely to end in an increase of their own incumbrances. Their refusal would be too plausible a pretext to the complaining States to withhold their contributions, not to be embraced with avidity; and the non-compliance of these States with their engagements would be a ground of bitter discussion and altercation. If even the rule adopted should in practice justify the equality of its principle, still delinquencies in payments on the part of some of the States would result from a diversity of other causes--the real deficiency of resources; the mismanagement of their finances; accidental disorders in the management of the government; and, in addition to the rest, the reluctance with which men commonly part with money for purposes that have outlived the exigencies which produced them, and interfere with the supply of immediate wants. Delinquencies, from whatever causes, would be productive of complaints, recriminations, and quarrels. There is, perhaps, nothing more likely to disturb the tranquillity of nations than their being bound to mutual contributions for any common object that does not yield an equal and coincident benefit. For it is an observation, as true as it is trite, that there is nothing men differ so readily about as the payment of money. Laws in violation of private contracts, as they amount to aggressions on the rights of those States whose citizens are injured by them, may be considered as another probable source of hostility. We are not authorized to expect that a more liberal or more equitable spirit would preside over the legislations of the individual States hereafter, if unrestrained by any additional checks, than we have heretofore seen in too many instances disgracing their several codes. We have observed the disposition to retaliation excited in Connecticut in consequence of the enormities perpetrated by the Legislature of Rhode Island; and we reasonably infer that, in similar cases, under other circumstances, a war, not of PARCHMENT, but of the sword, would chastise such atrocious breaches of moral obligation and social justice. The probability of incompatible alliances between the different States or confederacies and different foreign nations, and the effects of this situation upon the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, be gradually

entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. Divide et impera must be the motto of every nation that either hates or fears us. 2 PUBLIUS. 1 Divide and command. 2 In order that the whole subject of these papers may as soon as possible be laid before the public, it is proposed to publish them four times a week--on Tuesday in the New York Packet and on Thursday in the Daily Advertiser.

FEDERALIST No. 8

The Consequences of Hostilities Between the States From the New York Packet. Tuesday, November 20, 1787.

HAMILTON

To the People of the State of New York: ASSUMING it therefore as an established truth that the several States, in case of disunion, or such combinations of them as might happen to be formed out of the wreck of the general Confederacy, would be subject to those vicissitudes of peace and war, of friendship and enmity, with each other, which have fallen to the lot of all neighboring nations not united under one government, let us enter into a concise detail of some of the consequences that would attend such a situation. War between the States, in the first period of their separate existence, would be accompanied with much greater distresses than it commonly is in those countries where regular military establishments have long obtained. The disciplined armies always kept on foot on the continent of Europe, though they bear a malignant aspect to liberty and economy, have, notwithstanding, been productive of the signal advantage of rendering sudden conquests impracticable, and of preventing that rapid desolation which used to mark the progress of war prior to their introduction. The art of fortification has contributed to the same ends. The nations of Europe are encircled with chains of fortified places, which mutually obstruct invasion. Campaigns are wasted in reducing two or three frontier garrisons, to gain admittance into an enemy's country. Similar impediments occur at every step, to exhaust the strength and delay the progress of an invader. Formerly, an invading army would penetrate into the heart of a neighboring country almost as soon as intelligence of its approach could be received; but now a comparatively small force of disciplined troops, acting on the defensive, with the aid of posts, is able to impede, and finally to frustrate, the enterprises of one much more considerable. The history of war, in that quarter of the globe, is no longer a history of nations subdued and empires overturned, but of towns taken and retaken; of battles that decide nothing; of retreats more beneficial than victories; of much effort and little acquisition. In this country the scene would be altogether reversed. The jealousy of military establishments would postpone them as long as possible. The want of fortifications, leaving the frontiers of one state open to another, would facilitate inroads. The populous States would, with little difficulty, overrun their less populous neighbors. Conquests would be as easy to be made as difficult to be retained. War, therefore, would be desultory and predatory. PLUNDER and devastation ever march in the train of irregulars. The calamities of individuals would make the principal figure in the events which would characterize our military exploits. This picture is not too highly wrought; though, I confess, it would not long remain a just one. Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free. The institutions chiefly alluded to are STANDING ARMIES and the correspondent appendages of military establishments. Standing armies, it is said, are not provided against in the new Constitution; and it is therefore inferred that they may exist under it. Their existence, however, from the very terms of the proposition, is, at most, problematical and uncertain. But standing armies, it may be replied, must inevitably result from a dissolution of the Confederacy. Frequent war and constant apprehension, which require a state of as constant preparation, will infallibly produce them. The weaker States or confederacies would first have recourse to them, to put themselves upon an equality with their more potent neighbors. They would endeavor to supply the inferiority of population and resources by a more regular and effective system of defense, by disciplined troops, and by fortifications. They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction toward monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority. The expedients which have been mentioned would soon give the States or confederacies that made use of them a superiority over their neighbors. Small states, or states of less natural strength, under vigorous governments, and with the assistance of disciplined armies, have often triumphed over large states, or states of greater natural strength, which have been destitute of these advantages. Neither the pride nor the safety of the more important States or confederacies would permit them long to submit to this mortifying and adventitious superiority. They would quickly resort to means similar to those by which it had been effected, to reinstate themselves in their lost pre-eminence. Thus, we should, in a little time, see established in every part of this country the same engines of despotism which have been the scourge of the Old World. This, at least, would be the natural course of things; and our reasonings will be the more likely to be just, in proportion as they are accommodated to this standard. These are not vague inferences drawn from supposed or speculative defects in a Constitution, the whole power of which is lodged in the hands of a people, or their representatives and delegates, but they are solid conclusions, drawn from the natural and necessary progress of human affairs. It may, perhaps, be asked, by way of objection to this, why did not standing armies spring up out of the contentions which so often distracted the ancient republics of Greece? Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companions of frequent hostility. There is a wide difference, also, between military establishments in a country seldom exposed by its situation to internal invasions, and in one which is often subject to them, and always apprehensive of them. The rulers of the former can have a good pretext, if they are even so inclined, to keep on foot armies so numerous as must of necessity be maintained in the latter. These armies being, in the first case, rarely, if at all, called into activity for interior defense, the people are in no danger of being broken to military subordination. The laws are not accustomed to relaxations, in favor of military exigencies; the civil state remains in full vigor, neither corrupted, nor confounded with the principles or propensities of the other state. The smallness of the army renders the natural strength of the community an over-match for it; and the citizens, not habituated to look up to the military power for protection, or to submit to its oppressions, neither love nor fear the soldiery; they view them with a spirit of jealous acquiescence in a necessary evil, and stand ready to resist a power which they suppose may be exerted to the prejudice of their rights. The army under such circumstances may usefully aid the magistrate to suppress a small faction, or an occasional mob, or insurrection; but it will be unable to enforce encroachments against the united efforts of the great body of the people. In a country in the predicament last described, the contrary of all this happens. The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies

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must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionally degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations supported by the military power. The kingdom of Great Britain falls within the first description. An insular situation, and a powerful marine, guarding it in a great measure against the possibility of foreign invasion, supersede the necessity of a numerous army within the kingdom. A sufficient force to make head against a sudden descent, till the militia could have time to rally and embody, is all that has been deemed requisite. No motive of national policy has demanded, nor would public opinion have tolerated, a larger number of troops upon its domestic establishment. There has been, for a long time past, little room for the operation of the other causes, which have been enumerated as the consequences of internal war. This peculiar felicity of situation has, in a great degree, contributed to preserve the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption. If, on the contrary, Britain had been situated on the continent, and had been compelled, as she would have been, by that situation, to make her military establishments at home coextensive with those of the other great powers of Europe, she, like them, would in all probability be, at this day, a victim to the absolute power of a single man. 'T is possible, though not easy, that the people of that island may be enslaved from other causes; but it cannot be by the prowess of an army so inconsiderable as that which has been usually kept up within the kingdom. If we are wise enough to preserve the Union we may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity will be likely to continue too much disproportioned in strength to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security. But if we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three confederacies, we should be, in a short course of time, in the predicament of the continental powers of Europe --our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other. This is an idea not superficial or futile, but solid and weighty. It deserves the most serious and mature consideration of every prudent and honest man of whatever party. If such men will make a firm and solemn pause, and meditate dispassionately on the importance of this interesting idea; if they will contemplate it in all its attitudes, and trace it to all its consequences, they will not hesitate to part with trivial objections to a Constitution, the rejection of which would in all probability put a final period to the Union. The airy phantoms that flit before the distempered imaginations of some of its adversaries would quickly give place to the more substantial forms of dangers, real, certain, and formidable. PUBLIUS. 1 This objection will be fully examined in its proper place, and it will be shown that the only natural precaution which could have been taken on this subject has been taken; and a much better one than is to be found in any constitution that has been heretofore framed in America, most of which contain no guard at all on this subject.

FEDERALIST No. 9

The Union as a Safeguard Against Domestic Faction and Insurrection For the Independent Journal.

HAMILTON

To the People of the State of New York: A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrast to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated. From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors. But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution: I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place. The utility of a Confederacy, as well to suppress faction and to guard the internal tranquillity of States, as to increase their external force and security, is in reality not a new idea. It has been practiced upon in different countries and ages, and has received the sanction of the most approved writers on the subject of politics. The opponents of the plan proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence. When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting

ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America. Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested. So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism. "It is very probable," (says he) "that mankind would have been obliged at length to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC. "This form of government is a convention by which several smaller STATES agree to become members of a larger ONE, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body. "A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences. "If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped and overpower him before he could be settled in his usurpation. "Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty. "As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies." I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and most effectually remove the false impressions which a misapplication of other parts of the work was calculated to make. They have, at the same time, an intimate connection with the more immediate design of this paper; which is, to illustrate the tendency of the Union to repress domestic faction and insurrection. A distinction, more subtle than accurate, has been raised between a CONFEDERACY and a CONSOLIDATION of the States. The essential characteristic of the first is said to be, the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown in the course of this investigation that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government. The definition of a CONFEDERATE REPUBLIC seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government. In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to THREE votes in the COMMON COUNCIL, those of the middle class to TWO, and the smallest to ONE. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude, that they are the novel refinements of an erroneous theory. PUBLIUS. 1 "Spirit of Lawa," vol. i., book ix., chap. i.

FEDERALIST No. 10

The Same Subject Continued (The Union as a Safeguard Against Domestic Faction and Insurrection) From the New York Packet. Friday, November 23, 1787.

MADISON

To the People of the State of New York: AMONG the numerous advantages promised by a wellconstructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that

prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations. By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects. There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests. It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency. The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties. The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government. No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets. It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS. If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind. By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful. From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions. A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union. The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended. The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to

temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations: In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice. In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters. It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render them unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures. The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary. Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,--is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage. The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State. In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists. PUBLIUS.

FEDERALIST No. 11

The Utility of the Union in Respect to Commercial Relations and a Navy For the Independent Journal.

HAMILTON

To the People of the State of New York: THE importance of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries as with each other. There are appearances to authorize a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe. They seem to be apprehensive of our too great interference in that carrying trade, which is the support of their navigation and the foundation of their naval strength. Those of them which have colonies in America look forward to what this country is capable of becoming, with painful solicitude. They foresee the dangers that may threaten their American dominions from the neighborhood of States, which have all the dispositions, and would possess all the means, requisite to the creation of a powerful marine. Impressions of this kind will naturally indicate the policy of fostering divisions among us, and of depriving us, as far as possible, of an ACTIVE COMMERCE in our own bottoms. This would answer the threefold purpose of preventing our interference in their navigation, of monopolizing the profits of our trade, and of clipping the wings by which we might soar to a dangerous greatness. Did not prudence forbid the detail, it would not be difficult to trace, by facts, the workings of this policy to the cabinets of ministers. If we continue united, we may counteract a policy so unfriendly to our prosperity in a variety of ways. By prohibitory regulations, extending, at the same time, throughout the States, we may oblige foreign nations to bid against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance of the markets of three millions of people--increasing in rapid progression, for the most part exclusively addicted to agriculture, and likely from local circumstances to remain so--to any manufacturing nation; and the immense difference there would be to the trade and navigation of such a nation, between a direct communication in its own ships, and an indirect conveyance of its products and returns, to and from America, in the ships of another country. Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom? When these questions have been asked, upon other occasions, they have received a plausible, but not a solid or satisfactory answer. It has been said that prohibitions on our part would produce no change in the system of Britain, because she could prosecute her trade with us through the medium of the Dutch, who would be her immediate customers and paymasters for those articles which were wanted for the supply of our markets. But would not her navigation be materially injured

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by the loss of the important advantage of being her own carrier in that trade? Would not the principal part of its profits be intercepted by the Dutch, as a compensation for their agency and risk? Would not the mere circumstance of freight occasion a considerable deduction? Would not so circuitous an intercourse facilitate the competitions of other nations, by enhancing the price of British commodities in our markets, and by transferring to other hands the management of this interesting branch of the British commerce? A mature consideration of the objects suggested by these questions will justify a belief that the real disadvantages to Britain from such a state of things, conspiring with the pre-possessions of a great part of the nation in favor of the American trade, and with the importunities of the West India islands, would produce a relaxation in her present system, and would let us into the enjoyment of privileges in the markets of those islands elsewhere, from which our trade would derive the most substantial benefits. Such a point gained from the British government, and which could not be expected without an equivalent in exemptions and immunities in our markets, would be likely to have a correspondent effect on the conduct of other nations, who would not be inclined to see themselves altogether supplanted in our trade. A further resource for influencing the conduct of European nations toward us, in this respect, would arise from the establishment of a federal navy. There can be no doubt that the continuance of the Union under an efficient government would put it in our power, at a period not very distant, to create a navy which, if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties. This would be more peculiarly the case in relation to operations in the West Indies. A few ships of the line, sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which interests of the greatest magnitude were suspended. Our position is, in this respect, a most commanding one. And if to this consideration we add that of the usefulness of supplies from this country, in the prosecution of military operations in the West Indies, it will readily be perceived that a situation so favorable would enable us to bargain with great advantage for commercial privileges. A price would be set not only upon our friendship, but upon our neutrality. By a steady adherence to the Union we may hope, ere long, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interest may dictate. But in the reverse of this eligible situation, we shall discover that the rivalships of the parts would make them checks upon each other, and would frustrate all the tempting advantages which nature has kindly placed within our reach. In a state so insignificant our commerce would be a prey to the wanton intermeddlings of all nations at war with each other; who, having nothing to fear from us, would with little scruple or remorse, supply their wants by depredations on our property as often as it fell in their way. The rights of neutrality will only be respected when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral. Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an impracticability of success. An active commerce, an extensive navigation, and a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature. But in a state of disunion, these combinations might exist and might operate with success. It would be in the power of the maritime nations, availing themselves of our universal impotence, to prescribe the conditions of our political existence; and as they have a common interest in being our carriers, and still more in preventing our becoming theirs, they would in all probability combine to embarrass our navigation in such a manner as would in effect destroy it, and confine us to a PASSIVE COMMERCE. We should then be compelled to content ourselves with the first price of our commodities, and to see the profits of our trade snatched from us to enrich our enemies and persecutors. That unequalled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost, and poverty and disgrace would overspread a country which, with wisdom, might make herself the admiration and envy of the world. There are rights of great moment to the trade of America which are rights of the Union—I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage. The disposition of Spain with regard to the Mississippi needs no comment. France and Britain are concerned with us in the fisheries, and view them as of the utmost moment to their navigation. They, of course, would hardly remain long indifferent to that decided mastery, of which experience has shown us to be possessed in this valuable branch of traffic, and by which we are able to undersell those nations in their own markets. What more natural than that they should be disposed to exclude from the lists such dangerous competitors? This branch of trade ought not to be considered as a partial benefit. All the navigating States may, in different degrees, advantageously participate in it, and under circumstances of a greater extension of mercantile capital, would not be unlikely to do it. As a nursery of seamen, it now is, or when time shall have more nearly assimilated the principles of navigation in the several States, will become, a universal resource. To the establishment of a navy, it must be indispensable. To this great national object, a NAVY, union will contribute in various ways. Every institution will grow and flourish in proportion to the quantity and extent of the means concentrated towards its formation and support. A navy of the United States, as it would embrace the resources of all, is an object far less remote than a navy of any single State or partial confederacy, which would only embrace the resources of a single part. It happens, indeed, that different portions of confederated America possess each some peculiar advantage for this essential establishment. The more southern States furnish in greater abundance certain kinds of naval stores--tar, pitch, and turpentine. Their wood for the construction of ships is also of a more solid and lasting texture. The difference in the duration of the ships of which the navy might be composed, if chiefly constructed of Southern wood, would be of signal importance, either in the view of naval strength or of national economy. Some of the Southern and of the Middle States yield a greater plenty of iron, and of better quality. Seamen must chiefly be drawn from the Northern hive. The necessity of naval protection to external or maritime commerce does not require a particular elucidation, no more than the conduciveness of that species of commerce to the prosperity of a navy. An unrestrained intercourse between the States themselves will advance the trade of each by an interchange of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigor from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different States. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation contributes to the activity of foreign commerce. It can be conducted upon much better terms with a large number of materials of a given value than with a small number of materials of the same value; arising from the competitions of trade and from the fluctuations of markets. Particular articles may be in great demand at certain periods, and unsalable at others; but if there be a variety of articles, it can scarcely happen that they should all be at one time in the latter predicament, and on this account the operations of the merchant would be less liable to any considerable obstruction or stagnation. The speculative trader will at once perceive the force of these observations, and will acknowledge that the aggregate balance of the commerce of the United States would bid fair to be much more favorable than that of the thirteen States without union or with partial unions. It may perhaps be replied to this, that whether the States are united or disunited, there would still be an intimate intercourse between them which would answer the same ends; this intercourse would be fettered, interrupted, and narrowed by a multiplicity of causes, which in the course of these papers have been amply detailed. A unity of commercial, as well as political, interests, can only result from a unity of government. There are other points of view in which this subject might be placed, of a striking and animating kind. But they would lead us too far

into the regions of futurity, and would involve topics not proper for a newspaper discussion. I shall briefly observe, that our situation invites and our interests prompt us to aim at an ascendancy in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negotiations, by force and by fraud, has, in different degrees, extended her dominion over them all. Africa, Asia, and America, have successively felt her domination. The superiority she has long maintained has tempted her to plume herself as the Mistress of the World, and to consider the rest of mankind as created for her benefit. Men admired as profound philosophers have, in direct terms, attributed to her inhabitants a physical superiority, and have gravely asserted that all animals, and with them the human species, degenerate in America--that even dogs cease to bark after having breathed awhile in our atmosphere. Facts have too long supported these arrogant pretensions of the Europeans. It belongs to us to vindicate the honor of the human race, and to teach that assuming brother, moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness! Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world! PUBLIUS. ``Recherches philosophiques sur les Americains."

FEDERALIST No. 12

The Utility of the Union In Respect to Revenue From the New York Packet. Tuesday, November 27, 1787.

HAMILTON

To the People of the State of New York: THE effects of Union upon the commercial prosperity of the States have been sufficiently delineated. Its tendency to promote the interests of revenue will be the subject of our present inquiry. The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares. By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify and invigorate the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,--all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils. The often-agitated question between agriculture and commerce has, from indubitable experience, received a decision which has silenced the rivalry that once subsisted between them, and has proved, to the satisfaction of their friends, that their interests are intimately blended and interwoven. It has been found in various countries that, in proportion as commerce has flourished, land has risen in value. And how could it have happened otherwise? Could that which procures a freer vent for the products of the earth, which furnishes new incitements to the cultivation of land, which is the most powerful instrument in increasing the quantity of money in a state--could that, in fine, which is the faithful handmaid of labor and industry, in every shape, fail to augment that article, which is the prolific parent of far the greatest part of the objects upon which they are exerted? It is astonishing that so simple a truth should ever have had an adversary; and it is one, among a multitude of proofs, how apt a spirit of ill-informed jealousy, or of too great abstraction and refinement, is to lead men astray from the plainest truths of reason and conviction. The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury. The hereditary dominions of the Emperor of Germany contain a great extent of fertile, cultivated, and populous territory, a large proportion of which is situated in mild and luxuriant climates. In some parts of this territory are to be found the best gold and silver mines in Europe. And yet, from the want of the fostering influence of commerce, that monarch can boast but slender revenues. He has several times been compelled to owe obligations to the pecuniary succors of other nations for the preservation of his essential interests, and is unable, upon the strength of his own resources, to sustain a long or continued war. But it is not in this aspect of the subject alone that Union will be seen to conduce to the purpose of revenue. There are other points of view, in which its influence will appear more immediate and decisive. It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasuries of the States have remained empty. The popular system of administration inherent in the nature of popular government, coinciding with the real scarcity of money incident to a languid and mutilated state of trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them. No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description. In America, it is evident that we must a long time depend for the means of revenue chiefly on such duties. In most parts of it, excises must be confined within a narrow compass. The genius of the people will ill brook the inquisitive and peremptory spirit of excise laws. The pockets of the farmers, on the other hand, will reluctantly yield but scanty supplies, in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way than by the imperceptible agency of taxes on consumption. If these remarks have any foundation, that state of things which will best enable us to improve and extend so valuable a resource must be best adapted to our political welfare. And it cannot admit of a serious doubt, that this state of things must rest on the basis of a general Union. As far as this would be conducive to the interests of commerce, so far it must tend to the extension of the revenue to be drawn from that source. As far as it would contribute to rendering regulations for the collection of the duties more simple and efficacious, so far it must serve to answer the purposes of making the same rate of duties more productive, and of putting it into the power of the government to increase the rate without prejudice to trade. The relative situation of these States; the number of rivers with which they are intersected, and of bays that wash their shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse;--all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty, and would insure frequent evasions of the commercial regulations of each other. The separate States or confederacies would be necessitated by mutual jealousy to avoid the temptations to that kind of trade by the looseness of their duties. The temper of our governments, for a long time to come, would not permit those rigorous precautions by which the European nations guard the avenues into their respective countries, as well by land as by water; and which, even there, are found insufficient obstacles to the adventurous stratagems of avarice. In France, there is an army of patrols (as they are called) constantly employed to secure their fiscal regulations against the inroads of the dealers in contraband trade. Mr. Neckar computes the number of these patrols at upwards of twenty thousand. This shows the immense difficulty in preventing that species of traffic, where there is an inland communication, and places in a strong light the disadvantages with which the collection of duties in this country would be encumbered, if by disunion the States should be placed in a situation, with

respect to each other, resembling that of France with respect to her neighbors. The arbitrary and vexatious powers with which the patrols are necessarily armed, would be intolerable in a free country. If, on the contrary, there be but one government pervading all the States, there will be, as to the principal part of our commerce, but ONE SIDE to guard--the ATLANTIC COAST. Vessels arriving directly from foreign countries, laden with valuable cargoes, would rarely choose to hazard themselves to the complicated and critical perils which would attend attempts to unlade prior to their coming into port. They would have to dread both the dangers of the coast, and of detection, as well after as before their arrival at the places of their final destination. An ordinary degree of vigilance would be competent to the prevention of any material infractions upon the rights of the revenue. A few armed vessels, judiciously stationed at the entrances of our ports, might at a small expense be made useful sentinels of the laws. And the government having the same interest to provide against violations everywhere, the co-operation of its measures in each State would have a powerful tendency to render them effectual. Here also we should preserve by Union, an advantage which nature holds out to us, and which would be relinquished by separation. The United States lie at a great distance from Europe, and at a considerable distance from all other places with which they would have extensive connections of foreign trade. The passage from them to us, in a few hours, or in a single night, as between the coasts of France and Britain, and of other neighboring nations, would be impracticable. This is a prodigious security against a direct contraband with foreign countries; but a circuitous contraband to one State, through the medium of another, would be both easy and safe. The difference between a direct importation from abroad, and an indirect importation through the channel of a neighboring State, in small parcels, according to time and opportunity, with the additional facilities of inland communication, must be palpable to every man of discernment. It is therefore evident, that one national government would be able, at much less expense, to extend the duties on imports, beyond comparison, further than would be practicable to the States separately, or to any partial confederacies. Hitherto, I believe, it may safely be asserted, that these duties have not upon an average exceeded in any State three per cent. In France they are estimated to be about fifteen per cent., and in Britain they exceed this proportion. There seems to be nothing to hinder their being increased in this country to at least treble their present amount. The single article of ardent spirits, under federal regulation, might be made to furnish a considerable revenue. Upon a ratio to the importation into this State, the whole quantity imported into the United States may be estimated at four millions of gallons; which, at a shilling per gallon, would produce two hundred thousand pounds. That article would well bear this rate of duty; and if it should tend to diminish the consumption of it, such an effect would be equally favorable to the agriculture, to the economy, to the morals, and to the health of the society. There is, perhaps, nothing so much a subject of national extravagance as these spirits. What will be the consequence, if we are not able to avail ourselves of the resource in question in its full extent? A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue, therefore, must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land. It has been already intimated that excises, in their true signification, are too little in unison with the feelings of the people, to admit of great use being made of that mode of taxation; nor, indeed, in the States where almost the sole employment is agriculture, are the objects proper for excise sufficiently numerous to permit very ample collections in that way. Personal estate (as has been before remarked), from the difficulty in tracing it, cannot be subjected to large contributions, by any other means than by taxes on consumption. In populous cities, it may be enough the subject of conjecture, to occasion the oppression of individuals, without much aggregate benefit to the State; but beyond these circles, it must, in a great measure, escape the eye and the hand of the tax-gatherer. As the necessities of the State, nevertheless, must be satisfied in some mode or other, the defect of other resources must throw the principal weight of public burdens on the possessors of land. And as, on the other hand, the wants of the government can never obtain an adequate supply, unless all the sources of revenue are open to its demands, the finances of the community, under such embarrassments, cannot be put into a situation consistent with its respectability or its security. Thus we shall not even have the consolations of a full treasury, to atone for the oppression of that valuable class of the citizens who are employed in the cultivation of the soil. But public and private distress will keep pace with each other in gloomy concert; and unite in deploring the infatuation of those counsels which led to disunion. PUBLIUS. 1 If my memory be right they amount to twenty per cent.

FEDERALIST No. 13

Advantage of the Union in Respect to Economy in Government For the Independent Journal.

HAMILTON

To the People of the State of New York: As CONNECTED with the subject of revenue, we may with propriety consider that of economy. The money saved from one object may be usefully applied to another, and there will be so much the less to be drawn from the pockets of the people. If the States are united under one government, there will be but one national civil list to support; if they are divided into several confederacies, there will be as many different national civil lists to be provided for--and each of them, as to the principal departments, coextensive with that which would be necessary for a government of the whole. The entire separation of the States into thirteen unconnected sovereignties is a project too extravagant and too replete with danger to have many advocates. The ideas of men who speculate upon the dismemberment of the empire seem generally turned toward three confederacies--one consisting of the four Northern, another of the four Middle, and a third of the five Southern States. There is little probability that there would be a greater number. According to this distribution, each confederacy would comprise an extent of territory larger than that of the kingdom of Great Britain. No well-informed man will suppose that the affairs of such a confederacy can be properly regulated by a government less comprehensive in its organs or institutions than that which has been proposed by the convention. When the dimensions of a State attain to a certain magnitude, it requires the same energy of government and the same forms of administration which are requisite in one of much greater extent. This idea admits not of precise demonstration, because there is no rule by which we can measure the momentum of civil power necessary to the government of any given number of individuals; but when we consider that the island of Britain, nearly commensurate with each of the supposed confederacies, contains about eight millions of people, and when we reflect upon the degree of authority required to direct the passions of so large a society to the public good, we shall see no reason to doubt that the like portion of power would be sufficient to perform the same task in a society far more numerous. Civil power, properly organized and exerted, is capable of diffusing its force to a very great extent; and can, in a manner, reproduce itself in every part of a great empire by a judicious arrangement of subordinate institutions. The supposition that each confederacy into which the States would be likely to be divided would require a government not less comprehensive than the one proposed, will be strengthened by another supposition, more probable than that which presents us with three confederacies as the alternative to a general Union. If we attend carefully to geographical and commercial considerations, in conjunction with the habits and prejudices of the different States, we shall be led to conclude that in case of disunion they will most naturally league themselves under two governments. The four Eastern States, from all the causes that form the links of national sympathy and connection, may with certainty be expected to unite. New York, situated as she is, would never be unwise enough to oppose a feeble and unsupported flank to the weight of that confederacy. There are other obvious reasons that would facilitate her accession to it. New Jersey is too small a State to think of being a frontier, in opposition to this still more powerful combination; nor do there appear to be any obstacles to her admission into

it. Even Pennsylvania would have strong inducements to join the Northern league. An active foreign commerce, on the basis of her own navigation, is her true policy, and coincides with the opinions and dispositions of her citizens. The more Southern States, from various circumstances, may not think themselves much interested in the encouragement of navigation. They may prefer a system which would give unlimited scope to all nations to be the carriers as well as the purchasers of their commodities. Pennsylvania may not choose to confound her interests in a connection so adverse to her policy. As she must at all events be a frontier, she may deem it most consistent with her safety to have her exposed side turned towards the weaker power of the Southern, rather than towards the stronger power of the Northern, Confederacy. This would give her the fairest chance to avoid being the Flanders of America. Whatever may be the determination of Pennsylvania, if the Northern Confederacy includes New Jersey, there is no likelihood of more than one confederacy to the south of that State. Nothing can be more evident than that the thirteen States will be able to support a national government better than one half, or one third, or any number less than the whole. This reflection must have great weight in obviating that objection to the proposed plan, which is founded on the principle of expense; an objection, however, which, when we come to take a nearer view of it, will appear in every light to stand on mistaken ground. If, in addition to the consideration of a plurality of civil lists, we take into view the number of persons who must necessarily be employed to guard the inland communication between the different confederacies against illicit trade, and who in time will infallibly spring up out of the necessities of revenue; and if we also take into view the military establishments which it has been shown would unavoidably result from the jealousies and conflicts of the several nations into which the States would be divided, we shall clearly discover that a separation would be not less injurious to the economy, than to the tranquillity, commerce, revenue, and liberty of every part. PUBLIUS.

FEDERALIST No. 14

Objections to the Proposed Constitution From Extent of Territory Answered From the New York Packet. Friday, November 30, 1787.

MADISON

To the People of the State of New York: WE HAVE seen the necessity of the Union, as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the Old World, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains, within this branch of our inquiries, is to take notice of an objection that may be drawn from the great extent of country which the Union embraces. A few observations on this subject will be the more proper, as it is perceived that the adversaries of the new Constitution are availing themselves of the prevailing prejudice with regard to the practicable sphere of republican administration, in order to supply, by imaginary difficulties, the want of those solid objections which they endeavor in vain to find. The error which limits republican government to a narrow district has been unfolded and refuted in preceding papers. I remark here only that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy, applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is, that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a large region. To this accidental source of the error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavored to heighten the advantages, or palliate the evils of those forms, by placing in comparison the vices and defects of the republican, and by citing as specimens of the latter the turbulent democracies of ancient Greece and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic observations applicable to a democracy only; and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory. Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which the will of the largest political body may be concentrated, and its force directed to any object which the public good requires, America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration. As the natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions; so the natural limit of a republic is that distance from the centre which will barely allow the representatives to meet as often as may be necessary for the administration of public affairs. Can it be said that the limits of the United States exceed this distance? It will not be said by those who recollect that the Atlantic coast is the longest side of the Union, that during the term of thirteen years, the representatives of the States have been almost continually assembled, and that the members from the most distant States are not chargeable with greater intermissions of attendance than those from the States in the neighborhood of Congress. That we may form a juster estimate with regard to this interesting subject, let us resort to the actual dimensions of the Union. The limits, as fixed by the treaty of peace, are: on the east the Atlantic, on the south the latitude of thirty-one degrees, on the west the Mississippi, and on the north an irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of Lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees, to seven hundred and sixty-four miles and a half. Taking the mean for the distance, the amount will be eight hundred and sixty-eight miles and three-fourths. The mean distance from the Atlantic to the Mississippi does not probably exceed seven hundred and fifty miles. On a comparison of this extent with that of several countries in Europe, the practicability of rendering our system commensurate to it appears to be demonstrable. It is not a great deal larger than Germany, where a diet representing the whole empire is continually assembled; or than Poland before the late dismemberment, where another national diet was the depository of the supreme power. Passing by France and Spain, we find that in Great Britain, inferior as it may be in size, the representatives of the northern extremity of the island have as far to travel to the national council as will be required of those of the most remote parts of the Union. Favorable as this view of the subject may be, some observations remain which will place it in a light still more satisfactory. In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other subjects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular States, its adversaries would have some ground for their objection; though it would not be difficult to show that if they were abolished the general government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction. A

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second observation to be made is that the immediate object of the federal Constitution is to secure the union of the thirteen primitive States, which we know to be practicable; and to add to them such other States as may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory which lie on our northwestern frontier, must be left to those whom further discoveries and experience will render more equal to the task. Let it be remarked, in the third place, that the intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete. A fourth and still more important consideration is, that as almost every State will, on one side or other, be a frontier, and will thus find, in regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance from the heart of the Union, and which, of course, may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand, on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia, or the States forming our western or northeastern borders, to send their representatives to the seat of government; but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions which may be dictated by the neighborhood of continual danger. If they should derive less benefit, therefore, from the Union in some respects than the less distant States, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout. I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you. Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rendering us in pieces, in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theatre, in favor of private rights and public happiness. Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has been new modelled by the act of your convention, and it is that act on which you are now to deliberate and to decide. PUBLIUS.

FEDERALIST No. 15

The Insufficiency of the Present Confederation to Preserve the Union For the Independent Journal.

HAMILTON

To the People of the State of New York. IN THE course of the preceding papers, I have endeavored, my fellow-citizens, to place before you, in a clear and convincing light, the importance of Union to your political safety and happiness. I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot which binds the people of America together be severed or dissolved by ambition or by avarice, by jealousy or by misrepresentation. In the sequel of the inquiry through which I propose to accompany you, the truths intended to be inculcated will receive further confirmation from facts and arguments hitherto unnoticed. If the road over which you will still have to pass should in some places appear to you tedious or irksome, you will recollect that you are in quest of information on a subject the most momentous which can engage the attention of a free people, that the field through which you have to travel is in itself spacious, and that the difficulties of the journey have been unnecessarily increased by the mazes with which sophistry has beset the way. It will be my aim to remove the obstacles from your progress in as compendious a manner as it can be done, without sacrificing utility to despatch. In pursuance of the plan which I have laid down for the discussion of the subject, the point next in order to be examined is the "insufficiency of the present Confederation to the preservation of the Union." It may perhaps be asked what need there is of reasoning or proof to illustrate a position which is not either controverted or doubted, to which the understandings and feelings of all classes of men assent, and which in substance is admitted by the opponents as well as by the friends of the new Constitution. It must in truth be acknowledged that, however these may differ in other respects, they in general appear to harmonize in this sentiment, at least, that there are material imperfections in our national system, and that something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted from those, whose mistaken policy has had the principal share in precipitating the extremity at which we are arrived, a reluctant confession of the reality of those defects in the scheme of our federal government, which have been long pointed out and regretted by the intelligent friends of the Union. We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the

possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from the scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes? This is the melancholy situation to which we have been brought by those very maxims and counsels which would now deter us from adopting the proposed Constitution; and which, not content with having conducted us to the brink of a precipice, seem resolved to plunge us into the abyss that awaits us below. Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity. It is true, as has been before observed that facts, too stubborn to be resisted, have produced a species of general assent to the abstract proposition that there exist material defects in our national system; but the usefulness of the concession, on the part of the old adversaries of federal measures, is destroyed by a strenuous opposition to a remedy, upon the only principles that can give it a chance of success. While they admit that the government of the United States is destitute of energy, they contend against conferring upon it those powers which are requisite to supply that energy. They seem still to aim at things repugnant and irreconcilable; at an augmentation of federal authority, without a diminution of State authority; at sovereignty in the Union, and complete independence in the members. They still, in fine, seem to cherish with blind devotion the political monster of an imperium in imperio. This renders a full display of the principal defects of the Confederation necessary, in order to show that the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric. The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of appointment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option. It is a singular instance of the capriciousness of the human mind, that after all the admonitions we have had from experience on this head, there should still be found men who object to the new Constitution, for deviating from a principle which has been found the bane of the old, and which is in itself evidently incompatible with the idea of GOVERNMENT; a principle, in short, which, if it is to be executed at all, must substitute the violent and sanguinary agency of the sword to the mild influence of the magistracy. There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war, of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century there was an epidemical rage in Europe for this species of compacts, from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power and the peace of that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive but afflicting lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith, and which oppose general considerations of peace and justice to the impulse of any immediate interest or passion. If the particular States in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance offensive and defensive; and would place us in a situation to be alternate friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us. But if we are unwilling to be placed in this perilous situation; if we still will adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens, -- the only proper objects of government. Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity, be employed against bodies politic, or communities, or States. It is evident that there is no process of a court by which the observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association where the general authority is confined to the collective bodies of the communities, that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it. There was a time when we were told that breaches, by the States, of the regulations of the federal authority were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the Union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the

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establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation has a less active influence, when the infamy of a bad action is to be divided among a number than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses, for which they would blush in a private capacity. In addition to all this, there is, in the nature of sovereign power, an impatience of control, that disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons intrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready, with perfect good-humor, and an unbiased regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature. If, therefore, the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favor of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies; who have seen how difficult it often is, where there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times, and under different impressions, long to co-operate in the same views and pursuits. In our case, the concurrence of thirteen distinct sovereign wills is requisite, under the Confederation, to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the States have, step by step, matured themselves to an extreme, which has, at length, arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration, till the States can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified produced at first only unequal and disproportionate degrees of compliance with the requisitions of the Union. The greater deficiencies of some States furnished the pretext of example and the temptation of interest to the complying, or to the least delinquent States. Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burden? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not, without hesitation, combat. Each State, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins. PUBLIUS. 1 "I mean for the Union."

FEDERALIST No. 16

The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)
From the New York Packet. Tuesday, December 4, 1787.

HAMILTON

To the People of the State of New York: THE tendency of the principle of legislation for States, or communities, in their political capacities, as it has been exemplified by the experiment we have made of it, is equally attested by the events which have befallen all other governments of the confederate kind, of which we have any account, in exact proportion to its prevalence in those systems. The confirmations of this fact will be worthy of a distinct and particular examination. I shall content myself with barely observing here, that of all the confederacies of antiquity, which history has handed down to us, the Lycian and Achaean leagues, as far as there remain vestiges of them, appear to have been most free from the fetters of that mistaken principle, and were accordingly those which have best deserved, and have most liberally received, the applauding suffrages of political writers. This exceptional principle may, as truly as emphatically, be styled the parent of anarchy: It has been seen that delinquencies in the members of the Union are its natural and necessary offspring; and that whenever they happen, the only constitutional remedy is force, and the immediate effect of the use of it, civil war. It remains to inquire how far so odious an engine of government, in its application to us, would even be capable of answering its end. If there should not be a large army constantly at the disposal of the national government it would either not be able to employ force at all, or, when this could be done, it would amount to a war between parts of the Confederacy concerning the infractions of a league, in which the strongest combination would be most likely to prevail, whether it consisted of those who supported or of those who resisted the general authority. It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one who had neglected their duty, similarity of situation would induce them to unite for common defense. Independent of this motive of sympathy, if a large and influential State should happen to be the aggressing member, it would commonly have weight enough with its neighbors to win over some of them as associates to its cause. Specious arguments of danger to the common liberty could easily be contrived; plausible excuses for the deficiencies of the party could, without difficulty, be invented to alarm the apprehensions, inflame the passions, and conciliate the good-will, even of those States which were not chargeable with any violation or omission of duty. This would be the more likely to take place, as the delinquencies of the larger members might be expected sometimes to proceed from an ambitious premeditation in their rulers, with a view to getting rid of all external control upon their designs of personal aggrandizement; the better to effect which it is presumable they would tamper beforehand with leading individuals in the adjacent States. If associates could not be found at home, recourse would be had to the aid of foreign powers, who would seldom be disinclined to encouraging the dissensions of a Confederacy, from the firm union of which they had so much to fear. When the sword is once drawn, the passions of men observe no bounds of moderation. The suggestions of wounded pride, the instigations of irritated resentment, would be apt to carry the States against which the arms of the Union were exerted, to any extremes necessary to avenge the affront or to avoid the disgrace of submission. The first war of this kind would probably terminate in a dissolution of the Union. This may be considered as the violent death of the Confederacy. Its more natural death is what we now seem to be on the point of experiencing, if the federal system be not speedily renovated in a

more substantial form. It is not probable, considering the genius of this country, that the complying States would often be inclined to support the authority of the Union by engaging in a war against the non-complying States. They would always be more ready to pursue the milder course of putting themselves upon an equal footing with the delinquent members by an imitation of their example. And the guilt of all would thus become the security of all. Our past experience has exhibited the operation of this spirit in its full light. There would, in fact, be an insuperable difficulty in ascertaining when force could with propriety be employed. In the article of pecuniary contribution, which would be the most usual source of delinquency, it would often be impossible to decide whether it had proceeded from disinclination or inability. The pretense of the latter would always be at hand. And the case must be very flagrant in which its fallacy could be detected with sufficient certainty to justify the harsh expedient of compulsion. It is easy to see that this problem alone, as often as it should occur, would open a wide field for the exercise of factious views, of partiality, and of oppression, in the majority that happened to prevail in the national council. It seems to require no pains to prove that the States ought not to prefer a national Constitution which could only be kept in motion by the instrumentality of a large army continually on foot to execute the ordinary requisitions or decrees of the government. And yet this is the plain alternative involved by those who wish to deny it the power of extending its operations to individuals. Such a scheme, if practicable at all, would instantly degenerate into a military despotism; but it will be found in every light impracticable. The resources of the Union would not be equal to the maintenance of an army considerable enough to confine the larger States within the limits of their duty; nor would the means ever be furnished of forming such an army in the first instance. Whoever considers the populousness and strength of several of these States singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme which aims at regulating their movements by laws to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit which is attributed to the fabulous heroes and demi-gods of antiquity. Even in those confederacies which have been composed of members smaller than many of our counties, the principle of legislation for sovereign States, supported by military coercion, has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient have been the signals of bloody wars, in which one half of the confederacy has displayed its banners against the other half. The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed Constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the government of the particular States. To this reasoning it may perhaps be objected, that if any State should be disaffected to the authority of the Union, it could at any time obstruct the execution of its laws, and bring the matter to the same issue of force, with the necessity of which the opposite scheme is reproached. The possibility of this objection will vanish the moment we advert to the essential difference between a mere NON-COMPLIANCE and a DIRECT and ACTIVE RESISTANCE. If the interposition of the State legislatures be necessary to give effect to a measure of the Union, they have only NOT TO ACT, or to ACT EVASIVELY, and the measure is defeated. This neglect of duty may be disguised under affected but unsubstantial provisions, so as not to appear, and of course not to excite any alarm in the people for the safety of the Constitution. The State leaders may even make a merit of their surreptitious invasions of it on the ground of some temporary convenience, exemption, or advantage. But if the execution of the laws of the national government should not require the intervention of the State legislatures, if they were to pass into immediate operation upon the citizens themselves, the particular governments could not interrupt their progress without an open and violent exertion of an unconstitutional power. No omissions nor evasions would answer the end. They would be obliged to act, and in such a manner as would leave no doubt that they had encroached on the national rights. An experiment of this nature would always be hazardous in the face of a constitution in any degree competent to its own defense, and of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority. The success of it would require not merely a factious majority in the legislature, but the concurrence of the courts of justice and of the body of the people. If the judges were not embarked in a conspiracy with the legislature, they would pronounce the resolutions of such a majority to be contrary to the supreme law of the land, unconstitutional, and void. If the people were not tainted with the spirit of their State representatives, they, as the natural guardians of the Constitution, would throw their weight into the national scale and give it a decided preponderancy in the contest. Attempts of this kind would not often be made with levity or rashness, because they could seldom be made without danger to the authors, unless in cases of a tyrannical exercise of the federal authority. If opposition to the national government should arise from the disorderly conduct of refractory or seditious individuals, it could be overcome by the same means which are daily employed against the same evil under the State governments. The magistracy, being equally the ministers of the law of the land, from whatever source it might emanate, would doubtless be as ready to guard the national as the local regulations from the inroads of private licentiousness. As to those partial commotions and insurrections, which sometimes disquiet society, from the intrigues of an inconsiderable faction, or from sudden or occasional illhumors that do not infect the great body of the community the general government could command more extensive resources for the suppression of disturbances of that kind than would be in the power of any single member. And as to those mortal feuds which, in certain conjunctures, spread a conflagration through a whole nation, or through a very large proportion of it, proceeding either from weighty causes of discontent given by the government or from the contagion of some violent popular paroxysm, they do not fall within any ordinary rules of calculation. When they happen, they commonly amount to revolutions and dismemberments of empire. No form of government can always either avoid or control them. It is in vain to hope to guard against events too mighty for human foresight or precaution, and it would be idle to object to a government because it could not perform impossibilities. PUBLIUS.

FEDERALIST No. 17

The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)
For the Independent Journal.

HAMILTON

To the People of the State of New York: AN OBJECTION, of a nature different from that which has been stated and answered, in my last address, may perhaps be likewise urged against the principle of legislation for the individual citizens of America. It may be said that it would tend to render the government of the Union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the States for local purposes. Allowing the utmost latitude to the love of power which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government could ever feel to

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divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought, in the first instance, to be lodged in the national depository. The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government. But let it be admitted, for argument's sake, that mere wantonness and lust of domination would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the national representatives, or, in other words, the people of the several States, would control the indulgence of so extravagant an appetite. It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities. The proof of this proposition turns upon the greater degree of influence which the State governments if they administer their affairs with uprightness and prudence, will generally possess over the people; a circumstance which at the same time teaches us that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty. The superiority of influence in favor of the particular governments would result partly from the diffusive construction of the national government, but chiefly from the nature of the objects to which the attention of the State administrations would be directed. It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union; unless the force of that principle should be destroyed by a much better administration of the latter. This strong propensity of the human heart would find powerful auxiliaries in the objects of State regulation. The variety of more minute interests, which will necessarily fall under the superintendance of the local administrations, and which will form so many rivulets of influence, running through every part of the society, cannot be particularized, without involving a detail too tedious and uninteresting to compensate for the instruction it might afford. There is one transcendent advantage belonging to the province of the State governments, which alone suffices to place the matter in a clear and satisfactory light,--I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is that which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake, contributes, more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence towards the government. This great cement of society, which will diffuse itself almost wholly through the channels of the particular governments, independent of all other causes of influence, would insure them so decided an empire over their respective citizens as to render them at all times a complete counterpoise, and, not unfrequently, dangerous rivals to the power of the Union. The operations of the national government, on the other hand, falling less immediately under the observation of the mass of the citizens, the benefits derived from it will chiefly be perceived and attended to by speculative men. Relating to more general interests, they will be less apt to come home to the feelings of the people; and, in proportion, less likely to inspire an habitual sense of obligation, and an active sentiment of attachment. The reasoning on this head has been abundantly exemplified by the experience of all federal constitutions with which we are acquainted, and of all others which have borne the least analogy to them. Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of INFERIOR vassals or retainers, who occupied and cultivated that land upon the tenure of fealty or obedience, to the persons of whom they held it. Each principal vassal was a kind of sovereign, within his particular demesnes. The consequences of this situation were a continual opposition to authority of the sovereign, and frequent wars between the great barons or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal anarchy. When the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered, for the time, the purpose of a more regular authority. But in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or States. In those instances in which the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common people, were dreaded and detested by both; till mutual danger and mutual interest effected a union between them fatal to the power of the aristocracy. Had the nobles, by a conduct of clemency and justice, preserved the fidelity and devotion of their retainers and followers, the contests between them and the prince must almost always have ended in their favor, and in the abridgment or subversion of the royal authority. This is not an assertion founded merely in speculation or conjecture. Among other illustrations of its truth which might be cited, Scotland will furnish a cogent example. The spirit of clanship which was, at an early day, introduced into that kingdom, uniting the nobles and their dependants by ties equivalent to those of kindred, rendered the aristocracy a constant overmatch for the power of the monarch, till the incorporation with England subdued its fierce and ungovernable spirit, and reduced it within those rules of subordination which a more rational and more energetic system of civil polity had previously established in the latter kingdom. The separate governments in a confederacy may aptly be compared with the feudal baronies; with this advantage in their favor, that from the reasons already explained, they will generally possess the confidence and good-will of the people, and with so important a support, will be able effectually to oppose all encroachments of the national government. It will be well if they are not able to counteract its legitimate and necessary authority. The points of similitude consist in the rivalry of power, applicable to both, and in the CONCENTRATION of large portions of the strength of the community into particular DEPOSITS, in one case at the disposal of individuals, in the other case at the disposal of political bodies. A concise review of the events that have attended confederate governments will further illustrate this important doctrine: an inattention to which has been the great source of our political mistakes, and has given our jealousy a direction to the wrong side. This review shall form the subject of some ensuing papers. PUBLIUS.

FEDERALIST No. 18

The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union) For the Independent Journal.

HAMILTON AND MADISON

To the People of the State of New York: AMONG the confederacies of antiquity, the most considerable

was that of the Grecian republics, associated under the Amphictyonic council. From the best accounts transmitted of this celebrated institution, it bore a very instructive analogy to the present Confederation of the American States. The members retained the character of independent and sovereign states, and had equal votes in the federal council. This council had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide, in the last resort, all controversies between the members; to fine the aggressing party; to employ the whole force of the confederacy against the disobedient; to admit new members. The Amphictyons were the guardians of religion, and of the immense riches belonging to the temple of Delphos, where they had the right of jurisdiction in controversies between the inhabitants and those who came to consult the oracle. As a further provision for the efficacy of the federal powers, they took an oath mutually to defend and protect the united cities, to punish the violators of this oath, and to inflict vengeance on sacrilegious despoilers of the temple. In theory, and upon paper, this apparatus of powers seems amply sufficient for all general purposes. In several material instances, they exceed the powers enumerated in the articles of confederation. The Amphictyons had in their hands the superstition of the times, one of the principal engines by which government was then maintained; they had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions. Very different, nevertheless, was the experiment from the theory. The powers, like those of the present Congress, were administered by deputies appointed wholly by the cities in their political capacities; and exercised over them in the same capacities. Hence the weakness, the disorders, and finally the destruction of the confederacy. The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest. Athens, as we learn from Demosthenes, was the arbiter of Greece seventy-three years. The Lacedaemonians next governed it twenty-nine years; at a subsequent period, after the battle of Leuctra, the Thebans had their turn of domination. It happened but too often, according to Plutarch, that the deputies of the strongest cities awed and corrupted those of the weaker; and that judgment went in favor of the most powerful party. Even in the midst of defensive and dangerous wars with Persia and Macedon, the members never acted in concert, and were, more or fewer of them, eternally the dupes or the hirelings of the common enemy. The intervals of foreign war were filled up by domestic vicissitudes convulsions, and carnage. After the conclusion of the war with Xerxes, it appears that the Lacedaemonians required that a number of the cities should be turned out of the confederacy for the unfaithful part they had acted. The Athenians, finding that the Lacedaemonians would lose fewer partisans by such a measure than themselves, and would become masters of the public deliberations, vigorously opposed and defeated the attempt. This piece of history proves at once the inefficiency of the union, the ambition and jealousy of its most powerful members, and the dependent and degraded condition of the rest. The smaller members, though entitled by the theory of their system to revolve in equal pride and majesty around the common center, had become, in fact, satellites of the orbs of primary magnitude. Had the Greeks, says the Abbe Milot, been as wise as they were courageous, they would have been admonished by experience of the necessity of a closer union, and would have availed themselves of the peace which followed their success against the Persian arms, to establish such a reformation. Instead of this obvious policy, Athens and Sparta, inflated with the victories and the glory they had acquired, became first rivals and then enemies; and did each other infinitely more mischief than they had suffered from Xerxes. Their mutual jealousies, fears, hatreds, and injuries ended in the celebrated Peloponnesian war; which itself ended in the ruin and slavery of the Athenians who had begun it. As a weak government, when not at war, is ever agitated by internal dissensions, so these never fail to bring on fresh calamities from abroad. The Phocians having ploughed up some consecrated ground belonging to the temple of Apollo, the Amphictyonic council, according to the superstition of the age, imposed a fine on the sacrilegious offenders. The Phocians, being abetted by Athens and Sparta, refused to submit to the decree. The Thebans, with others of the cities, undertook to maintain the authority of the Amphictyons, and to avenge the violated god. The latter, being the weaker party, invited the assistance of Philip of Macedon, who had secretly fostered the contest. Philip gladly seized the opportunity of executing the designs he had long planned against the liberties of Greece. By his intrigues and bribes he won over to his interests the popular leaders of several cities; by their influence and votes, gained admission into the Amphictyonic council; and by his arts and his arms, made himself master of the confederacy. Such were the consequences of the fallacious principle on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and persevered in her union, she would never have worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome. The Achaean league, as it is called, was another society of Grecian republics, which supplies us with valuable instruction. The Union here was far more intimate, and its organization much wiser, than in the preceding instance. It will accordingly appear, that though not exempt from a similar catastrophe, it by no means equally deserved it. The cities composing this league retained their municipal jurisdiction, appointed their own officers, and enjoyed a perfect equality. The senate, in which they were represented, had the sole and exclusive right of peace and war; of sending and receiving ambassadors; of entering into treaties and alliances; of appointing a chief magistrate or praetor, as he was called, who commanded their armies, and who, with the advice and consent of ten of the senators, not only administered the government in the recess of the senate, but had a great share in its deliberations, when assembled. According to the primitive constitution, there were two praetors associated in the administration; but on trial a single one was preferred. It appears that the cities had all the same laws and customs, the same weights and measures, and the same money. But how far this effect proceeded from the authority of the federal council is left in uncertainty. It is said only that the cities were in a manner compelled to receive the same laws and usages. When Lacedaemon was brought into the league by Philopoemen, it was attended with an abolition of the institutions and laws of Lycurgus, and an adoption of those of the Achaeans. The Amphictyonic confederacy, of which she had been a member, left her in the full exercise of her government and her legislation. This circumstance alone proves a very material difference in the genius of the two systems. It is much to be regretted that such imperfect monuments remain of this curious political fabric. Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of federal government, than by any of the like experiments with which we are acquainted. One important fact seems to be witnessed by all the historians who take notice of Achaean affairs. It is, that as well after the renovation of the league by Aratus, as before its dissolution by the arts of Macedon, there was infinitely more of moderation and justice in the administration of its government, and less of violence and sedition in the people, than were to be found in any of the cities exercising SINGLY all the prerogatives of sovereignty. The Abbe Mably, in his observations on Greece, says that the popular government, which was so tempestuous elsewhere, caused no disorders in the members of the Achaean republic, BECAUSE IT WAS THERE TEMPERED BY THE GENERAL AUTHORITY AND LAWS OF THE CONFEDERACY. We are not to conclude too hastily, however, that faction did not, in a certain degree, agitate the particular cities; much less that a due subordination and harmony reigned in the general system. The contrary is sufficiently displayed in the vicissitudes and fate of the republic. Whilst the Amphictyonic confederacy remained, that of the Achaeans, which comprehended the less important cities only, made little figure on the theatre of Greece. When the former became a victim to Macedon, the latter was spared by the policy of Philip and Alexander. Under the successors of these princes, however, a different policy prevailed. The arts of division were practiced among the Achaeans. Each city was seduced into a separate interest; the union was dissolved. Some of the cities fell under the tyranny of Macedonian garrisons; others under that of usurpers springing out of their own confusions. Shame and oppression ere long awakened their love of liberty. A few cities reunited. Their example was followed by others, as opportunities were found of cutting off their tyrants. The league soon embraced almost the whole Peloponnesus. Macedon saw its progress; but was hindered by internal dissensions from stopping it. All Greece caught the enthusiasm and seemed ready to unite

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in one confederacy, when the jealousy and envy in Sparta and Athens, of the rising glory of the Achaeans, threw a fatal damp on the enterprise. The dread of the Macedonian power induced the league to court the alliance of the Kings of Egypt and Syria, who, as successors of Alexander, were rivals of the king of Macedon. This policy was defeated by Cleomenes, king of Sparta, who was led by his ambition to make an unprovoked attack on his neighbors, the Achaeans, and who, as an enemy to Macedon, had interest enough with the Egyptian and Syrian princes to effect a breach of their engagements with the league. The Achaeans were now reduced to the dilemma of submitting to Cleomenes, or of supplicating the aid of Macedon, its former oppressor. The latter expedient was adopted. The contests of the Greeks always afforded a pleasing opportunity to that powerful neighbor of intermeddling in their affairs. A Macedonian army quickly appeared. Cleomenes was vanquished. The Achaeans soon experienced, as often happens, that a victorious and powerful ally is but another name for a master. All that their most abject compliances could obtain from him was a toleration of the exercise of their laws. Philip, who was now on the throne of Macedon, soon provoked by his tyrannies, fresh combinations among the Greeks. The Achaeans, though weakened by internal dissensions and by the revolt of Messene, one of its members, being joined by the Aetolians and Athenians, erected the standard of opposition. Finding themselves, though thus supported, unequal to the undertaking, they once more had recourse to the dangerous expedient of introducing the succor of foreign arms. The Romans, to whom the invitation was made, eagerly embraced it. Philip was conquered; Macedon subdued. A new crisis ensued to the league. Dissensions broke out among its members. These the Romans fostered. Calliocrates and other popular leaders became mercenary instruments for inveigling their countrymen. The more effectually to nourish discord and disorder the Romans had, to the astonishment of those who confided in their sincerity, already proclaimed universal liberty throughout Greece. With the same insidious views, they now seduced the members from the league, by representing to their pride the violation it committed on their sovereignty. By these arts this union, the last hope of Greece, the last hope of ancient liberty, was torn into pieces; and such imbecility and distraction introduced, that the arms of Rome found little difficulty in completing the ruin which their arts had commenced. The Achaeans were cut to pieces, and Achaia loaded with chains, under which it is groaning at this hour. I have thought it not superfluous to give the outlines of this important portion of history; both because it teaches more than one lesson, and because, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies rather to anarchy among the members, than to tyranny in the head. PUBLIUS. 1 This was but another name more specious for the independence of the members on the federal head.

FEDERALIST No. 19

The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union) For the Independent Journal.

HAMILTON AND MADISON

To the People of the State of New York: THE examples of ancient confederacies, cited in my last paper, have not exhausted the source of experimental instruction on this subject. There are existing institutions, founded on a similar principle, which merit particular consideration. The first which presents itself is the Germanic body. In the early ages of Christianity, Germany was occupied by seven distinct nations, who had no common chief. The Franks, one of the number, having conquered the Gauls, established the kingdom which has taken its name from them. In the ninth century Charlemagne, its warlike monarch, carried his victorious arms in every direction; and Germany became a part of his vast dominions. On the dismemberment, which took place under his sons, this part was erected into a separate and independent empire. Charlemagne and his immediate descendants possessed the reality, as well as the ensigns and dignity of imperial power. But the principal vassals, whose fiefs had become hereditary, and who composed the national diets which Charlemagne had not abolished, gradually threw off the yoke and advanced to sovereign jurisdiction and independence. The force of imperial sovereignty was insufficient to restrain such powerful dependants; or to preserve the unity and tranquillity of the empire. The most furious private wars, accompanied with every species of calamity, were carried on between the different princes and states. The imperial authority, unable to maintain the public order, declined by degrees till it was almost extinct in the anarchy, which agitated the long interval between the death of the last emperor of the Suabian, and the accession of the first emperor of the Austrian lines. In the eleventh century the emperors enjoyed full sovereignty: In the fifteenth they had little more than the symbols and decorations of power. Out of this feudal system, which has itself many of the important features of a confederacy, has grown the federal system which constitutes the Germanic empire. Its powers are vested in a diet representing the component members of the confederacy; in the emperor, who is the executive magistrate, with a negative on the decrees of the diet; and in the imperial chamber and the aulic council, two judiciary tribunals having supreme jurisdiction in controversies which concern the empire, or which happen among its members. The diet possesses the general power of legislating for the empire; of making war and peace; contracting alliances; assessing quotas of troops and money; constructing fortresses; regulating coin; admitting new members; and subjecting disobedient members to the ban of the empire, by which the party is degraded from his sovereign rights and his possessions forfeited. The members of the confederacy are expressly restricted from entering into compacts prejudicial to the empire; from imposing tolls and duties on their mutual intercourse, without the consent of the emperor and diet; from altering the value of money; from doing injustice to one another; or from affording assistance or retreat to disturbers of the public peace. And the ban is denounced against such as shall violate any of these restrictions. The members of the diet, as such, are subject in all cases to be judged by the emperor and diet, and in their private capacities by the aulic council and imperial chamber. The prerogatives of the emperor are numerous. The most important of them are: his exclusive right to make propositions to the diet; to negative its resolutions; to name ambassadors; to confer dignities and titles; to fill vacant electorates; to found universities; to grant privileges not injurious to the states of the empire; to receive and apply the public revenues; and generally to watch over the public safety. In certain cases, the electors form a council to him. In quality of emperor, he possesses no territory within the empire, nor receives any revenue for his support. But his revenue and dominions, in other qualities, constitute him one of the most powerful princes in Europe. From such a parade of constitutional powers, in the representatives and head of this confederacy, the natural supposition would be, that it must form an exception to the general character which belongs to its kindred systems. Nothing would be further from the reality. The fundamental principle on which it rests, that the empire is a community of sovereigns, that the diet is a representation of sovereigns and that the laws are addressed to sovereigns, renders the empire a nerveless body, incapable of regulating its own members, insecure against external dangers, and agitated with unceasing fermentations in its own bowels. The history of Germany is a history of wars between the emperor and the princes and states; of wars among the princes and states themselves; of the licentiousness of the strong, and the oppression of the weak; of foreign intrusions, and foreign intrigues; of requisitions of men and money disregarded, or partially complied with; of attempts to enforce them, altogether abortive, or attended with slaughter and desolation, involving the innocent with the guilty; of general imbecility, confusion, and misery. In the sixteenth century, the emperor, with one part of the empire on his side, was seen engaged against the other princes and states. In one of the conflicts, the emperor himself was put to flight, and very near being made prisoner by the elector of Saxony. The late king of Prussia was more than once pitted against his imperial sovereign; and commonly proved an overmatch for him. Controversies and wars among the members themselves have been so common, that the German annals are crowded with the bloody pages which describe them. Previous to the peace of Westphalia, Germany was desolated by a war of thirty years, in which

the emperor, with one half of the empire, was on one side, and Sweden, with the other half, on the opposite side. Peace was at length negotiated, and dictated by foreign powers; and the articles of it, to which foreign powers are parties, made a fundamental part of the Germanic constitution. If the nation happens, on any emergency, to be more united by the necessity of self-defense, its situation is still deplorable. Military preparations must be preceded by so many tedious discussions, arising from the jealousies, pride, separate views, and clashing pretensions of sovereign bodies, that before the diet can settle the arrangements, the enemy are in the field; and before the federal troops are ready to take it, are retiring into winter quarters. The small body of national troops, which has been judged necessary in time of peace, is defectively kept up, badly paid, infected with local prejudices, and supported by irregular and disproportionate contributions to the treasury. The impossibility of maintaining order and dispensing justice among these sovereign subjects, produced the experiment of dividing the empire into nine or ten circles or districts; of giving them an interior organization, and of charging them with the military execution of the laws against delinquent and contumacious members. This experiment has only served to demonstrate more fully the radical vice of the constitution. Each circle is the miniature picture of the deformities of this political monster. They either fail to execute their commissions, or they do it with all the devastation and carnage of civil war. Sometimes whole circles are defaulters; and then they increase the mischief which they were instituted to remedy. We may form some judgment of this scheme of military coercion from a sample given by Thuanus. In Donawerth, a free and imperial city of the circle of Suabia, the Abb 300 de St. Croix enjoyed certain immunities which had been reserved to him. In the exercise of these, on some public occasions, outrages were committed on him by the people of the city. The consequence was that the city was put under the ban of the empire, and the Duke of Bavaria, though director of another circle, obtained an appointment to enforce it. He soon appeared before the city with a corps of ten thousand troops, and finding it a fit occasion, as he had secretly intended from the beginning, to revive an antiquated claim, on the pretext that his ancestors had suffered the place to be dismembered from his territory, he took possession of it in his own name, disarmed, and punished the inhabitants, and reannexed the city to his domains. It may be asked, perhaps, what has so long kept this disjointed machine from falling entirely to pieces? The answer is obvious: The weakness of most of the members, who are unwilling to expose themselves to the mercy of foreign powers; the weakness of most of the principal members, compared with the formidable powers all around them; the vast weight and influence which the emperor derives from his separate and hereditary dominions; and the interest he feels in preserving a system with which his family pride is connected, and which constitutes him the first prince in Europe; --these causes support a feeble and precarious Union; whilst the repellant quality, incident to the nature of sovereignty, and which time continually strengthens, prevents any reform whatever, founded on a proper consolidation. Nor is it to be imagined, if this obstacle could be surmounted, that the neighboring powers would suffer a revolution to take place which would give to the empire the force and preeminence to which it is entitled. Foreign nations have long considered themselves as interested in the changes made by events in this constitution; and have, on various occasions, betrayed their policy of perpetuating its anarchy and weakness. If more direct examples were wanting, Poland, as a government over local sovereigns, might not improperly be taken notice of. Nor could any proof more striking be given of the calamities flowing from such institutions. Equally unfit for self-government and self-defense, it has long been at the mercy of its powerful neighbors; who have lately had the mercy to disburden it of one third of its people and territories. The connection among the Swiss cantons scarcely amounts to a confederacy; though it is sometimes cited as an instance of the stability of such institutions. They have no common treasury; no common troops even in war; no common coin; no common judiciary; nor any other common mark of sovereignty. They are kept together by the peculiarity of their topographical position; by their individual weakness and insignificance; by the fear of powerful neighbors, to one of which they were formerly subject; by the few sources of contention among a people of such simple and homogeneous manners; by their joint interest in their dependent possessions; by the mutual aid they stand in need of, for suppressing insurrections and rebellions, an aid expressly stipulated and often required and afforded; and by the necessity of some regular and permanent provision for accommodating disputes among the cantons. The provision is, that the parties at variance shall each choose four judges out of the neutral cantons, who, in case of disagreement, choose an umpire. This tribunal, under an oath of impartiality, pronounces definitive sentence, which all the cantons are bound to enforce. The competency of this regulation may be estimated by a clause in their treaty of 1683, with Victor Amadeus of Savoy; in which he obliges himself to interpose as mediator in disputes between the cantons, and to employ force, if necessary, against the contumacious party. So far as the peculiarity of their case will admit of comparison with that of the United States, it serves to confirm the principle intended to be established. Whatever efficacy the union may have had in ordinary cases, it appears that the moment a cause of difference sprang up, capable of trying its strength, it failed. The controversies on the subject of religion, which in three instances have kindled violent and bloody contests, may be said, in fact, to have severed the league. The Protestant and Catholic cantons have since had their separate diets, where all the most important concerns are adjusted, and which have left the general diet little other business than to take care of the common bailiages. That separation had another consequence, which merits attention. It produced opposite alliances with foreign powers: of Berne, at the head of the Protestant association, with the United Provinces; and of Luzerne, at the head of the Catholic association, with France. PUBLIUS. 1 Pfeffel, `Nouvel Abreg. Chronol. de l'Hist., etc., d'Allemagne," says the pretext was to indemnify himself for the expense of the expedition.

FEDERALIST No. 20

The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union) From the New York Packet. Tuesday, December 11, 1787.

HAMILTON AND MADISON

To the People of the State of New York: THE United Netherlands are a confederacy of republics, or rather of aristocracies of a very remarkable texture, yet confirming all the lessons derived from those which we have already reviewed. The union is composed of seven coequal and sovereign states, and each state or province is a composition of equal and independent cities. In all important cases, not only the provinces but the cities must be unanimous. The sovereignty of the Union is represented by the States-General, consisting usually of about fifty deputies appointed by the provinces. They hold their seats, some for life, some for six, three, and one years; from two provinces they continue in appointment during pleasure. The States-General have authority to enter into treaties and alliances; to make war and peace; to raise armies and equip fleets; to ascertain quotas and demand contributions. In all these cases, however, unanimity and the sanction of their constituents are requisite. They have authority to appoint and receive ambassadors; to execute treaties and alliances already formed; to provide for the collection of duties on imports and exports; to regulate the mint, with a saving to the provincial rights; to govern as sovereigns the dependent territories. The provinces are restrained, unless with the general consent, from entering into foreign treaties; from establishing imposts injurious to others, or charging their neighbors with higher duties than their own subjects. A council of state, a chamber of accounts, with five colleges of admiralty, aid and fortify the federal administration. The executive magistrate of the union is the stadtholder, who is now an hereditary prince. His principal weight and influence in the republic are derived from this independent title; from his great patrimonial estates; from his family connections with some of the chief potentates of Europe; and, more than all, perhaps, from his being stadtholder in the several provinces, as well as for the union; in which provincial quality he has the appointment of town magistrates under certain regulations, executes provincial decrees, presides when he pleases in the provincial tribunals, and has

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throughout the power of pardon. As stadtholder of the union, he has, however, considerable prerogatives. In his political capacity he has authority to settle disputes between the provinces, when other methods fail; to assist at the deliberations of the States-General, and at their particular conferences; to give audiences to foreign ambassadors, and to keep agents for his particular affairs at foreign courts. In his military capacity he commands the federal troops, provides for garrisons, and in general regulates military affairs; disposes of all appointments, from colonels to ensigns, and of the governments and posts of fortified towns. In his marine capacity he is admiral-general, and superintends and directs every thing relative to naval forces and other naval affairs; presides in the admiralties in person or by proxy; appoints lieutenant-admirals and other officers; and establishes councils of war, whose sentences are not executed till he approves them. His revenue, exclusive of his private income, amounts to three hundred thousand florins. The standing army which he commands consists of about forty thousand men. Such is the nature of the celebrated Belgic confederacy, as delineated on parchment. What are the characters which practice has stamped upon it? Imbecility in the government; discord among the provinces; foreign influence and indignities; a precarious existence in peace, and peculiar calamities from war. It was long ago remarked by Grotius, that nothing but the hatred of his countrymen to the house of Austria kept them from being ruined by the vices of their constitution. The union of Utrecht, says another respectable writer, reposes an authority in the States-General, seemingly sufficient to secure harmony, but the jealousy in each province renders the practice very different from the theory. The same instrument, says another, obliges each province to levy certain contributions; but this article never could, and probably never will, be executed; because the inland provinces, who have little commerce, cannot pay an equal quota. In matters of contribution, it is the practice to waive the articles of the constitution. The danger of delay obliges the consenting provinces to furnish their quotas, without waiting for the others; and then to obtain reimbursement from the others, by deputations, which are frequent, or otherwise, as they can. The great wealth and influence of the province of Holland enable her to effect both these purposes. It has more than once happened, that the deficiencies had to be ultimately collected at the point of the bayonet; a thing practicable, though dreadful, in a confederacy where one of the members exceeds in force all the rest, and where several of them are too small to meditate resistance; but utterly impracticable in one composed of members, several of which are equal to each other in strength and resources, and equal singly to a vigorous and persevering defense. Foreign ministers, says Sir William Temple, who was himself a foreign minister, elude matters taken ad referendum, by tampering with the provinces and cities. In 1726, the treaty of Hanover was delayed by these means a whole year. Instances of a like nature are numerous and notorious. In critical emergencies, the States-General are often compelled to overleap their constitutional bounds. In 1688, they concluded a treaty of themselves at the risk of their heads. The treaty of Westphalia, in 1648, by which their independence was formerly and finally recognized, was concluded without the consent of Zealand. Even as recently as the last treaty of peace with Great Britain, the constitutional principle of unanimity was departed from. A weak constitution must necessarily terminate in dissolution, for want of proper powers, or the usurpation of powers requisite for the public safety. Whether the usurpation, when once begun, will stop at the salutary point, or go forward to the dangerous extreme, must depend on the contingencies of the moment. Tyranny has perhaps often grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities. Notwithstanding the calamities produced by the stadtholdership, it has been supposed that without his influence in the individual provinces, the causes of anarchy manifest in the confederacy would long ago have dissolved it. "Under such a government," says the Abbe Mably, "the Union could never have subsisted, if the provinces had not a spring within themselves, capable of quickening their tardiness, and compelling them to the same way of thinking. This spring is the stadtholder." It is remarked by Sir William Temple, "that in the intermissions of the stadtholdership, Holland, by her riches and her authority, which drew the others into a sort of dependence, supplied the place." These are not the only circumstances which have controlled the tendency to anarchy and dissolution. The surrounding powers impose an absolute necessity of union to a certain degree, at the same time that they nourish by their intrigues the constitutional vices which keep the republic in some degree always at their mercy. The true patriots have long bewailed the fatal tendency of these vices, and have made no less than four regular experiments by EXTRAORDINARY ASSEMBLIES, convened for the special purpose, to apply a remedy. As many times has their laudable zeal found it impossible to UNITE THE PUBLIC COUNCILS in reforming the known, the acknowledged, the fatal evils of the existing constitution. Let us pause, my fellow-citizens, for one moment, over this melancholy and monitory lesson of history; and with the tear that drops for the calamities brought on mankind by their adverse opinions and selfish passions, let our gratitude mingle an ejaculation to Heaven, for the propitious concord which has distinguished the consultations for our political happiness. A design was also conceived of establishing a general tax to be administered by the federal authority. This also had its adversaries and failed. This unhappy people seem to be now suffering from popular convulsions, from dissensions among the states, and from the actual invasion of foreign arms, the crisis of their destiny. All nations have their eyes fixed on the awful spectacle. The first wish prompted by humanity is, that this severe trial may issue in such a revolution of their government as will establish their union, and render it the parent of tranquillity, freedom and happiness: The next, that the asylum under which, we trust, the enjoyment of these blessings will speedily be secured in this country, may receive and console them for the catastrophe of their own. I make no apology for having dwelt so long on the contemplation of these federal precedents. Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth, which it unequivocally pronounces in the present case, is that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting VIOLENCE in place of LAW, or the destructive COERCION of the SWORD in place of the mild and salutary COERCION of the MAGISTRACY. PUBLIUS.

FEDERALIST No. 21

Other Defects of the Present Confederation For the Independent Journal.

HAMILTON

To the People of the State of New York: HAVING in the three last numbers taken a summary review of the principal circumstances and events which have depicted the genius and fate of other confederate governments, I shall now proceed in the enumeration of the most important of those defects which have hitherto disappointed our hopes from the system established among ourselves. To form a safe and satisfactory judgment of the proper remedy, it is absolutely necessary that we should be well acquainted with the extent and malignity of the disease. The next most palpable defect of the subsisting Confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional mode. There is no express delegation of authority to them to use force against delinquent members; and if such a right should be ascribed to the federal head, as resulting from the nature of the social compact between the States, it must be by inference and construction, in the face of that part of the second article, by which it is declared, "that each State shall retain every power, jurisdiction, and right, not EXPRESSLY delegated to the United States in Congress assembled." There is, doubtless, a striking absurdity in supposing that a right of this kind does not exist, but we are reduced to the dilemma either of embracing that supposition, preposterous as it may seem, or of contravening or explaining

away a provision, which has been of late a repeated theme of the eulogies of those who oppose the new Constitution; and the want of which, in that plan, has been the subject of much plausible animadversion, and severe criticism. If we are unwilling to impair the force of this applauded provision, we shall be obliged to conclude, that the United States afford the extraordinary spectacle of a government destitute even of the shadow of constitutional power to enforce the execution of its own laws. It will appear, from the specimens which have been cited, that the American Confederacy, in this particular, stands discriminated from every other institution of a similar kind, and exhibits a new and unexampled phenomenon in the political world. The want of a mutual guaranty of the State governments is another capital imperfection in the federal plan. There is nothing of this kind declared in the articles that compose it; and to imply a tacit guaranty from considerations of utility, would be a still more flagrant departure from the clause which has been mentioned, than to imply a tacit power of coercion from the like considerations. The want of a guaranty, though it might in its consequences endanger the Union, does not so immediately attack its existence as the want of a constitutional sanction to its laws. Without a guaranty the assistance to be derived from the Union in repelling those domestic dangers which may sometimes threaten the existence of the State constitutions, must be renounced. Usurpation may rear its crest in each State, and trample upon the liberties of the people, while the national government could legally do nothing more than behold its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while no succor could constitutionally be afforded by the Union to the friends and supporters of the government. The tempestuous situation from which Massachusetts has scarcely emerged, evinces that dangers of this kind are not merely speculative. Who can determine what might have been the issue of her late convulsions, if the malcontents had been headed by a Caesar or by a Cromwell? Who can predict what effect a despotism, established in Massachusetts, would have upon the liberties of New Hampshire or Rhode Island, of Connecticut or New York? The inordinate pride of State importance has suggested to some minds an objection to the principle of a guaranty in the federal government, as involving an officious interference in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union, and can only flow from a misapprehension of the nature of the provision itself. It could be no impediment to reforms of the State constitution by a majority of the people in a legal and peaceable mode. This right would remain undiminished. The guaranty could only operate against changes to be effected by violence. Towards the preventions of calamities of this kind, too many checks cannot be provided. The peace of society and the stability of government depend absolutely on the efficacy of the precautions adopted on this head. Where the whole power of the government is in the hands of the people, there is the less pretense for the use of violent remedies in partial or occasional distempers of the State. The natural cure for an ill-administration, in a popular or representative constitution, is a change of men. A guaranty by the national authority would be as much levelled against the usurpations of rulers as against the ferments and outrages of faction and sedition in the community. The principle of regulating the contributions of the States to the common treasury by QUOTAS is another fundamental error in the Confederation. Its repugnancy to an adequate supply of the national exigencies has been already pointed out, and has sufficiently appeared from the trial which has been made of it. I speak of it now solely with a view to equality among the States. Those who have been accustomed to contemplate the circumstances which produce and constitute national wealth, must be satisfied that there is no common standard or barometer by which the degrees of it can be ascertained. Neither the value of lands, nor the numbers of the people, which have been successively proposed as the rule of State contributions, has any pretension to being a just representative. If we compare the wealth of the United Netherlands with that of Russia or Germany, or even of France, and if we at the same time compare the total value of the lands and the aggregate population of that contracted district with the total value of the lands and the aggregate population of the immense regions of either of the three last-mentioned countries, we shall at once discover that there is no comparison between the proportion of either of these two objects and that of the relative wealth of those nations. If the like parallel were to be run between several of the American States, it would furnish a like result. Let Virginia be contrasted with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey, and we shall be convinced that the respective abilities of those States, in relation to revenue, bear little or no analogy to their comparative stock in lands or to their comparative population. The position may be equally illustrated by a similar process between the counties of the same State. No man who is acquainted with the State of New York will doubt that the active wealth of King's County bears a much greater proportion to that of Montgomery than it would appear to be if we should take either the total value of the lands or the total number of the people as a criterion! The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate, the nature of the productions, the nature of the government, the genius of the citizens, the degree of information they possess, the state of commerce, of arts, of industry, these circumstances and many more, too complex, minute, or adventitious to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different countries. The consequence clearly is that there can be no common measure of national wealth, and, of course, no general or stationary rule by which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a confederacy by any such rule, cannot fail to be productive of glaring inequality and extreme oppression. This inequality would of itself be sufficient in America to work the eventual destruction of the Union, if any mode of enforcing a compliance with its requisitions could be devised. The suffering States would not long consent to remain associated upon a principle which distributes the public burdens with so unequal a hand, and which was calculated to impoverish and oppress the citizens of some States, while those of others would scarcely be conscious of the small proportion of the weight they were required to sustain. This, however, is an evil inseparable from the principle of quotas and requisitions. There is no method of steering clear of this inconvenience, but by authorizing the national government to raise its own revenues in its own way. Imposts, excises, and, in general, all duties upon articles of consumption, may be compared to a fluid, which will, in time, find its level with the means of paying them. The amount to be contributed by each citizen will in a degree be at his own option, and can be regulated by an attention to his resources. The rich may be extravagant, the poor can be frugal; and private oppression may always be avoided by a judicious selection of objects proper for such impositions. If inequalities should arise in some States from duties on particular objects, these will, in all probability, be counterbalanced by proportional inequalities in other States, from the duties on other objects. In the course of time and things, an equilibrium, as far as it is attainable in so complicated a subject, will be established everywhere. Or, if inequalities should still exist, they would neither be so great in their degree, so uniform in their operation, nor so odious in their appearance, as those which would necessarily spring from quotas, upon any scale that can possibly be devised. It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them. Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to land and buildings, may admit of a rule of apportionment. Either the value of land, or the number of the people, may serve as a standard. The state of agriculture and the populousness of a country have been considered as nearly connected with each other. And, as a rule, for the purpose intended, numbers, in the view of simplicity and certainty, are entitled to a preference. In every country it is a herculean task to obtain a valuation of the land; in a country

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imperfectly settled and progressive in improvement, the difficulties are increased almost to impracticability. The expense of an accurate valuation is, in all situations, a formidable objection. In a branch of taxation where no limits to the discretion of the government are to be found in the nature of things, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave that discretion altogether at large. PUBLIUS.

FEDERALIST No. 22

The Same Subject Continued (Other Defects of the Present Confederation) From the New York Packet. Friday, December 14, 1787.

HAMILTON

To the People of the State of New York: IN ADDITION to the defects already enumerated in the existing federal system, there are others of not less importance, which concur in rendering it altogether unfit for the administration of the affairs of the Union. The want of a power to regulate commerce is by all parties allowed to be of the number. The utility of such a power has been anticipated under the first head of our inquiries; and for this reason, as well as from the universal conviction entertained upon the subject, little need be added in this place. It is indeed evident, on the most superficial view, that there is no object, either as it respects the interests of trade or finance, that more strongly demands a federal superintendence. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions of dissatisfaction between the States. No nation acquainted with the nature of our political association would be unwise enough to enter into stipulations with the United States, by which they conceded privileges of any importance to them, while they were apprised that the engagements on the part of the Union might at any moment be violated by its members, and while they found from experience that they might enjoy every advantage they desired in our markets, without granting us any return but such as their momentary convenience might suggest. It is not, therefore, to be wondered at that Mr. Jenkinson, in ushering into the House of Commons a bill for regulating the temporary intercourse between the two countries, should preface its introduction by a declaration that similar provisions in former bills had been found to answer every purpose to the commerce of Great Britain, and that it would be prudent to persist in the plan until it should appear whether the American government was likely or not to acquire greater consistency. [1] Several States have endeavored, by separate prohibitions, restrictions, and exclusions, to influence the conduct of that kingdom in this particular, but the want of concert, arising from the want of a general authority and from clashing and dissimilar views in the State, has hitherto frustrated every experiment of the kind, and will continue to do so as long as the same obstacles to a uniformity of measures continue to exist. The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy. The commerce of the German empire [2] is in continual trammels from the multiplicity of the duties which the several princes and states exact upon the merchandises passing through their territories, by means of which the fine streams and navigable rivers with which Germany is so happily watered are rendered almost useless. Though the genius of the people of this country might never permit this description to be strictly applicable to us, yet we may reasonably expect, from the gradual conflicts of State regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens. The power of raising armies, by the most obvious construction of the articles of the Confederation, is merely a power of making requisitions upon the States for quotas of men. This practice in the course of the late war, was found replete with objections to a vigorous and to an economical system of defense. It gave birth to a competition between the States which created a kind of auction for men. In order to furnish the quotas required of them, they outbid each other till bounties grew to an enormous and insupportable size. The hope of a still further increase afforded an inducement to those who were disposed to serve to procrastinate their enlistment, and disinclined them from engaging for any considerable periods. Hence, slow and scanty levies of men, in the most critical emergencies of our affairs; short enlistments at an unparalleled expense; continual fluctuations in the troops, ruinous to their discipline and subjecting the public safety frequently to the perilous crisis of a disbanded army. Hence, also, those oppressive expedients for raising men which were upon several occasions practiced, and which nothing but the enthusiasm of liberty would have induced the people to endure. This method of raising troops is not more unfriendly to economy and vigor than it is to an equal distribution of the burden. The States near the seat of war, influenced by motives of self-preservation, made efforts to furnish their quotas, which even exceeded their abilities; while those at a distance from danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate pressure of this inequality was not in this case, as in that of the contributions of money, alleviated by the hope of a final liquidation. The States which did not pay their proportions of money might at least be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies of men. We shall not, however, see much reason to regret the want of this hope, when we consider how little prospect there is, that the most delinquent States will ever be able to make compensation for their pecuniary failures. The system of quotas and requisitions, whether it be applied to men or money, is, in every view, a system of imbecility in the Union, and of inequality and injustice among the members. The right of equal suffrage among the States is another exceptionable part of the Confederation. Every idea of proportion and every rule of fair representation conspire to condemn a principle, which gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New York; and to Delaware an equal voice in the national deliberations with Pennsylvania, or Virginia, or North Carolina. Its operation contradicts the fundamental maxim of republican government, which requires that the sense of the majority should prevail. Sophistry may reply, that sovereigns are equal, and that a majority of the votes of the States will be a majority of confederated America. But this kind of logical legerdemain will never counteract the plain suggestions of justice and common-sense. It may happen that this majority of States is a small minority of the people of America [3]; and two thirds of the people of America could not long be persuaded, upon the credit of artificial distinctions and syllogistic subtleties, to submit their interests to the management and disposal of one third. The larger States would after a while revolt from the idea of receiving the law from the smaller. To acquiesce in such a privation of their due importance in the political scale, would be not merely to be insensible to the love of power, but even to sacrifice the desire of equality. It is neither rational to expect the first, nor just to require the last. The smaller States, considering how peculiarly their safety and welfare depend on union, ought readily to renounce a pretension which, if not relinquished, would prove fatal to its duration. It may be objected to this, that not seven but nine States, or two thirds of the whole number, must consent to the most important resolutions; and it may be thence inferred that nine States would always comprehend a majority of the Union. But this does not obviate the impropriety of an equal vote between States of the most unequal dimensions and populousness; nor is the inference accurate in point of fact; for we can enumerate nine States which contain less than a majority of the people [4]; and it is constitutionally possible that these nine may give the vote. Besides, there are matters of considerable moment determinable by a bare majority; and there are others, concerning which doubts have been entertained, which, if interpreted in favor of the sufficiency of a vote of seven States, would extend its operation to interests of the first magnitude. In addition to this, it is to be observed that there is a probability of an increase in the number of States, and no provision for a proportional augmentation of the ratio of votes. But this is not all: what at first sight may seem a remedy, is, in reality, a poison.

To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision), is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress, from the nonattendance of a few States, have been frequently in the situation of a Polish diet, where a single VOTE has been sufficient to put a stop to all their movements. A sixtieth part of the Union, which is about the proportion of Delaware and Rhode Island, has several times been able to oppose an entire bar to its operations. This is one of those refinements which, in practice, has an effect the reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of something approaching towards it, has been founded upon a supposition that it would contribute to security. But its real operation is to embarrass the administration, to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority. In those emergencies of a nation, in which the goodness or badness, the weakness or strength of its government, is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even happy when such compromises can take place: for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy. It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption, as well as to domestic faction, than that which permits the sense of the majority to decide; though the contrary of this has been presumed. The mistake has proceeded from not attending with due care to the mischiefs that may be occasioned by obstructing the progress of government at certain critical seasons. When the concurrence of a large number is required by the Constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will likely TO BE DONE, but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering the doing what may be necessary, and of keeping affairs in the same unfavorable posture in which they may happen to stand at particular periods. Suppose, for instance, we were engaged in a war, in conjunction with one foreign nation, against another. Suppose the necessity of our situation demanded peace, and the interest or ambition of our ally led him to seek the prosecution of the war, with views that might justify us in making separate terms. In such a state of things, this ally of ours would evidently find it much easier, by his bribes and intrigues, to tie up the hands of government from making peace, where two thirds of all the votes were requisite to that object, than where a simple majority would suffice. In the first case, he would have to corrupt a smaller number; in the last, a greater number. Upon the same principle, it would be much easier for a foreign power with which we were at war to perplex our councils and embarrass our exertions. And, in a commercial view, we may be subjected to similar inconveniences. A nation, with which we might have a treaty of commerce, could with much greater facility prevent our forming a connection with her competitor in trade, though such a connection should be ever so beneficial to ourselves. Evils of this description ought not to be regarded as imaginary. One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption. An hereditary monarch, though often disposed to sacrifice his subjects to his ambition, has so great a personal interest in the government and in the external glory of the nation, that it is not easy for a foreign power to give him an equivalent for what he would sacrifice by treachery to the state. The world has accordingly been witness to few examples of this species of royal prostitution, though there have been abundant specimens of every other kind. In republics, persons elevated from the mass of the community, by the suffrages of their fellow-citizens, to stations of great pre-eminence and power, may find compensations for betraying their trust, which, to any but minds animated and guided by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is that history furnishes us with so many mortifying examples of the prevalence of foreign corruption in republican governments. How much this contributed to the ruin of the ancient commonwealths has been already delineated. It is well known that the deputies of the United Provinces have, in various instances, been purchased by the emissaries of the neighboring kingdoms. The Earl of Chesterfield (if my memory serves me right), in a letter to his court, intimates that his success in an important negotiation must depend on his obtaining a major's commission for one of those deputies. And in Sweden the parties were alternately bought by France and England in so barefaced and notorious a manner that it excited universal disgust in the nation, and was a principal cause that the most limited monarch in Europe, in a single day, without tumult, violence, or opposition, became one of the most absolute and uncontrolled. A circumstance which crowns the defects of the Confederation remains yet to be mentioned, the want of a judiciary power. Laws are a dead letter without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. To produce uniformity in these determinations, they ought to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. These ingredients are both indispensable. If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. There are endless diversities in the opinions of men. We often see not only different courts but the judges of the same court differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one court paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice. This is the more necessary where the frame of the government is so compounded that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if the particular tribunals are invested with a right of ultimate jurisdiction, besides the contradictions to be expected from difference of opinion, there will be much to fear from the bias of local views and prejudices, and from the interference of local regulations. As often as such an interference was to happen, there would be reason to apprehend that the provisions of the particular laws might be preferred to those of the general laws; for nothing is more natural to men in office than to look with peculiar deference towards that authority to which they owe their official existence. The treaties of the United States, under the present Constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation? In this review of the Confederation, I have confined myself to the exhibition of its most material defects; passing over those imperfections in its details by which even a great part of the power intended to be conferred upon it has been in a great measure rendered abortive. It must be by this time evident to all men of reflection, who can divest themselves of the prepossessions of preconceived opinions, that it is a system so radically vicious and unsound, as to admit not of amendment but by an entire change in its leading features and characters. The organization of Congress is itself utterly improper for the exercise of those powers which are necessary to be deposited in the Union. A single assembly may be a proper receptacle of those slender, or rather fettered, authorities, which have been heretofore delegated to the federal head; but it would be inconsistent with all the principles of good government, to intrust it with those additional

powers which, even the moderate and more rational adversaries of the proposed Constitution admit, ought to reside in the United States. If that plan should not be adopted, and if the necessity of the Union should be able to withstand the ambitious aims of those men who may indulge magnificent schemes of personal aggrandizement from its dissolution, the probability would be, that we should run into the project of conferring supplementary powers upon Congress, as they are now constituted; and either the machine, from the intrinsic feebleness of its structure, will moulder into pieces, in spite of our ill-judged efforts to prop it; or, by successive augmentations of its force an energy, as necessity might prompt, we shall finally accumulate, in a single body, all the most important prerogatives of sovereignty, and thus entail upon our posterity one of the most execrable forms of government that human infatuation ever contrived. Thus, we should create in reality that very tyranny which the adversaries of the new Constitution either are, or affect to be, solicitous to avert. It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers, and has, in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a State, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain that a PARTY to a COMPACT has a right to revoke that COMPACT, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority. PUBLIUS. FNA1-@1 This, as nearly as I can recollect, was the sense of his speech on introducing the last bill. FNA1-@2 Encyclopedia, article "Empire." FNA1-@3 New Hampshire, Rhode Island, New Jersey, Delaware, Georgia, South Carolina, and Maryland are a majority of the whole number of the States, but they do not contain one third of the people. FNA1-@4 Add New York and Connecticut to the foregoing seven, and they will be less than a majority.

FEDERALIST No. 23

The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union From the New York Packet. Tuesday, December 18, 1787.

HAMILTON

To the People of the State of New York: THE necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union, is the point at the examination of which we are now arrived. This inquiry will naturally divide itself into three branches the objects to be provided for by the federal government, the quantity of power necessary to the accomplishment of those objects, the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head. 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. If the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government, the essential point which will remain to be adjusted will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same State the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and imprudently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success. Who is likely to make suitable provisions for the public defense, as that body to which the guardianship of the public safety is

confided; which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the States, can alone establish uniformity and concert in the plans and measures by which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defense, and leaving in the State governments the EFFECTIVE powers by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just accomplished? Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, as to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people OUGHT TO DELEGATE TO ANY GOVERNMENT, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention ought to have confined themselves to showing, that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative. I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the observations which have been made in the course of these papers have served to place the reverse of that position in as clear a light as any matter still in the womb of time and experience can be susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading entire limits of the present Confederacy. PUBLIUS.

FEDERALIST No. 24

The Powers Necessary to the Common Defense Further Considered For the Independent Journal.

HAMILTON

To the People of the State of New York: To THE powers proposed to be conferred upon the federal government, in respect to the creation and direction of the national forces, I have met with but one specific objection, which, if I understand it right, is this, that proper provision has not been made against the existence of standing armies in time of peace; an objection which, I shall now endeavor to show, rests on weak and unsubstantial foundations. It has indeed been brought forward in the most vague and general form, supported only by bold assertions, without the appearance of argument; without even the sanction of theoretical opinions; in contradiction to the practice of other free nations, and to the general sense of America, as expressed in most of the existing constitutions. The propriety of this remark will appear, the moment it is recollected that the objection under consideration turns upon a supposed necessity of restraining the LEGISLATIVE authority of the nation, in the article of military establishments; a principle unheard of, except in one or two of our State constitutions, and rejected in all the rest. A stranger to our politics, who was to read our newspapers at the present juncture, without having previously inspected the plan reported by the convention, would be naturally led to one of two conclusions: either that it contained a positive injunction, that standing armies should be kept up in time of peace; or that it vested in the EXECUTIVE the whole power of levying troops, without subjecting his discretion, in any shape, to the control of the legislature. If he came afterwards to peruse the plan itself, he would be surprised to discover, that neither the one nor the other was the case; that the whole power of raising armies was lodged in the LEGISLATURE, not in the EXECUTIVE; that this legislature was to be a popular body, consisting of the representatives of the people periodically elected; and that instead of the provision he had supposed in favor of standing armies, there was to be found, in respect to this object, an important qualification even of the legislative discretion, in that clause which forbids the appropriation of money for the support of an army for any longer period than two years a precaution which, upon a nearer view of it, will appear to be a great and real security against the keeping up of troops without evident necessity. Disappointed in his first surmise, the person I have supposed would be apt to pursue his conjectures a little further. He would naturally say to himself, it is impossible that all this vehement and pathetic declamation can be without some colorable pretext. It must needs be that this people, so jealous of their liberties, have, in all the preceding models of the constitutions which they have established, inserted the most precise and rigid precautions on this point, the omission of which, in the new plan, has given birth to all this apprehension and clamor. If, under this impression, he proceeded to pass in review the several State constitutions, how great would be his disappointment to find that TWO ONLY of them [1] contained an interdiction of standing armies in time of peace; that the other eleven had either observed a profound silence on the subject, or had in express terms admitted the right of the Legislature to authorize their existence. Still, however he would be persuaded that there must be some plausible foundation for the cry raised on this head. He would never be able to imagine, while any source of information remained unexplored, that it was nothing more than an experiment upon the public credulity, dictated either by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous. It would probably occur to him, that he would be likely to find the precautions he was in search of in the primitive compact between the States. Here, at length, he would expect to meet with a solution of the enigma. No doubt, he would observe to himself, the existing Confederation must contain the most explicit provisions against military establishments in time of peace; and a departure from this model, in a favorite point, has occasioned the discontent which appears to influence these political champions. If he should now apply himself to a careful and critical survey of the articles of Confederation, his astonishment would not only be increased, but would acquire a mixture of indignation, at the unexpected discovery, that these articles, instead of containing the prohibition he looked for, and though they had, with jealous

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circumspection, restricted the authority of the State legislatures in this particular, had not imposed a single restraint on that of the United States. If he happened to be a man of quick sensibility, or ardent temper, he could now no longer refrain from regarding these clamors as the dishonest artifices of a sinister and unprincipled opposition to a plan which ought at least to receive a fair and candid examination from all sincere lovers of their country! How else, he would say, could the authors of them have been tempted to vent such loud censures upon that plan, about a point in which it seems to have conformed itself to the general sense of America as declared in its different forms of government, and in which it has even superadded a new and powerful guard unknown to any of them? If, on the contrary, he happened to be a man of calm and dispassionate feelings, he would indulge a sigh for the frailty of human nature, and would lament, that in a matter so interesting to the happiness of millions, the true merits of the question should be perplexed and entangled by expedients so unfriendly to an impartial and right determination. Even such a man could hardly forbear remarking, that a conduct of this kind has too much the appearance of an intention to mislead the people by alarming their passions, rather than to convince them by arguments addressed to their understandings. But however little this objection may be countenanced, even by precedents among ourselves, it may be satisfactory to take a nearer view of its intrinsic merits. From a close examination it will appear that restraints upon the discretion of the legislature in respect to military establishments in time of peace, would be improper to be imposed, and if imposed, from the necessities of society, would be unlikely to be observed. Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excess of confidence or security. On one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. This situation and the vicinity of the West India Islands, belonging to these two powers create between them, in respect to their American possessions and in relation to us, a common interest. The savage tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them. The improvements in the art of navigation have, as to the facility of communication, rendered distant nations, in a great measure, neighbors. Britain and Spain are among the principal maritime powers of Europe. A future concert of views between these nations ought not to be regarded as improbable. The increasing remoteness of consanguinity is every day diminishing the force of the family compact between France and Spain. And politicians have ever with great reason considered the ties of blood as feeble and precarious links of political connection. These circumstances combined, admonish us not to be too sanguine in considering ourselves as entirely out of the reach of danger. Previous to the Revolution, and ever since the peace, there has been a constant necessity for keeping small garrisons on our Western frontier. No person can doubt that these will continue to be indispensable, if it should only be against the ravages and depredations of the Indians. These garrisons must either be furnished by occasional detachments from the militia, or by permanent corps in the pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia would not long, if at all, submit to be dragged from their occupations and families to perform that most disagreeable duty in times of profound peace. And if they could be prevailed upon or compelled to do it, the increased expense of a frequent rotation of service, and the loss of labor and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burdensome and injurious to the public as ruinous to private citizens. The latter resource of permanent corps in the pay of the government amounts to a standing army in time of peace; a small one, indeed, but not the less real for being small. Here is a simple view of the subject, that shows us at once the impropriety of a constitutional interdiction of such establishments, and the necessity of leaving the matter to the discretion and prudence of the legislature. In proportion to our increase in strength, it is probable, nay, it may be said certain, that Britain and Spain would augment their military establishments in our neighborhood. If we should not be willing to be exposed, in a naked and defenseless condition, to their insults and encroachments, we should find it expedient to increase our frontier garrisons in some ratio to the force by which our Western settlements might be annoyed. There are, and will be, particular posts, the possession of which will include the command of large districts of territory, and facilitate future invasions of the remainder. It may be added that some of those posts will be keys to the trade with the Indian nations. Can any man think it would be wise to leave such posts in a situation to be at any instant seized by one or the other of two neighboring and formidable powers? To act this part would be to desert all the usual maxims of prudence and policy. If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavor, as soon as possible, to have a navy. To this purpose there must be dock-yards and arsenals; and for the defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that purpose; but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, be found an indispensable security against descents for the destruction of the arsenals and dock-yards, and sometimes of the fleet itself. PUBLIUS. FNA1-@1 This statement of the matter is taken from the printed collection of State constitutions. Pennsylvania and North Carolina are the two which contain the interdiction in these words: "As standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This is, in truth, rather a CAUTION than a PROHIBITION. New Hampshire, Massachusetts, Delaware, and Maryland have, in each of their bills of rights, a clause to this effect: "Standing armies are dangerous to liberty, and ought not to be raised or kept up WITHOUT THE CONSENT OF THE LEGISLATURE"; which is a formal admission of the authority of the Legislature. New York has no bills of rights, and her constitution says not a word about the matter. No bills of rights appear annexed to the constitutions of the other States, except the foregoing, and their constitutions are equally silent. I am told, however that one or two States have bills of rights which do not appear in this collection; but that those also recognize the right of the legislative authority in this respect.

FEDERALIST No. 25

The Same Subject Continued (The Powers Necessary to the Common Defense Further Considered) From the New York Packet. Friday, December 21, 1787.

HAMILTON

To the People of the State of New York: IT MAY perhaps be urged that the objects enumerated in the preceding number ought to be provided for by the State governments, under the direction of the Union. But this would be, in reality, an inversion of the primary principle of our political association, as it would in practice transfer the care of the common defense from the federal head to the individual members: a project oppressive to some States, dangerous to all, and baneful to the Confederacy. The territories of Britain, Spain, and of the Indian nations in our neighborhood do not border on particular States, but encircle the Union from Maine to Georgia. The danger, though in different degrees, is therefore common. And the means of guarding against it ought, in like manner, to be the objects of common councils and of a common treasury. It happens that some States, from local situation, are more directly exposed. New York is of this class. Upon the plan of separate provisions, New York would have to sustain the whole weight of the establishments requisite to her immediate safety, and to the mediate or ultimate protection of her neighbors. This would neither be equitable as it respected New York nor safe as it respected the other States. Various inconveniences would attend such a system. The States, to whose lot it might fall to support the necessary establishments, would be as little able as willing, for a considerable time to come, to bear the burden of competent provisions. The security of all would thus be subjected to the parsimony, improvidence, or inability of a part. If the resources of such part becoming more abundant and extensive, its

provisions should be proportionally enlarged, the other States would quickly take the alarm at seeing the whole military force of the Union in the hands of two or three of its members, and those probably amongst the most powerful. They would each choose to have some counterpoise, and pretenses could easily be contrived. In this situation, military establishments, nourished by mutual jealousy, would be apt to swell beyond their natural or proper size; and being at the separate disposal of the members, they would be engines for the abridgment or demolition of the national authority. Reasons have been already given to induce a supposition that the State governments will too naturally be prone to a rivalry with that of the Union, the foundation of which will be the love of power; and that in any contest between the federal head and one of its members the people will be most apt to unite with their local government. If, in addition to this immense advantage, the ambition of the members should be stimulated by the separate and independent possession of military forces, it would afford too strong a temptation and too great a facility to them to make enterprises upon, and finally to subvert, the constitutional authority of the Union. On the other hand, the liberty of the people would be less safe in this state of things than in that which left the national forces in the hands of the national government. As far as an army may be considered as a dangerous weapon of power, it had better be in those hands of which the people are most likely to be jealous than in those of which they are least likely to be jealous. For it is a truth, which the experience of ages has attested, that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion. The framers of the existing Confederation, fully aware of the danger to the Union from the separate possession of military forces by the States, have, in express terms, prohibited them from having either ships or troops, unless with the consent of Congress. The truth is, that the existence of a federal government and military establishments under State authority are not less at variance with each other than a due supply of the federal treasury and the system of quotas and requisitions. There are other lights besides those already taken notice of, in which the impropriety of restraints on the discretion of the national legislature will be equally manifest. The design of the objection, which has been mentioned, is to preclude standing armies in time of peace, though we have never been informed how far it is designed the prohibition should extend; whether to raising armies as well as to KEEPING THEM UP in a season of tranquillity or not. If it be confined to the latter it will have no precise signification, and it will be ineffectual for the purpose intended. When armies are once raised what shall be denominated "keeping them up," contrary to the sense of the Constitution? What time shall be requisite to ascertain the violation? Shall it be a week, a month, a year? Or shall we say they may be continued as long as the danger which occasioned their being raised continues? This would be to admit that they might be kept up IN TIME OF PEACE, against threatening or impending danger, which would be at once to deviate from the literal meaning of the prohibition, and to introduce an extensive latitude of construction. Who shall judge of the continuance of the danger? This must undoubtedly be submitted to the national government, and the matter would then be brought to this issue, that the national government, to provide against apprehended danger, might in the first instance raise troops, and might afterwards keep them on foot as long as they supposed the peace or safety of the community was in any degree of jeopardy. It is easy to perceive that a discretion so latitudinarian as this would afford ample room for eluding the force of the provision. The supposed utility of a provision of this kind can only be founded on the supposed probability, or at least possibility, of a combination between the executive and the legislative, in some scheme of usurpation. Should this at any time happen, how easy would it be to fabricate pretenses of approaching danger! Indian hostilities, instigated by Spain or Britain, would always be at hand. Provocations to produce the desired appearances might even be given to some foreign power, and appeased again by timely concessions. If we can reasonably presume such a combination to have been formed, and that the enterprise is warranted by a sufficient prospect of success, the army, when once raised, from whatever cause, or on whatever pretext, may be applied to the execution of the project. If, to obviate this consequence, it should be resolved to extend the prohibition to the RAISING of armies in time of peace, the United States would then exhibit the most extraordinary spectacle which the world has yet seen, that of a nation incapacitated by its Constitution to prepare for defense, before it was actually invaded. As the ceremony of a formal denunciation of war has of late fallen into disuse, the presence of an enemy within our territories must be waited for, as the legal warrant to the government to begin its levies of men for the protection of the State. We must receive the blow, before we could even prepare to return it. All that kind of policy by which nations anticipate distant danger, and meet the gathering storm, must be abstained from, as contrary to the genuine maxims of a free government. We must expose our property and liberty to the mercy of foreign invaders, and invite them by our weakness to seize the naked and defenseless prey, because we are afraid that rulers, created by our choice, dependent on our will, might endanger that liberty, by an abuse of the means necessary to its preservation. Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defense. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice. All violent policy, as it is contrary to the natural and experienced course of human affairs, defeats itself. Pennsylvania, at this instant, affords an example of the truth of this remark. The Bill of Rights of that State declares that standing armies are dangerous to liberty, and ought not to be kept up in time of peace. Pennsylvania, nevertheless, in a time of profound peace, from the existence of partial disorders in one or two of her counties, has resolved to raise a body of troops; and in all probability will keep them up as long as there is any appearance of danger to the public peace. The conduct of Massachusetts affords a lesson on the same subject, though on different ground. That State (without waiting for the sanction of Congress, as the articles of the Confederation require) was compelled to raise troops to quell a domestic insurrection, and still keeps a corps in pay to prevent a revival of the spirit of revolt. The particular constitution of Massachusetts opposed no obstacle to the measure; but the instance is still of use to instruct us that cases are likely to occur under our government, as well as under those of other nations, which will sometimes render a military force in time of peace essential to the security of the society, and that it is therefore improper in this respect to control the legislative discretion. It also teaches us, in its application to the United States, how little the rights of a feeble government are likely to be respected, even by its own constituents. And it teaches us, in addition to the rest, how unequal parchment provisions are to a struggle with public necessity. It was a fundamental maxim of the Lacedaemonian commonwealth, that the post of admiral should not be conferred twice on the same person. The Peloponnesian confederates, having suffered a severe defeat at sea from the Athenians, demanded Lysander, who had before served with success in that capacity, to command the combined fleets. The Lacedaemonians, to gratify their allies, and yet preserve the semblance of an adherence to their ancient institutions, had recourse to the flimsy subterfuge of investing Lysander with the real power of admiral, under the nominal title of vice-admiral. This instance is selected from among a multitude that might be cited to confirm the truth already advanced and illustrated by domestic examples; which is, that nations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at

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all, or is less urgent and palpable. PUBLIUS.

FEDERALIST No. 26

The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered For the Independent Journal.

HAMILTON

To the People of the State of New York: IT WAS a thing hardly to be expected that in a popular revolution the minds of men should stop at that happy mean which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. A failure in this delicate and important point is the great source of the inconveniences we experience, and if we are not cautious to avoid a repetition of the error, in our future attempts to rectify and ameliorate our system, we may travel from one chimerical project to another; we may try change after change; but we shall never be likely to make any material change for the better. The idea of restraining the legislative authority, in the means of providing for the national defense, is one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened. We have seen, however, that it has not had thus far an extensive prevalence; that even in this country, where it made its first appearance, Pennsylvania and North Carolina are the only two States by which it has been in any degree patronized; and that all the others have refused to give it the least countenance; wisely judging that confidence must be placed somewhere; that the necessity of doing it, is implied in the very act of delegating power; and that it is better to hazard the abuse of that confidence than to embarrass the government and endanger the public safety by impolitic restrictions on the legislative authority. The opponents of the proposed Constitution combat, in this respect, the general decision of America; and instead of being taught by experience the propriety of correcting any extremes into which we may have heretofore run, they appear disposed to conduct us into others still more dangerous, and more extravagant. As if the tone of government had been found too high, or too rigid, the doctrines they teach are calculated to induce us to depress or to relax it, by expedients which, upon other occasions, have been condemned or forborne. It may be affirmed without the imputation of invective, that if the principles they inculcate, on various points, could so far obtain as to become the popular creed, they would utterly unfit the people of this country for any species of government whatever. But a danger of this kind is not to be apprehended. The citizens of America have too much discernment to be argued into anarchy. And I am much mistaken, if experience has not wrought a deep and solemn conviction in the public mind, that greater energy of government is essential to the welfare and prosperity of the community. It may not be amiss in this place concisely to remark the origin and progress of the idea, which aims at the exclusion of military establishments in time of peace. Though in speculative minds it may arise from a contemplation of the nature and tendency of such institutions, fortified by the events that have happened in other ages and countries, yet as a national sentiment, it must be traced to those habits of thinking which we derive from the nation from whom the inhabitants of these States have in general sprung. In England, for a long time after the Norman Conquest, the authority of the monarch was almost unlimited. Inroads were gradually made upon the prerogative, in favor of liberty, first by the barons, and afterwards by the people, till the greatest part of its most formidable pretensions became extinct. But it was not till the revolution in 1688, which elevated the Prince of Orange to the throne of Great Britain, that English liberty was completely triumphant. As incident to the undefined power of making war, an acknowledged prerogative of the crown, Charles II. had, by his own authority, kept on foot in time of peace a body of 5,000 regular troops. And this number James II. increased to 30,000; who were paid out of his civil list. At the revolution, to abolish the exercise of so dangerous an authority, it became an article of the Bill of Rights then framed, that "the raising or keeping a standing army within the kingdom in time of peace, UNLESS WITH THE CONSENT OF PARLIAMENT, was against law." In that kingdom, when the pulse of liberty was at its highest pitch, no security against the danger of standing armies was thought requisite, beyond a prohibition of their being raised or kept up by the mere authority of the executive magistrate. The patriots, who effected that memorable revolution, were too temperate, too wellinformed, to think of any restraint on the legislative discretion. They were aware that a certain number of troops for guards and garrisons were indispensable; that no precise bounds could be set to the national exigencies; that a power equal to every possible contingency must exist somewhere in the government: and that when they referred the exercise of that power to the judgment of the legislature, they had arrived at the ultimate point of precaution which was reconcilable with the safety of the community. From the same source, the people of America may be said to have derived an hereditary impression of danger to liberty, from standing armies in time of peace. The circumstances of a revolution quickened the public sensibility on every point connected with the security of popular rights, and in some instances raise the warmth of our zeal beyond the degree which consisted with the due temperature of the body politic. The attempts of two of the States to restrict the authority of the legislature in the article of military establishments, are of the number of these instances. The principles which had taught us to be jealous of the power of an hereditary monarch were by an injudicious excess extended to the representatives of the people in their popular assemblies. Even in some of the States, where this error was not adopted, we find unnecessary declarations that standing armies ought not to be kept up, in time of peace, WITHOUT THE CONSENT OF THE LEGISLATURE. I call them unnecessary, because the reason which had introduced a similar provision into the English Bill of Rights is not applicable to any of the State constitutions. The power of raising armies at all, under those constitutions, can by no construction be deemed to reside anywhere else, than in the legislatures themselves; and it was superfluous, if not absurd, to declare that a matter should not be done without the consent of a body, which alone had the power of doing it. Accordingly, in some of these constitutions, and among others, in that of this State of New York, which has been justly celebrated, both in Europe and America, as one of the best of the forms of government established in this country, there is a total silence upon the subject. It is remarkable, that even in the two States which seem to have meditated an interdiction of military establishments in time of peace, the mode of expression made use of is rather cautionary than prohibitory. It is not said, that standing armies SHALL NOT BE kept up, but that they OUGHT NOT to be kept up, in time of peace. This ambiguity of terms appears to have been the result of a conflict between jealousy and conviction; between the desire of excluding such establishments at all events, and the persuasion that an absolute exclusion would be unwise and unsafe. Can it be doubted that such a provision, whenever the situation of public affairs was understood to require a departure from it, would be interpreted by the legislature into a mere admonition, and would be made to yield to the necessities or supposed necessities of the State? Let the fact already mentioned, with respect to Pennsylvania, decide. What then (it may be asked) is the use of such a provision, if it cease to operate the moment there is an inclination to disregard it? Let us examine whether there be any comparison, in point of efficacy, between the provision alluded to and that which is contained in the new Constitution, for restraining the appropriations of money for military purposes to the period of two years. The former, by aiming at too much, is calculated to effect nothing; the latter, by steering clear of an imprudent extreme, and by being perfectly compatible with a proper provision for the exigencies of the nation, will have a salutary and powerful operation. The legislature of the United States will be OBLIGED, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They are not AT LIBERTY to vest in the executive department permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence. As the spirit of party, in different degrees, must be expected to infect all political bodies, there will be, no doubt, persons in the national

legislature willing enough to arraign the measures and criminate the views of the majority. The provision for the support of a military force will always be a favorable topic for declamation. As often as the question comes forward, the public attention will be roused and attracted to the subject, by the party in opposition; and if the majority should be really disposed to exceed the proper limits, the community will be warned of the danger, and will have an opportunity of taking measures to guard against it. Independent of parties in the national legislature itself, as often as the period of discussion arrived, the State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent. Schemes to subvert the liberties of a great community REQUIRE TIME to mature them for execution. An army, so large as seriously to menace those liberties, could only be formed by progressive augmentations; which would suppose, not merely a temporary combination between the legislature and executive, but a continued conspiracy for a series of time. Is it probable that such a combination would exist at all? Is it probable that it would be persevered in, and transmitted along through all the successive variations in a representative body, which biennial elections would naturally produce in both houses? Is it presumable, that every man, the instant he took his seat in the national Senate or House of Representatives, would commence a traitor to his constituents and to his country? Can it be supposed that there would not be found one man, discerning enough to detect so atrocious a conspiracy, or bold or honest enough to apprise his constituents of their danger? If such presumptions can fairly be made, there ought at once to be an end of all delegated authority. The people should resolve to recall all the powers they have heretofore parted with out of their own hands, and to divide themselves into as many States as there are counties, in order that they may be able to manage their own concerns in person. If such suppositions could even be reasonably made, still the concealment of the design, for any duration, would be impracticable. It would be announced, by the very circumstance of augmenting the army to so great an extent in time of profound peace. What colorable reason could be assigned, in a country so situated, for such vast augmentations of the military force? It is impossible that the people could be long deceived; and the destruction of the project, and of the projectors, would quickly follow the discovery. It has been said that the provision which limits the appropriation of money for the support of an army to the period of two years would be unavailing, because the Executive, when once possessed of a force large enough to awe the people into submission, would find resources in that very force sufficient to enable him to dispense with supplies from the acts of the legislature. But the question again recurs, upon what pretense could he be put in possession of a force of that magnitude in time of peace? If we suppose it to have been created in consequence of some domestic insurrection or foreign war, then it becomes a case not within the principles of the objection; for this is levelled against the power of keeping up troops in time of peace. Few persons will be so visionary as seriously to contend that military forces ought not to be raised to quell a rebellion or resist an invasion; and if the defense of the community under such circumstances should make it necessary to have an army so numerous as to hazard its liberty, this is one of those calamities for which there is neither preventative nor cure. It cannot be provided against by any possible form of government; it might even result from a simple league offensive and defensive, if it should ever be necessary for the confederates or allies to form an army for common defense. But it is an evil infinitely less likely to attend us in a united than in a disunited state; nay, it may be safely asserted that it is an evil altogether unlikely to attend us in the latter situation. It is not easy to conceive a possibility that dangers so formidable can assail the whole Union, as to demand a force considerable enough to place our liberties in the least jeopardy, especially if we take into our view the aid to be derived from the militia, which ought always to be counted upon as a valuable and powerful auxiliary. But in a state of disunion (as has been fully shown in another place), the contrary of this supposition would become not only probable, but almost unavoidable. PUBLIUS.

FEDERALIST No. 27

The Same Subject Continued (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered) From the New York Packet. Tuesday, December 25, 1787.

HAMILTON

To the People of the State of New York: IT HAS been urged, in different shapes, that a Constitution of the kind proposed by the convention cannot operate without the aid of a military force to execute its laws. This, however, like most other things that have been alleged on that side, rests on mere general assertion, unsupported by any precise or intelligible designation of the reasons upon which it is founded. As far as I have been able to divine the latent meaning of the objectors, it seems to originate in a presupposition that the people will be disinclined to the exercise of federal authority in any matter of an internal nature. Waiving any exception that might be taken to the inaccuracy or inexplicitness of the distinction between internal and external, let us inquire what ground there is to presuppose that disinclination in the people. Unless we presume at the same time that the powers of the general government will be worse administered than those of the State government, there seems to be no room for the presumption of ill-will, disaffection, or opposition in the people. I believe it may be laid down as a general rule that their confidence in and obedience to a government will commonly be proportioned to the goodness or badness of its administration. It must be admitted that there are exceptions to this rule; but these exceptions depend so entirely on accidental causes, that they cannot be considered as having any relation to the intrinsic merits or demerits of a constitution. These can only be judged of by general principles and maxims. Various reasons have been suggested, in the course of these papers, to induce a probability that the general government will be better administered than the particular governments; the principal of which reasons are that the extension of the spheres of election will present a greater option, or latitude of choice, to the people; that through the medium of the State legislatures which are select bodies of men, and which are to appoint the members of the national Senate there is reason to expect that this branch will generally be composed with peculiar care and judgment; that these circumstances promise greater knowledge and more extensive information in the national councils, and that they will be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill-humors, or temporary prejudices and propensities, which, in smaller societies, frequently contaminate the public councils, beget injustice and oppression of a part of the community, and engender schemes which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust. Several additional reasons of considerable force, to fortify that probability, will occur when we come to survey, with a more critical eye, the interior structure of the edifice which we are invited to erect. It will be sufficient here to remark, that until satisfactory reasons can be assigned to justify an opinion, that the federal government is likely to be administered in such a manner as to render it odious or contemptible to the people, there can be no reasonable foundation for the supposition that the laws of the Union will meet with any greater obstruction from them, or will stand in need of any other methods to enforce their execution, than the laws of the particular members. The hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionally strong discouragement to it. Will not the government of the Union, which, if possessed of a due degree of power, can call to its aid the collective resources of the whole Confederacy, be more likely to repress the FORMER sentiment and to inspire the LATTER, than that of a single State, which can only command the resources within itself? A turbulent faction in a State may easily suppose itself able to contend with the friends to the government in that State; but it can hardly be so infatuated as to imagine itself a match for the combined efforts of the Union. If this reflection be just, there is less danger of resistance

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from irregular combinations of individuals to the authority of the Confederacy than to that of a single member. I will, in this place, hazard an observation, which will not be the less just because to some it may appear new; which is, that the more the operations of the national authority are intermingled in the ordinary exercise of government, the more the citizens are accustomed to meet with it in the common occurrences of their political life, the more it is familiarized to their sight and to their feelings, the further it enters into those objects which touch the most sensible chords and put in motion the most active springs of the human heart, the greater will be the probability that it will conciliate the respect and attachment of the community. Man is very much a creature of habit. A thing that rarely strikes his senses will generally have but little influence upon his mind. A government continually at a distance and out of sight can hardly be expected to interest the sensations of the people. The inference is, that the authority of the Union, and the affections of the citizens towards it, will be strengthened, rather than weakened, by its extension to what are called matters of internal concern; and will have less occasion to recur to force, in proportion to the familiarity and comprehensiveness of its agency. The more it circulates through those channels and currents in which the passions of mankind naturally flow, the less will it require the aid of the violent and perilous expedients of compulsion. One thing, at all events, must be evident, that a government like the one proposed would bid much fairer to avoid the necessity of using force, than that species of league contend for by most of its opponents; the authority of which should only operate upon the States in their political or collective capacities. It has been shown that in such a Confederacy there can be no sanction for the laws but force; that frequent delinquencies in the members are the natural offspring of the very frame of the government; and that as often as these happen, they can only be redressed, if at all, by war and violence. The plan reported by the convention, by extending the authority of the federal head to the individual citizens of the several States, will enable the government to employ the ordinary magistracy of each, in the execution of its laws. It is easy to perceive that this will tend to destroy, in the common apprehension, all distinction between the sources from which they might proceed; and will give the federal government the same advantage for securing a due obedience to its authority which is enjoyed by the government of each State, in addition to the influence on public opinion which will result from the important consideration of its having power to call to its assistance and support the resources of the whole Union. It merits particular attention in this place, that the laws of the Confederacy, as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which all officers, legislative, executive, and judicial, in each State, will be bound by the sanction of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS; and will be rendered AUXILIARY to the enforcement of its laws. [1%] Any man who will pursue, by his own reflections, the consequences of this situation, will perceive that there is good ground to calculate upon a regular and peaceable execution of the laws of the Union, if its powers are administered with a common share of prudence. If we will arbitrarily suppose the contrary, we may deduce any inferences we please from the supposition; for it is certainly possible, by an injudicious exercise of the authorities of the best government that ever was, or ever can be instituted, to provoke and precipitate the people into the wildest excesses. But though the adversaries of the proposed Constitution should presume that the national rulers would be insensible to the motives of public good, or to the obligations of duty, I would still ask them how the interests of ambition, or the views of encroachment, can be promoted by such a conduct? PUBLIUS. FNAI-@1 The sophistry which has been employed to show that this will tend to the destruction of the State governments, will, in its will, in its proper place, be fully detected.

FEDERALIST No. 28

The Same Subject Continued (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered) For the Independent Journal.

HAMILTON

To the People of the State of New York: THAT there may happen cases in which the national government may be necessitated to resort to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes arise in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government), has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction. Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression; and the national presumption is that they would be ready to do their duty. An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support. If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the employment of a different kind of force might become unavoidable. It appears that Massachusetts found it necessary to raise troops for repressing the disorders within that State; that Pennsylvania, from the mere apprehension of commotions among a part of her citizens, has thought proper to have recourse to the same measure. Suppose the State of New York had been inclined to re-establish her lost jurisdiction over the inhabitants of Vermont, could she have hoped for success in such an enterprise from the efforts of the militia alone? Would she not have been compelled to raise and to maintain a more regular force for the execution of her design? If it must then be admitted that the necessity of recurring to a force different from the militia, in cases of this extraordinary nature, is applicable to the State governments themselves, why should the possibility, that the national government might be under a like necessity, in similar extremities, be made an objection to its existence? Is it not surprising that men who declare an attachment to the Union in the abstract, should urge as an objection to the proposed Constitution what applies with tenfold weight to the plan for which they contend; and what, as far as it has any foundation in truth, is an inevitable consequence of civil society upon an enlarged scale? Who would not prefer that possibility to the unceasing agitations and frequent revolutions which are the continual scourges of petty republics? Let us pursue this examination in another light. Suppose, in lieu of one general system, two, or three, or even four Confederacies were to be formed, would not the same difficulty oppose itself to the operations of either of these Confederacies? Would not each of them be exposed to the same casualties; and when these happened, be obliged to have recourse to the same expedients for upholding its authority which are objected to in a government for all the States? Would the militia, in this supposition, be more ready or more able to support the federal authority than in the case of a general union? All candid and intelligent men must, upon due consideration, acknowledge that the principle of the objection is equally applicable to either of the two cases; and that whether we have one government for all the States, or different governments for different parcels of them, or even if there should be an entire separation of the States, there might sometimes be a necessity to make use of a force constituted differently from the militia, to preserve the peace of the community and to maintain the just authority of the laws against those violent invasions of them which amount to insurrections and rebellions. Independent of all other reasonings upon the subject, it is a full answer to those who require a more preemptory provision against military establishments in time of peace, to

say that the whole power of the proposed government is to be in the hands of the representatives of the people. This is the essential, and, after all, only efficacious security for the rights and privileges of the people, which is attainable in civil society. [1] If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers, may be exerted with infinitely better prospect of success than against those of the rulers of an individual state. In a single state, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of which it consists, having no distinct government in each, can take no regular measures for defense. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo. The smaller the extent of the territory, the more difficult will it be for the people to form a regular or systematic plan of opposition, and the more easy will it be to defeat their early efforts. Intelligence can be more speedily obtained of their preparations and movements, and the military force in the possession of the usurpers can be more rapidly directed against the part where the opposition has begun. In this situation there must be a peculiar coincidence of circumstances to insure success to the popular resistance. The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small, and of course more competent to a struggle with the attempts of the government to establish a tyranny. But in a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress. How wise will it be in them by cherishing the union to preserve to themselves an advantage which can never be too highly prized! It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty. The great extent of the country is a further security. We have already experienced its utility against the attacks of a foreign power. And it would have precisely the same effect against the enterprises of ambitious rulers in the national councils. If the federal army should be able to quell the resistance of one State, the distant States would have it in their power to make head with fresh forces. The advantages obtained in one place must be abandoned to subdue the opposition in others; and the moment the part which had been reduced to submission was left to itself, its efforts would be renewed, and its resistance revive. We should recollect that the extent of the military force must, at all events, be regulated by the resources of the country. For a long time to come, it will not be possible to maintain a large army; and as the means of doing this increase, the population and natural strength of the community will proportionably increase. When will the time arrive that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their State governments, to take measures for their own defense, with all the celerity, regularity, and system of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning. PUBLIUS. FNAI-@1 Its full efficacy will be examined hereafter.

FEDERALIST No. 29

Concerning the Militia From the Daily Advertiser. Thursday, January 10, 1788

HAMILTON

To the People of the State of New York: THE power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defense, and of watching over the internal peace of the Confederacy. It requires no skill in the science of war to discern that uniformity in the organization and discipline of the militia would be attended with the most beneficial effects, whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp and of the field with mutual intelligence and concert an advantage of peculiar moment in the operations of an army; and it would fit them much sooner to acquire the degree of proficiency in military functions which would be essential to their usefulness. This desirable uniformity can only be accomplished by confiding the regulation of the militia to the direction of the national authority. It is, therefore, with the most evident propriety, that the plan of the convention proposes to empower the Union 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." Of the different grounds which have been taken in opposition to the plan of the convention, there is none that was so little to have been expected, or is so untenable in itself, as the one from which this particular provision has been attacked. If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security. If standing armies are dangerous to liberty, an efficacious power over the militia, in the body to whose care the protection of the State is committed, ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions. If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence than a thousand prohibitions upon paper. In order to cast an odium upon the power of calling forth the militia to execute the laws of the Union, it has been remarked that there is nowhere any provision in the proposed Constitution for calling out the POSSE COMITATUS, to assist the magistrate in the execution of his duty, whence it has been inferred, that military force was intended to be his only auxiliary. There is a striking incoherence in the objections which have appeared, and sometimes even from the same quarter, not much calculated to inspire a very favorable opinion of the sincerity or fair dealing of their authors. The same persons who tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE COMITATUS. The latter, fortunately, is as much short of the truth as the former exceeds it. It would be as absurd to doubt, that a right to pass all laws NECESSARY AND PROPER to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws, as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes would involve that of varying the rules of descent and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it. It being therefore evident that the supposition of a want of power to require the aid of the POSSE COMITATUS is entirely destitute of color, it will follow, that the conclusion which has been drawn

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from it, in its application to the authority of the federal government over the militia, is as uncandid as it is illogical. What reason could there be to infer, that force was intended to be the sole instrument of authority, merely because there is a power to make use of it when necessary? What shall we think of the motives which could induce men of sense to reason in this manner? How shall we prevent a conflict between charity and judgment? By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend danger from the militia itself, in the hands of the federal government. It is observed that select corps may be formed, composed of the young and ardent, who may be rendered subservient to the views of arbitrary power. What plan for the regulation of the militia may be pursued by the national government, is impossible to be foreseen. But so far from viewing the matter in the same light with those who object to select corps as dangerous, were the Constitution ratified, and were I to deliver my sentiments to a member of the federal legislature from this State on the subject of a militia establishment, I should hold to him, in substance, the following discourse: "The project of disciplining all the militia of the United States is as futile as it would be injurious, if it were capable of being carried into execution. A tolerable expertness in military movements is a business that requires time and practice. It is not a day, or even a week, that will suffice for the attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss. It would form an annual deduction from the productive labor of the country, to an amount which, calculating upon the present numbers of the people, would not fall far short of the whole expense of the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and industry to so considerable an extent, would be unwise: and the experiment, if made, could not succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year. "But though the scheme of disciplining the whole nation must be abandoned as mischievous or impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as possible, be adopted for the proper establishment of the militia. The attention of the government ought particularly to be directed to the formation of a select corps of moderate extent, upon such principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have an excellent body of well-trained militia, ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist." Thus differently from the adversaries of the proposed Constitution should I reason on the same subject, deducing arguments of safety from the very sources which they represent as fraught with danger and perdition. But how the national legislature may reason on the point, is a thing which neither they nor I can foresee. There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instill prejudices at any price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia, and to command its services when necessary, while the particular States are to have the SOLE AND EXCLUSIVE APPOINTMENT OF THE OFFICERS? If it were possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia. In reading many of the publications against the Constitution, a man is apt to imagine that he is perusing some ill-written tale or romance, which instead of natural and agreeable images, exhibits to the mind nothing but frightful and distorted shapes "Gorgons, hydras, and chimeras dire"; discolored and disfiguring whatever it represents, and transforming everything it touches into a monster. A sample of this is to be observed in the exaggerated and improbable suggestions which have taken place respecting the power of calling for the services of the militia. That of New Hampshire is to be marched to Georgia, of Georgia to New Hampshire, of New York to Kentucky, and of Kentucky to Lake Champlain. Nay, the debts due to the French and Dutch are to be paid in militiamen instead of louis d'ors and ducats. At one moment there is to be a large army to lay prostrate the liberties of the people; at another moment the militia of Virginia are to be dragged from their homes five or six hundred miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to be transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians. Do the persons who rave at this rate imagine that their art or their eloquence can impose any conceits or absurdities upon the people of America for infallible truths? If there should be an army to be made use of as the engine of despotism, what need of the militia? If there should be no army, whither would the militia, irritated by being called upon to undertake a distant and hopeless expedition, for the purpose of riveting the chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as so wicked a project, to crush them in their imagined intrinsements of power, and to make them an example of the just vengeance of an abused and incensed people? Is this the way in which usurpers stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually commence their career by wanton and disgusting acts of power, calculated to answer no end, but to draw upon themselves universal hatred and execration? Are suppositions of this sort the sober admonitions of discerning patriots to a discerning people? Or are they the inflammatory ravings of incendiaries or distempered enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable ambition, it is impossible to believe that they would employ such preposterous means to accomplish their designs. In times of insurrection, or invasion, it would be natural and proper that the militia of a neighboring State should be marched into another, to resist a common enemy, or to guard the republic against the violence of faction or sedition. This was frequently the case, in respect to the first object, in the course of the late war; and this mutual succor is, indeed, a principal end of our political association. If the power of affording it be placed under the direction of the Union, there will be no danger of a supine and listless inattention to the dangers of a neighbor, till its near approach had superadded the incitements of self-preservation to the too feeble impulses of duty and sympathy. PUBLIUS.

FEDERALIST No. 30

Concerning the General Power of Taxation From the New York Packet. Friday, December 28, 1787.

HAMILTON

To the People of the State of New York: IT HAS been already observed that the federal government ought to possess the power of providing for the support of the national forces; in which proposition was intended to be included the expense of raising troops, of building and equipping fleets, and all other expenses in any wise connected with military arrangements and operations. But these are not

the only objects to which the jurisdiction of the Union, in respect to revenue, must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury. The conclusion is, that there must be interwoven, in the frame of the government, a general power of taxation, in one shape or another. Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of it, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and, in a short course of time, perish. In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the lives and fortunes of his subjects, has no right to impose a new tax. The consequence is that he permits the bashaws or governors of provinces to pillage the people without mercy; and, in turn, squeezes out of them the sums of which he stands in need, to satisfy his own exigencies and those of the state. In America, from a like cause, the government of the Union has gradually dwindled into a state of decay, approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries would be promoted by competent authorities in the proper hands, to provide the revenues which the necessities of the public might require? The present Confederation, feeble as it is intended to repose in the United States, an unlimited power of providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle, it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which compose that compact (as has already been stated), are authorized to ascertain and call for any sums of money necessary, in their judgment, to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are in every constitutional sense obligatory upon the States. These have no right to question the propriety of the demand; no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of Union; though it may seldom or never have been avowedly claimed, yet in practice it has been constantly exercised, and would continue to be so, as long as the revenues of the Confederacy should remain dependent on the intermediate agency of its members. What the consequences of this system have been, is within the knowledge of every man the least conversant in our public affairs, and has been amply unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation, which affords ample cause both of mortification to ourselves, and of triumph to our enemies. What remedy can there be for this situation, but in a change of the system which has produced it in a change of the fallacious and delusive system of quotas and requisitions? What substitute can there be imagined for this ignis fatuus in finance, but that of permitting the national government to raise its own revenues by the ordinary methods of taxation authorized in every well-ordered constitution of civil government? Ingenious men may declaim with plausibility on any subject; but no human ingenuity can point out any other expedient to rescue us from the inconveniences and embarrassments naturally resulting from defective supplies of the public treasury. The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call INTERNAL and EXTERNAL taxation. The former they would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head. This distinction, however, would violate the maxim of good sense and sound policy, which dictates that every POWER ought to be in proportion to its OBJECT; and would still leave the general government in a kind of tutelage to the State governments, inconsistent with every idea of vigor or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of the Union? Taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves, that this resource alone, upon the most improved scale, would even suffice for its present necessities. Its future necessities admit not of calculation or limitation; and upon the principle, more than once adverted to, the power of making provision for them as they arise ought to be equally unconfined. I believe it may be regarded as a position warranted by the history of mankind, that, IN THE USUAL PROGRESS OF THINGS, THE NECESSITIES OF A NATION, IN EVERY STAGE OF ITS EXISTENCE, WILL BE FOUND AT LEAST EQUAL TO ITS RESOURCES. To say that deficiencies may be provided for by requisitions upon the States, is on the one hand to acknowledge that this system cannot be depended upon, and on the other hand to depend upon it for every thing beyond a certain limit. Those who have carefully attended to its vices and deformities as they have been exhibited by experience or delineated in the course of these papers, must feel invincible repugnancy to trusting the national interests in any degree to its operation. Its inevitable tendency, whenever it is brought into activity, must be to enfeeble the Union, and sow the seeds of discord and contention between the federal head and its members, and between the members themselves. Can it be expected that the deficiencies would be better supplied in this mode than the total wants of the Union have heretofore been supplied in the same mode? It ought to be recollected that if less will be required from the States, they will have proportionably less means to answer the demand. If the opinions of those who contend for the distinction which has been mentioned were to be received as evidence of truth, one would be led to conclude that there was some known point in the economy of national affairs at which it would be safe to stop and to say: Thus far the ends of public happiness will be promoted by supplying the wants of government, and all beyond this is unworthy of our care or anxiety. How is it possible that a government half supplied and always necessitous, can fulfill the purposes of its institution, can provide for the security, advance the prosperity, or support the reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at home or respectability abroad? How can its administration be any thing else than a succession of expedients temporizing, impotent, disgraceful? How will it be able to avoid a frequent sacrifice of its engagements to immediate necessity? How can it undertake or execute any liberal or enlarged plans of public good? Let us attend to what would be the effects of this situation in the very first war in which we should happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost duties answers the purposes of a provision for the public debt and of a peace establishment for the Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience that proper dependence could not be placed on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated from their proper objects to the defense of the State? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was becoming essential to the public safety. To imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In the modern system of war, nations the most wealthy are obliged to have recourse to large loans. A country so little opulent as ours must feel this necessity in a much stronger degree. But who would lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure would be as limited in their extent as burdensome in their conditions. They would be made upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors, with a sparing hand and at enormous premiums. It may perhaps be imagined that, from the scantiness of the resources of the country, the necessity of diverting the established funds in the case supposed would exist, though the national government should possess an unrestrained power

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of taxation. But two considerations will serve to quiet all apprehension on this head: one is, that we are sure the resources of the community, in their full extent, will be brought into activity for the benefit of the Union; the other is, that whatever deficiencies there may be, can without difficulty be supplied by loans. The power of creating new funds upon new objects of taxation, by its own authority, would enable the national government to borrow as far as its necessities might require. Foreigners, as well as the citizens of America, could then reasonably repose confidence in its engagements; but to depend upon a government that must itself depend upon thirteen other governments for the means of fulfilling its contracts, when once its situation is clearly understood, would require a degree of credulity not often to be met with in the pecuniary transactions of mankind, and little reconcilable with the usual sharp-sightedness of avarice. Reflections of this kind may have trifling weight with men who hope to see realized in America the halcyon scenes of the poetic or fabulous age; but to those who believe we are likely to experience a common portion of the vicissitudes and calamities which have fallen to the lot of other nations, they must appear entitled to serious attention. Such men must behold the actual situation of their country with painful solicitude, and deprecate the evils which ambition or revenge might, with too much facility, inflict upon it. PUBLIUS.

FEDERALIST No. 31

The Same Subject Continued (Concerning the General Power of Taxation) From the New York Packet. Tuesday, January 1, 1788.

HAMILTON

To the People of the State of New York: IN DISQUISITIONS of every kind, there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind. Where it produces not this effect, it must proceed either from some defect or disorder in the organs of perception, or from the influence of some strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that "the whole is greater than its part; things equal to the same are equal to one another; two straight lines cannot enclose a space; and all right angles are equal to each other." Of the same nature are these other maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to be proportioned to the end; that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation. And there are other truths in the two latter sciences which, if they cannot pretend to rank in the class of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to the natural and unsophisticated dictates of common-sense, that they challenge the assent of a sound and unbiased mind, with a degree of force and conviction almost equally irresistible. The objects of geometrical inquiry are so entirely abstracted from those pursuits which stir up and put in motion the unruly passions of the human heart, that mankind, without difficulty, adopt not only the more simple theorems of the science, but even those abstruse paradoxes which, however they may appear susceptible of demonstration, are at variance with the natural conceptions which the mind, without the aid of philosophy, would be led to entertain upon the subject. The INFINITE DIVISIBILITY of matter, or, in other words, the INFINITE divisibility of a FINITE thing, extending even to the minutest atom, is a point agreed among geometers, though not less incomprehensible to common-sense than any of those mysteries in religion, against which the batteries of infidelity have been so industriously leveled. But in the sciences of morals and politics, men are found far less tractable. To a certain degree, it is right and useful that this should be the case. Caution and investigation are a necessary armor against error and imposition. But this untractableness may be carried too far, and may degenerate into obstinacy, perverseness, or disingenuity. Though it cannot be pretended that the principles of moral and political knowledge have, in general, the same degree of certainty with those of the mathematics, yet they have much better claims in this respect than, to judge from the conduct of men in particular situations, we should be disposed to allow them. The obscurity is much oftener in the passions and prejudices of the reasoner than in the subject. Men, upon too many occasions, do not give their own understandings fair play; but, yielding to some untoward bias, they entangle themselves in words and confound themselves in subtleties. How else could it happen (if we admit the objectors to be sincere in their opposition), that positions so clear as those which manifest the necessity of a general power of taxation in the government of the Union, should have to encounter any adversaries among men of discernment? Though these positions have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as introductory to an examination of what may have been offered by way of objection to them. They are in substance as follows: A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people. As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualties and dangers to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community. As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies. As theory and practice conspire to prove that the power of procuring revenue is unavailing when exercised over the States in their collective capacities, the federal government must of necessity be invested with an unqualified power of taxation in the ordinary modes. Did not experience evince the contrary, it would be natural to conclude that the propriety of a general power of taxation in the national government might safely be permitted to rest on the evidence of these propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that the antagonists of the proposed Constitution, so far from acquiescing in their justness or truth, seem to make their principal and most zealous effort against this part of the plan. It may therefore be satisfactory to analyze the arguments with which they combat it. Those of them which have been most labored with that view, seem in substance to amount to this: "It is not true, because the exigencies of the Union may not be susceptible of limitation, that its power of laying taxes ought to be unconfined. Revenue is as requisite to the purposes of the local administrations as to those of the Union; and the former are at least of equal importance with the latter to the happiness of the people. It is, therefore, as necessary that the State governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect to the wants of the Union. But an indefinite power of taxation in the LATTER might, and probably would in time, deprive the FORMER of the means of providing for their own necessities; and would subject them entirely to the mercy of the national legislature. As the laws of the Union are to become the supreme law of the land, as it is to have power to pass all laws that may be NECESSARY for carrying into execution the authorities with which it is proposed to vest it, the national government might at any time abolish the taxes imposed for State objects upon the pretense of an interference with its own. It might allege a necessity of doing this in order to give efficacy to the national revenues. And thus all the resources of taxation might by degrees become the subjects of federal monopoly, to the entire exclusion and destruction of the State governments." This mode of reasoning appears sometimes to turn upon the supposition of usurpation in the national government; at other times it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light that it can be admitted to have any pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure till it gets bewildered amidst the labyrinths of an enchanted castle, and knows

not on which side to turn to extricate itself from the perplexities into which it has so rashly adventured. Whatever may be the limits or modifications of the powers of the Union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here what I have observed in substance in another place, that all observations founded upon the danger of usurpation ought to be referred to the composition and structure of the government, not to the nature or extent of its powers. The State governments, by their original constitutions, are invested with complete sovereignty. In what does our security consist against usurpation from that quarter? Doubtless in the manner of their formation, and in a due dependence of those who are to administer them upon the people. If the proposed construction of the federal government be found, upon an impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all apprehensions on the score of usurpation ought to be discarded. It should not be forgotten that a disposition in the State governments to encroach upon the rights of the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State governments. What side would be likely to prevail in such a conflict, must depend on the means which the contending parties could employ toward insuring success. As in republics strength is always on the side of the people, and as there are weighty reasons to induce a belief that the State governments will commonly possess most influence over them, the natural conclusion is that such contests will be most apt to end to the disadvantage of the Union; and that there is greater probability of encroachments by the members upon the federal head, than by the federal head upon the members. But it is evident that all conjectures of this kind must be extremely vague and fallible; and that it is by far the safest course to lay them altogether aside, and to confine our attention wholly to the nature and extent of the powers as they are delineated in the Constitution. Every thing beyond this must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the State governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate the objections which have been made to an indefinite power of taxation in the United States. PUBLIUS.

FEDERALIST No. 32

The Same Subject Continued (Concerning the General Power of Taxation) From the Daily Advertiser. Thursday, January 3, 1788.

HAMILTON

To the People of the State of New York: ALTHOUGH I am of opinion that there would be no real danger of the consequences which seem to be apprehended to the State governments from a power in the Union to control them in the levies of money, because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments of the State governments, and a conviction of the utility and necessity of local administrations for local purposes, would be a complete barrier against the oppressive use of such a power; yet I am willing here to allow, in its full extent, the justness of the reasoning which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And making this concession, I affirm that (with the sole exception of duties on imports and exports) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution. An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally CONTRADICTIONARY and REPUGNANT. I use these terms to distinguish this last case from another which might appear to resemble it, but which would, in fact, be essentially different; I mean where the exercise of a concurrent jurisdiction might be productive of occasional interferences in the POLICY of any branch of administration, but would not imply any direct contradiction or repugnancy in point of constitutional authority. These three cases of exclusive jurisdiction in the federal government may be exemplified by the following instances: The last clause but one in the eighth section of the first article provides expressly that Congress shall exercise "EXCLUSIVE LEGISLATION" over the district to be appropriated as the seat of government. This answers to the first case. The first clause of the same section empowers Congress "TO LAY AND COLLECT TAXES, DUTIES, IMPOSTS AND EXCISES"; and the second clause of the tenth section of the same article declares that, "NO STATE SHALL, without the consent of Congress, LAY ANY IMPOSTS OR DUTIES ON IMPORTS OR EXPORTS, except for the purpose of executing its inspection laws." Hence would result an exclusive power in the Union to lay duties on imports and exports, with the particular exception mentioned; but this power is abridged by another clause, which declares that no tax or duty shall be laid on articles exported from any State; in consequence of which qualification, it now only extends to the DUTIES ON IMPORTS. This answers to the second case. The third will be found in that clause which declares that Congress shall have power "to establish a UNIFORM RULE of naturalization throughout the United States." This must necessarily be exclusive; because if each State had power to prescribe a DISTINCT RULE, there could not be a UNIFORM RULE. A case which may perhaps be thought to resemble the latter, but which is in fact widely different, affects the question immediately under consideration. I mean the power of imposing taxes on all articles other than exports and imports. This, I contend, is manifestly a concurrent and coequal authority in the United States and in the individual States. There is plainly no expression in the granting clause which makes that power EXCLUSIVE in the Union. There is no independent clause or sentence which prohibits the States from exercising it. So far is this from being the case, that a plain and conclusive argument to the contrary is to be deduced from the restraint laid upon the States in relation to duties on imports and exports. This restriction implies an admission that, if it were not inserted, the States would possess the power it excludes; and it implies a further admission, that as to all other taxes, the authority of the States remains undiminished. In any other view it would be both unnecessary and dangerous; it would be unnecessary, because if the grant to the Union of the power of laying such duties implied the exclusion of the States, or even their subordination in this particular, there could be no need of such a restriction; it would be dangerous, because the introduction of it leads directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors be just, could not have been intended; I mean that the States, in all cases to which the restriction did not apply, would have a concurrent power of taxation with the Union. The restriction in question amounts to what lawyers call a NEGATIVE PREGNANT that is, a NEGATION of one thing, and an AFFIRMANCE of another; a negation of the authority of the States to impose taxes on imports and exports, and an affirmation of their authority to impose them on all other articles. It would be mere sophistry to argue that it was meant to exclude them ABSOLUTELY from the imposition of taxes of the former kind, and to leave them at liberty to lay others SUBJECT TO THE CONTROL of the national legislature. The restraining or prohibitory clause only says, that they shall not, WITHOUT THE CONSENT OF CONGRESS, lay such duties; and if we are to understand this in the sense last mentioned, the Constitution would then be made to introduce a formal provision for the

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sake of a very absurd conclusion; which is, that the States, WITH THE CONSENT of the national legislature, might tax imports and exports; and that they might tax every other article, UNLESS CONTROLLED by the same body. If this was the intention, why not leave it, in the first instance, to what is alleged to be the natural operation of the original clause, conferring a general power of taxation upon the Union? It is evident that this could not have been the intention, and that it will not bear a construction of the kind. As to a supposition of repugnancy between the power of taxation in the States and in the Union, it cannot be supported in that sense which would be requisite to work an exclusion of the States. It is, indeed, possible that a tax might be laid on a particular article by a State which might render it INEXPEDIENT that thus a further tax should be laid on the same article by the Union; but it would not imply a constitutional inability to impose a further tax. The quantity of the imposition, the expediency or in expediency of an increase on either side, would be mutually questions of prudence; but there would be involved no direct contradiction of power. The particular policy of the national and of the State systems of finance might now and then not exactly coincide, and might require reciprocal forbearances. It is not, however a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy that can by implication alienate and extinguish a pre-existing right of sovereignty. The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign power; and the rule that all authorities, of which the States are not explicitly divested in favor of the Union, remain with them in full vigor, is not a theoretical consequence of that division, but is clearly admitted by the whole tenor of the instrument which contains the articles of the proposed Constitution. We there find that, notwithstanding the affirmative grants of general authorities, there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the States, to insert negative clauses prohibiting the exercise of them by the States. The tenth section of the first article consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the act, which justifies the position I have advanced and refutes every hypothesis to the contrary. PUBLIUS.

FEDERALIST No. 33

The Same Subject Continued (Concerning the General Power of Taxation) From the Daily Advertiser. January 3, 1788.

HAMILTON

To the People of the State of New York: THE residue of the argument against the provisions of the Constitution in respect to taxation is ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan under consideration authorizes the national legislature "to make all laws which shall be NECESSARY and PROPER for carrying into execution THE POWERS by that Constitution vested in the government of the United States, or in any department or officer thereof"; and the second clause of the sixth article declares, "that the Constitution and the laws of the United States made IN PURSUANCE THEREOF, and the treaties made by their authority shall be the SUPREME LAW of the land, any thing in the constitution or laws of any State to the contrary notwithstanding." These two clauses have been the source of much virulent invective and petulant declamation against the proposed Constitution. They have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers. This is so clear a proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity. What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but NECESSARY and PROPER laws? This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws NECESSARY and PROPER for the execution of that power; and what does the unfortunate and culminated provision in question do more than declare the same truth, to wit, that the national legislature, to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws NECESSARY and PROPER to carry it into effect? I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the Union. But the same process will lead to the same result, in relation to all other powers declared in the Constitution. And it is EXPRESSLY to execute these powers that the sweeping clause, as it has been affectively called, authorizes the national legislature to pass all NECESSARY and PROPER laws. If there is any thing exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated. The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless. But SUSPICION may ask, Why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the Union. The Convention probably foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most threatens our political welfare is that the State governments will finally sap the foundations of the Union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction. Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare. But it may be again asked, Who is to judge of the NECESSITY and PROPRIETY of the laws to be passed for executing the powers of the Union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers as upon the declaratory clause; and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers, and its constituents in the last. If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced constructions of its authority (which, indeed, cannot easily be imagined), the Federal legislature should attempt to vary the law of descent in any State, would it not be evident that, in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the State? Suppose, again, that upon the pretense of an interference with its revenues, it should undertake to abrogate a land tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the

imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths. But it is said that the laws of the Union are to be the SUPREME LAW of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow from this doctrine that acts of the large society which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION; which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed. Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State, (unless upon imports and exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. As far as an improper accumulation of taxes on the same object might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this respect which would avoid any material inconvenience. The inference from the whole is, that the individual States would, under the proposed Constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper that this CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an entire subordination, in respect to this branch of power, of the State authority to that of the Union. PUBLIUS.

FEDERALIST No. 34

The Same Subject Continued (Concerning the General Power of Taxation) From the New York Packet. Friday, January 4, 1788.

HAMILTON

To the People of the State of New York: I FLATTER myself it has been clearly shown in my last number that the particular States, under the proposed Constitution, would have COEQUAL authority with the Union in the article of revenue, except as to duties on imports. As this leaves open to the States far the greatest part of the resources of the community, there can be no color for the assertion that they would not possess means as abundant as could be desired for the supply of their own wants, independent of all external control. That the field is sufficiently wide will more fully appear when we come to advert to the inconsiderable share of the public expenses for which it will fall to the lot of the State governments to provide. To argue upon abstract principles that this co-ordinate authority cannot exist, is to set up supposition and theory against fact and reality. However proper such reasonings might be to show that a thing OUGHT NOT TO EXIST, they are wholly to be rejected when they are made use of to prove that it does not exist contrary to the evidence of the fact itself. It is well known that in the Roman republic the legislative authority, in the last resort, resided for ages in two different political bodies not as branches of the same legislature, but as distinct and independent legislatures, in each of which an opposite interest prevailed: in one the patrician; in the other, the plebian. Many arguments might have been adduced to prove the unfitness of two such seemingly contradictory authorities, each having power to ANNUL or REPEAL the acts of the other. But a man would have been regarded as frantic who should have attempted at Rome to disprove their existence. It will be readily understood that I allude to the COMITIA CENTURIATA and the COMITIA TRIBUTA. The former, in which the people voted by centuries, was so arranged as to give a superiority to the patrician interest; in the latter, in which numbers prevailed, the plebian interest had an entire predominancy. And yet these two legislatures coexisted for ages, and the Roman republic attained to the utmost height of human greatness. In the case particularly under consideration, there is no such contradiction as appears in the example cited; there is no power on either side to annul the acts of the other. And in practice there is little reason to apprehend any inconvenience; because, in a short course of time, the wants of the States will naturally reduce themselves within A VERY NARROW COMPASS; and in the interim, the United States will, in all probability, find it convenient to abstain wholly from those objects to which the particular States would be inclined to resort. To form a more precise judgment of the true merits of this question, it will be well to advert to the proportion between the objects that will require a federal provision in respect to revenue, and those which will require a State provision. We shall discover that the former are altogether unlimited, and that the latter are circumscribed within very moderate bounds. In pursuing this inquiry, we must bear in mind that we are not to confine our view to the present period, but to look forward to remote futurity. Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power, proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible safely to limit that capacity. It is true, perhaps, that a computation might be made with sufficient accuracy to answer the purpose of the quantity of revenue requisite to discharge the subsisting engagements of the Union, and to maintain those establishments which, for some time to come, would suffice in time of peace. But would it be wise, or would it not rather be the extreme of folly, to stop at this point, and to leave the government intrusted with the care of the national defense in a state of absolute incapacity to provide for the protection of the community against future invasions of the public peace, by foreign war or domestic convulsions? If, on the contrary, we ought to exceed this point, where can we stop, short of an indefinite power of providing for emergencies as they may arise? Though it is easy to assert, in general terms, the possibility of forming a rational judgment of a due provision against probable dangers, yet we may safely challenge those who make the assertion to bring forward their data, and may affirm that they would be found as vague and uncertain as any that could be produced to establish the probable duration of the world. Observations confined to the mere prospects of internal attacks can deserve no weight; though even these will admit of no satisfactory calculation; but if we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy and of naval wars would involve contingencies that must baffle all the efforts of political arithmetic. Admitting that we ought to try the novel and absurd experiment in politics of tying up the hands of government from offensive war founded upon reasons of state, yet certainly we ought not to disable it from guarding the community against the ambition or enmity of

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other nations. A cloud has been for some time hanging over the European world. If it should break forth into a storm, who can insure us that in its progress a part of its fury would not be spent upon us? No reasonable man would hastily pronounce that we are entirely out of its reach. Or if the combustible materials that now seem to be collecting should be dissipated without coming to maturity, or if a flame should be kindled without extending to us, what security can we have that our tranquillity will long remain undisturbed from some other cause or from some other quarter? Let us recollect that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition of others. Who could have imagined at the conclusion of the last war that France and Britain, wearied and exhausted as they both were, would so soon have looked with so hostile an aspect upon each other? To judge from the history of mankind, we shall be compelled to conclude that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquillity, is to calculate on the weaker springs of the human character. What are the chief sources of expense in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answers plainly is, wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society. The expenses arising from those institutions which are relative to the mere domestic police of a state, to the support of its legislative, executive, and judicial departments, with their different appendages, and to the encouragement of agriculture and manufactures (which will comprehend almost all the objects of state expenditure), are insignificant in comparison with those which relate to the national defense. In the kingdom of Great Britain, where all the ostentatious apparatus of monarchy is to be provided for, not above a fifteenth part of the annual income of the nation is appropriated to the class of expenses last mentioned; the other fourteen fifteenths are absorbed in the payment of the interest of debts contracted for carrying on the wars in which that country has been engaged, and in the maintenance of fleets and armies. If, on the one hand, it should be observed that the expenses incurred in the prosecution of the ambitious enterprises and vainglorious pursuits of a monarchy are not a proper standard by which to judge of those which might be necessary in a republic, it ought, on the other hand, to be remarked that there should be as great a disproportion between the profusion and extravagance of a wealthy kingdom in its domestic administration, and the frugality and economy which in that particular become the modest simplicity of republican government. If we balance a proper deduction from one side against that which it is supposed ought to be made from the other, the proportion may still be considered as holding good. But let us advert to the large debt which we have ourselves contracted in a single war, and let us only calculate on a common share of the events which disturb the peace of nations, and we shall instantly perceive, without the aid of any elaborate illustration, that there must always be an immense disproportion between the objects of federal and state expenditures. It is true that several of the States, separately, are encumbered with considerable debts, which are an excrescence of the late war. But this cannot happen again, if the proposed system be adopted; and when these debts are discharged, the only call for revenue of any consequence, which the State governments will continue to experience, will be for the mere support of their respective civil list; to which, if we add all contingencies, the total amount in every State ought to fall considerably short of two hundred thousand pounds. In framing a government for posterity as well as ourselves, we ought, in those provisions which are designed to be permanent, to calculate, not on temporary, but on permanent causes of expense. If this principle be a just one our attention would be directed to a provision in favor of the State governments for an annual sum of about two hundred thousand pounds; while the exigencies of the Union could be susceptible of no limits, even in imagination. In this view of the subject, by what logic can it be maintained that the local governments ought to command, in perpetuity, an EXCLUSIVE source of revenue for any sum beyond the extent of two hundred thousand pounds? To extend its power further, in EXCLUSION of the authority of the Union, would be to take the resources of the community out of those hands which stood in need of them for the public welfare, in order to put them into other hands which could have no just or proper occasion for them. Suppose, then, the convention had been inclined to proceed upon the principle of a repartition of the objects of revenue, between the Union and its members, in PROPORTION to their comparative necessities; what particular fund could have been selected for the use of the States, that would not either have been too much or too little too little for their present, too much for their future wants? As to the line of separation between external and internal taxes, this would leave to the States, at a rough computation, the command of two thirds of the resources of the community to defray from a tenth to a twentieth part of its expenses; and to the Union, one third of the resources of the community, to defray from nine tenths to nineteen twentieths of its expenses. If we desert this boundary and content ourselves with leaving to the States an exclusive power of taxing houses and lands, there would still be a great disproportion between the MEANS and the END; the possession of one third of the resources of the community to supply, at most, one tenth of its wants. If any fund could have been selected and appropriated, equal to and not greater than the object, it would have been inadequate to the discharge of the existing debts of the particular States, and would have left them dependent on the Union for a provision for this purpose. The preceding train of observation will justify the position which has been elsewhere laid down, that "A CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an entire subordination, in respect to this branch of power, of State authority to that of the Union." Any separation of the objects of revenue that could have been fallen upon, would have amounted to a sacrifice of the great INTERESTS of the Union to the POWER of the individual States. The convention thought the concurrent jurisdiction preferable to that subordination; and it is evident that it has at least the merit of reconciling an indefinite constitutional power of taxation in the Federal government with an adequate and independent power in the States to provide for their own necessities. There remain a few other lights, in which this important subject of taxation will claim a further consideration. PUBLIUS.

FEDERALIST No. 35

The Same Subject Continued (Concerning the General Power of Taxation) For the Independent Journal.

HAMILTON

To the People of the State of New York: BEFORE we proceed to examine any other objections to an indefinite power of taxation in the Union, I shall make one general remark; which is, that if the jurisdiction of the national government, in the article of revenue, should be restricted to particular objects, it would naturally occasion an undue proportion of the public burdens to fall upon those objects. Two evils would spring from this source: the oppression of particular branches of industry; and an unequal distribution of the taxes, as well among the several States as among the citizens of the same State. Suppose, as has been contended for, the federal power of taxation were to be confined to duties on imports, it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend these duties to an injurious excess. There are persons who imagine that they can never be carried to too great a length; since the higher they are, the more it is alleged they will tend to discourage an extravagant consumption, to produce a favorable balance of trade, and to promote domestic manufactures. But all extremes are pernicious in various ways. Exorbitant duties on imported articles would beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself: they tend to render other classes of the community tributary, in an improper degree, to the manufacturing classes, to whom they give a premature monopoly of the markets; they sometimes force industry out of its more natural channels into others in which it flows with less advantage; and in the last place, they oppress the

merchant, who is often obliged to pay them himself without any retribution from the consumer. When the demand is equal to the quantity of goods at market, the consumer generally pays the duty; but when the markets happen to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his profits, but breaks in upon his capital. I am apt to think that a division of the duty, between the seller and the buyer, more often happens than is commonly imagined. It is not always possible to raise the price of a commodity in exact proportion to every additional imposition laid upon it. The merchant, especially in a country of small commercial capital, is often under a necessity of keeping prices down in order to a more expeditious sale. The maxim that the consumer is the payer, is so much oftener true than the reverse of the proposition, that it is far more equitable that the duties on imports should go into a common stock, than that they should redound to the exclusive benefit of the importing States. But it is not so generally true as to render it equitable, that those duties should form the only national fund. When they are paid by the merchant they operate as an additional tax upon the importing State, whose citizens pay their proportion of them in the character of consumers. In this view they are productive of inequality among the States; which inequality would be increased with the increased extent of the duties. The confinement of the national revenues to this species of imposts would be attended with inequality, from a different cause, between the manufacturing and the non-manufacturing States. The States which can go farthest towards the supply of their own wants, by their own manufactures, will not, according to their numbers or wealth, consume so great a proportion of imported articles as those States which are not in the same favorable situation. They would not, therefore, in this mode alone contribute to the public treasury in a ratio to their abilities. To make them do this it is necessary that recourse be had to excises, the proper objects of which are particular kinds of manufactures. New York is more deeply interested in these considerations than such of her citizens as contend for limiting the power of the Union to external taxation may be aware of. New York is an importing State, and is not likely speedily to be, to any great extent, a manufacturing State. She would, of course, suffer in a double light from restraining the jurisdiction of the Union to commercial imposts. So far as these observations tend to inculcate a danger of the import duties being extended to an injurious extreme it may be observed, conformably to a remark made in another part of these papers, that the interest of the revenue itself would be a sufficient guard against such an extreme. I readily admit that this would be the case, as long as other resources were open; but if the avenues to them were closed, HOPE, stimulated by necessity, would beget experiments, fortified by rigorous precautions and additional penalties, which, for a time, would have the intended effect, till there had been leisure to contrive expedients to elude these new precautions. The first success would be apt to inspire false opinions, which it might require a long course of subsequent experience to correct. Necessity, especially in politics, often occasions false hopes, false reasonings, and a system of measures correspondingly erroneous. But even if this supposed excess should not be a consequence of the limitation of the federal power of taxation, the inequalities spoken of would still ensue, though not in the same degree, from the other causes that have been noticed. Let us now return to the examination of objections. One which, if we may judge from the frequency of its repetition, seems most to be relied on, is, that the House of Representatives is not sufficiently numerous for the reception of all the different classes of citizens, in order to combine the interests and feelings of every part of the community, and to produce a due sympathy between the representative body and its constituents. This argument presents itself under a very specious and seducing form; and is well calculated to lay hold of the prejudices of those to whom it is addressed. But when we come to dissect it with attention, it will appear to be made up of nothing but fair-sounding words. The object it seems to aim at is, in the first place, impracticable, and in the sense in which it is contended for, is unnecessary. I reserve for another place the discussion of the question which relates to the sufficiency of the representative body in respect to numbers, and shall content myself with examining here the particular use which has been made of a contrary supposition, in reference to the immediate subject of our inquiries. The idea of an actual representation of all classes of the people, by persons of each class, is altogether visionary. Unless it were expressly provided in the Constitution, that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants, in preference to persons of their own professions or trades. Those discerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them, indeed, are immediately connected with the operations of commerce. They know that the merchant is their natural patron and friend; and they are aware, that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchant than by themselves. They are sensible that their habits in life have not been such as to give them those acquired endowments, without which, in a deliberative assembly, the greatest natural abilities are for the most part useless; and that the influence and weight, and superior acquirements of the merchants render them more equal to a contest with any spirit which might happen to infuse itself into the public councils, unfriendly to the manufacturing and trading interests. These considerations, and many others that might be mentioned prove, and experience confirms it, that artisans and manufacturers will commonly be disposed to bestow their votes upon merchants and those whom they recommend. We must therefore consider merchants as the natural representatives of all these classes of the community. With regard to the learned professions, little need be observed: they truly form no distinct interest in society, and according to their situation and talents, will be indiscriminately the objects of the confidence and choice of each other, and of other parts of the community. Nothing remains but the landed interest; and this, in a political view, and particularly in relation to taxes, I take to be perfectly united, from the wealthiest landlord down to the poorest tenant. No tax can be laid on land which will not affect the proprietor of millions of acres as well as the proprietor of a single acre. Every landholder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if we even could suppose a distinction of interest between the opulent landholder and the middling farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number, than in the assembly, which is composed of a greater number. Where the qualifications of the electors are the same, whether they have to choose a small or a large number, their votes will fall upon those in whom they have most confidence; whether these happen to be men of large fortunes, or of moderate property, or of no property at all. It is said to be necessary, that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions. But where is the danger that the interests and feelings of the different classes of citizens will not be understood or attended to by these three descriptions of men? Will not the landholder know and feel whatever will promote or insure the interest of landed property? And will he not, from his own interest in that species of property, be sufficiently prone to resist every attempt to prejudice or encumber it? Will not the merchant understand and be disposed to cultivate, as far as may be proper, the interests of the mechanic and manufacturing arts, to which his commerce is so nearly allied? Will not the man of the learned profession, who will feel a neutrality to the rivalships between the different branches of industry, be likely to prove an impartial arbiter between them, ready to promote either, so far as it shall appear to him conducive to the general interests of the society? If we take into the account the momentary humors or dispositions which may happen to prevail in particular parts of the society, and to which a wise administration will never be inattentive, is the man whose situation leads to extensive inquiry and information less likely to be a competent judge of their nature, extent, and

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foundation than one whose observation does not travel beyond the circle of his neighbors and acquaintances? Is it not natural that a man who is a candidate for the favor of the people, and who is dependent on the suffrages of his fellow-citizens for the continuance of his public honors, should take care to inform himself of their dispositions and inclinations, and should be willing to allow them their proper degree of influence upon his conduct? This dependence, and the necessity of being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they are the strong chords of sympathy between the representative and the constituent. There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best will be least likely to resort to oppressive exactions, or sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome. There can be no doubt that in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning, or an absurd one. And in that sense let every considerate citizen judge for himself where the requisite qualification is most likely to be found. PUBLIUS.

FEDERALIST No. 36

The Same Subject Continued (Concerning the General Power of Taxation) From the New York Packet. Tuesday January 8, 1788.

HAMILTON

To the People of the State of New York: WE HAVE seen that the result of the observations, to which the foregoing number has been principally devoted, is, that from the natural operation of the different interests and views of the various classes of the community, whether the representation of the people be more or less numerous, it will consist almost entirely of proprietors of land, of merchants, and of members of the learned professions, who will truly represent all those different interests and views. If it should be objected that we have seen other descriptions of men in the local legislatures, I answer that it is admitted there are exceptions to the rule, but not in sufficient number to influence the general complexion or character of the government. There are strong minds in every walk of life that will rise superior to the disadvantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from the society in general. The door ought to be equally open to all; and I trust, for the credit of human nature, that we shall see examples of such vigorous plants flourishing in the soil of federal as well as of State legislation; but occasional instances of this sort will not render the reasoning founded upon the general course of things, less conclusive. The subject might be placed in several other lights that would all lead to the same result; and in particular it might be asked, What greater affinity or relation of interest can be conceived between the carpenter and blacksmith, and the linen manufacturer or stocking weaver, than between the merchant and either of them? It is notorious that there are often as great rivalships between different branches of the mechanic or manufacturing arts as there are between any of the departments of labor and industry; so that, unless the representative body were to be far more numerous than would be consistent with any idea of regularity or wisdom in its deliberations, it is impossible that what seems to be the spirit of the objection we have been considering should ever be realized in practice. But I forbear to dwell any longer on a matter which has hitherto worn too loose a garb to admit even of an accurate inspection of its real shape or tendency. There is another objection of a somewhat more precise nature that claims our attention. It has been asserted that a power of internal taxation in the national legislature could never be exercised with advantage, as well from the want of a sufficient knowledge of local circumstances, as from an interference between the revenue laws of the Union and of the particular States. The supposition of a want of proper knowledge seems to be entirely destitute of foundation. If any question is depending in a State legislature respecting one of the counties, which demands a knowledge of local details, how is it acquired? No doubt from the information of the members of the county. Cannot the like knowledge be obtained in the national legislature from the representatives of each State? And is it not to be presumed that the men who will generally be sent there will be possessed of the necessary degree of intelligence to be able to communicate that information? Is the knowledge of local circumstances, as applied to taxation, a minute topographical acquaintance with all the mountains, rivers, streams, highways, and bypaths in each State; or is it a general acquaintance with its situation and resources, with the state of its agriculture, commerce, manufactures, with the nature of its products and consumptions, with the different degrees and kinds of its wealth, property, and industry? Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men or to boards composed of a few individuals, who digest and prepare, in the first instance, the plans of taxation, which are afterwards passed into laws by the authority of the sovereign or legislature. Inquisitive and enlightened statesmen are deemed everywhere best qualified to make a judicious selection of the objects proper for revenue; which is a clear indication, as far as the sense of mankind can have weight in the question, of the species of knowledge of local circumstances requisite to the purposes of taxation. The taxes intended to be comprised under the general denomination of internal taxes may be subdivided into those of the DIRECT and those of the INDIRECT kind. Though the objection be made to both, yet the reasoning upon it seems to be confined to the former branch. And indeed, as to the latter, by which must be understood duties and excises on articles of consumption, one is at a loss to conceive what can be the nature of the difficulties apprehended. The knowledge relating to them must evidently be of a kind that will either be suggested by the nature of the article itself, or can easily be procured from any well-informed man, especially of the mercantile class. The circumstances that may distinguish its situation in one State from its situation in another must be few, simple, and easy to be comprehended. The principal thing to be attended to, would be to avoid those articles which had been previously appropriated to the use of a particular State; and there could be no difficulty in ascertaining the revenue system of each. This could always be known from the respective codes of laws, as well as from the information of the members from the several States. The objection, when applied to real property or to houses and lands, appears to have, at first sight, more foundation, but even in this view it will not bear a close examination. Land taxes are commonly laid in one of two modes, either by ACTUAL valuations, permanent or periodical, or by OCCASIONAL assessments, at the discretion, or according to the best judgment, of certain officers whose duty it is to make them. In either case, the EXECUTION of the business, which alone requires the knowledge of local details, must be devolved upon discreet persons in the character of commissioners or assessors, elected by the people or appointed by the government for the purpose. All that the law can do must be to name the persons or to prescribe the manner of their election or appointment, to fix their numbers and qualifications and to draw the general outlines of their powers and duties. And what is there in all this that cannot as well be performed by the national legislature as by a State legislature? The attention of either can only reach to general principles; local details, as already observed, must be referred to those who are to execute the plan. But there is a simple point of view in which this matter may be placed that must be altogether satisfactory. The national legislature can make use of the SYSTEM OF EACH STATE WITHIN THAT STATE. The method of laying and collecting this species of taxes in each State can, in all its parts, be adopted and employed by the federal government. Let it be recollected that the proportion of these taxes is not to be left to the discretion of the national legislature, but is to be determined by the numbers of each State, as described in the second section of the first article. An actual census or enumeration of the people must furnish the rule, a circumstance

which effectually shuts the door to partiality or oppression. The abuse of this power of taxation seems to have been provided against with guarded circumspection. In addition to the precaution just mentioned, there is a provision that "all duties, imposts, and excises shall be UNIFORM throughout the United States." It has been very properly observed by different speakers and writers on the side of the Constitution, that if the exercise of the power of internal taxation by the Union should be discovered on experiment to be really inconvenient, the federal government may then forbear the use of it, and have recourse to requisitions in its stead. By way of answer to this, it has been triumphantly asked, Why not in the first instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be given. The first is, that the exercise of that power, if convenient, will be preferable, because it will be more effectual; and it is impossible to prove in theory, or otherwise than by the experiment, that it cannot be advantageously exercised. The contrary, indeed, appears most probable. The second answer is, that the existence of such a power in the Constitution will have a strong influence in giving efficacy to requisitions. When the States know that the Union can apply itself without their agency, it will be a powerful motive for exertion on their part. As to the interference of the revenue laws of the Union, and of its members, we have already seen that there can be no clashing or repugnancy of authority. The laws cannot, therefore, in a legal sense, interfere with each other; and it is far from impossible to avoid an interference even in the policy of their different systems. An effectual expedient for this purpose will be, mutually, to abstain from those objects which either side may have first had recourse to. As neither can CONTROL the other, each will have an obvious and sensible interest in this reciprocal forbearance. And where there is an IMMEDIATE common interest, we may safely count upon its operation. When the particular debts of the States are done away, and their expenses come to be limited within their natural compass, the possibility almost of interference will vanish. A small land tax will answer the purpose of the States, and will be their most simple and most fit resource. Many spectres have been raised out of this power of internal taxation, to excite the apprehensions of the people: double sets of revenue officers, a duplication of their burdens by double taxations, and the frightful forms of odious and oppressive poll-taxes, have been played off with all the ingenious dexterity of political legerdemain. As to the first point, there are two cases in which there can be no room for double sets of officers: one, where the right of imposing the tax is exclusively vested in the Union, which applies to the duties on imports; the other, where the object has not fallen under any State regulation or provision, which may be applicable to a variety of objects. In other cases, the probability is that the United States will either wholly abstain from the objects preoccupied for local purposes, or will make use of the State officers and State regulations for collecting the additional imposition. This will best answer the views of revenue, because it will save expense in the collection, and will best avoid any occasion of disgust to the State governments and to the people. At all events, here is a practicable expedient for avoiding such an inconvenience; and nothing more can be required than to show that evils predicted to not necessarily result from the plan. As to any argument derived from a supposed system of influence, it is a sufficient answer to say that it ought not to be presumed; but the supposition is susceptible of a more precise answer. If such a spirit should infest the councils of the Union, the most certain road to the accomplishment of its aim would be to employ the State officers as much as possible, and to attach them to the Union by an accumulation of their emoluments. This would serve to turn the tide of State influence into the channels of the national government, instead of making federal influence flow in an opposite and adverse current. But all suppositions of this kind are invidious, and ought to be banished from the consideration of the great question before the people. They can answer no other end than to cast a mist over the truth. As to the suggestion of double taxation, the answer is plain. The wants of the Union are to be supplied in one way or another; if to be done by the authority of the federal government, it will not be to be done by that of the State government. The quantity of taxes to be paid by the community must be the same in either case; with this advantage, if the provision is to be made by the Union that the capital resource of commercial imposts, which is the most convenient branch of revenue, can be prudently improved to a much greater extent under federal than under State regulation, and of course will render it less necessary to recur to more inconvenient methods; and with this further advantage, that as far as there may be any real difficulty in the exercise of the power of internal taxation, it will impose a disposition to greater care in the choice and arrangement of the means; and must naturally tend to make it a fixed point of policy in the national administration to go as far as may be practicable in making the luxury of the rich tributary to the public treasury, in order to diminish the necessity of those impositions which might create dissatisfaction in the poorer and most numerous classes of the society. Happy it is when the interest which the government has in the preservation of its own power, coincides with a proper distribution of the public burdens, and tends to guard the least wealthy part of the community from oppression! As to poll taxes, I, without scruple, confess my disapprobation of them; and though they have prevailed from an early period in those States [1] which have uniformly been the most tenacious of their rights, I should lament to see them introduced into practice under the national government. But does it follow because there is a power to lay them that they will actually be laid? Every State in the Union has power to impose taxes of this kind; and yet in several of them they are unknown in practice. Are the State governments to be stigmatized as tyrannies, because they possess this power? If they are not, with what propriety can the like power justify such a charge against the national government, or even be urged as an obstacle to its adoption? As little friendly as I am to the species of imposition, I still feel a thorough conviction that the power of having recourse to it ought to exist in the federal government. There are certain emergencies of nations, in which expedients, that in the ordinary state of things ought to be forborne, become essential to the public weal. And the government, from the possibility of such emergencies, ought ever to have the option of making use of them. The real scarcity of objects in this country, which may be considered as productive sources of revenue, is a reason peculiar to itself, for not abridging the discretion of the national councils in this respect. There may exist certain critical and tempestuous conjunctures of the State, in which a poll tax may become an inestimable resource. And as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security. I have now gone through the examination of such of the powers proposed to be vested in the United States, which may be considered as having an immediate relation to the energy of the government; and have endeavored to answer the principal objections which have been made to them. I have passed over in silence those minor authorities, which are either too inconsiderable to have been thought worthy of the hostilities of the opponents of the Constitution, or of too manifest propriety to admit of controversy. The mass of judiciary power, however, might have claimed an investigation under this head, had it not been for the consideration that its organization and its extent may be more advantageously considered in connection. This has determined me to refer it to the branch of our inquiries upon which we shall next enter. PUBLIUS. FNA1-@1 The New England States.

FEDERALIST No. 37

Concerning the Difficulties of the Convention in Devising a Proper Form of Government From the Daily Advertiser. Friday, January 11, 1788.

MADISON

To the People of the State of New York: IN REVIEWING the defects of the existing Confederation, and showing that they cannot be supplied by a government of less energy than that before the public, several of the most important principles of the latter fell of course under consideration. But as the ultimate object of these papers is to determine clearly and fully the merits of this Constitution, and the

expediency of adopting it, our plan cannot be complete without taking a more critical and thorough survey of the work of the convention, without examining it on all its sides, comparing it in all its parts, and calculating its probable effects. That this remaining task may be executed under impressions conducive to a just and fair result, some reflections must in this place be indulged, which candor previously suggests. It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. To those who have been led by experience to attend to this consideration, it could not appear surprising, that the act of the convention, which recommends so many important changes and innovations, which may be viewed in so many lights and relations, and which touches the springs of so many passions and interests, should find or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits. In some, it has been too evident from their own publications, that they have scanned the proposed Constitution, not only with a predisposition to censure, but with a predetermination to condemn; as the language held by others betrays an opposite predetermination or bias, which must render their opinions also of little moment in the question. In placing, however, these different characters on a level, with respect to the weight of their opinions, I wish not to insinuate that there may not be a material difference in the purity of their intentions. It is but just to remark in favor of the latter description, that as our situation is universally admitted to be peculiarly critical, and to require indispensably that something should be done for our relief, the predetermined patron of what has been actually done may have taken his bias from the weight of these considerations, as well as from considerations of a sinister nature. The predetermined adversary, on the other hand, can have been governed by no venial motive whatever. The intentions of the first may be upright, as they may on the contrary be culpable. The views of the last cannot be upright, and must be culpable. But the truth is, that these papers are not addressed to persons falling under either of these characters. They solicit the attention of those only, who add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it. Persons of this character will proceed to an examination of the plan submitted by the convention, not only without a disposition to find or to magnify faults; but will see the propriety of reflecting, that a faultless plan was not to be expected. Nor will they barely make allowances for the errors which may be chargeable on the fallibility to which the convention, as a body of men, were liable; but will keep in mind, that they themselves also are but men, and ought not to assume an infallibility in rejudging the fallible opinions of others. With equal readiness will it be perceived, that besides these inducements to candor, many allowances ought to be made for the difficulties inherent in the very nature of the undertaking referred to the convention. The novelty of the undertaking immediately strikes us. It has been shown in the course of these papers, that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting upon it. It has been shown, that the other confederacies which could be consulted as precedents have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experiences may unfold them. Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public; yet that it could not be easily accomplished, will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws which enter into the very definition of good government. Stability in government is essential to national character and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself than it is odious to the people; and it may be pronounced with assurance that the people of this country, enlightened as they are with regard to the nature, and interested, as the great body of them are, in the effects of good government, will never be satisfied till some remedy be applied to the vicissitudes and uncertainties which characterize the State administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once the difficulty of mingling them together in their due proportions. The genius of republican liberty seems to demand on one side, not only that all power should be derived from the people, but that those entrusted with it should be kept in independence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand. How far the convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory view here taken, it must clearly appear to have been an arduous part. Not less arduous must have been the task of marking the proper line of partition between the authority of the general and that of the State governments. Every man will be sensible of this difficulty, in proportion as he has been accustomed to contemplate and discriminate objects extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades and minute gradations that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdom of nature, and, still more, between the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded in tracing with certainty the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the ermination of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters by which the objects in each of these great departments of nature have been arranged and assorted. When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises well from the object itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science. The experience of ages, with the continued and combined labors of the most enlightened legislatures and jurists, has been equally unsuccessful in delineating the several objects and limits of different codes of laws and different tribunals of justice. The precise extent of the common law, and the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remains still to be clearly and finally established in Great Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, etc., is not less a source of frequent and intricate discussions, sufficiently

denoting the indeterminate limits by which they are respectively circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other adds a fresh embarrassment. The use of words is to express ideas. Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated. Here, then, are three sources of vague and incorrect definitions: indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and State jurisdictions, must have experienced the full effect of them all. To the difficulties already mentioned may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable, also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the government, and to the distribution of its powers, as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the Constitution which warrant each of these suppositions; and as far as either of them is well founded, it shows that the convention must have been compelled to sacrifice theoretical propriety to the force of extraneous considerations. Nor could it have been the large and small States only, which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every State may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies, so the different parts of the United States are distinguished from each other by a variety of circumstances, which produce a like effect on a larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the government when formed, yet every one must be sensible of the contrary influence, which must have been experienced in the task of forming it. Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination? The real wonder is that so many difficulties should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution. We had occasion, in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands for reforming the baneful and notorious vices of their constitution. The history of almost all the great councils and consultations held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments, and may be classed among the most dark and degraded pictures which display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying them to the particular instances before us, we are necessarily led to two important conclusions. The first is, that the convention must have enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities the disease most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is that all the deputations composing the convention were satisfactorily accommodated by the final act, or were induced to accede to it by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments.

FEDERALIST No. 38

The Same Subject Continued, and the Incoherence of the Objections to the New Plan Exposed From the New York Packet. Tuesday, January 15, 1788.

MADISON

To the People of the State of New York: IT IS not a little remarkable that in every case reported by ancient history, in which government has been established with deliberation and consent, the task of framing it has not been committed to an assembly of men, but has been performed by some individual citizen of preeminent wisdom and approved integrity. Mino, we learn, was the primitive founder of the government of Crete, as Zaleucus was of that of the Locrians. Theseus first, and after him Draco and Solon, instituted the government of Athens. Lycurgus was the lawgiver of Sparta. The foundation of the original government of Rome was laid by Romulus, and the work completed by two of his elective successors, Numa and Tullius Hostilius. On the abolition of royalty the consular administration was substituted by Brutus, who stepped forward with a project for such a reform, which, he alleged, had been prepared by Tullius Hostilius, and to which his address obtained the assent and ratification of the senate and people. This remark is applicable to confederate governments also. Amphictyony, we are told, was the author of that which bore his name. The Achaean league received its first birth from Achaeus, and its second from Aratus. What degree of agency these reputed lawgivers might have in their respective establishments, or how far they might be clothed with the legitimate authority of the people, cannot in every instance be ascertained. In some, however, the proceeding was strictly regular. Draco appears to have been intrusted by the people of Athens with indefinite powers to reform its government and laws. And Solon, according to Plutarch, was in a manner compelled, by the universal suffrage of his fellow-citizens, to take upon him the sole and absolute power of new-modeling the constitution. The proceedings under Lycurgus were less regular; but as far as the advocates for a regular reform could prevail, they all turned their eyes towards the single efforts of that celebrated patriot and sage, instead of seeking to bring about a revolution by the intervention of a deliberative body of citizens. Whence could it have proceeded, that a people, jealous as the Greeks were of their liberty, should so far abandon the rules of caution as to place their destiny in the hands of a single citizen? Whence could it have proceeded, that the Athenians, a people who would not suffer an army to be commanded by fewer than ten generals, and who required no other proof of danger to their liberties than the illustrious merit of a fellow-citizen, should consider one illustrious citizen as a more eligible depository of the fortunes of themselves and their posterity, than a

select body of citizens, from whose common deliberations more wisdom, as well as more safety, might have been expected? These questions cannot be fully answered, without supposing that the fears of discord and disunion among a number of counsellors exceeded the apprehension of treachery or incapacity in a single individual. History informs us, likewise, of the difficulties with which these celebrated reformers had to contend, as well as the expedients which they were obliged to employ in order to carry their reforms into effect. Solon, who seems to have indulged a more temporizing policy, confessed that he had not given to his countrymen the government best suited to their happiness, but most tolerable to their prejudices. And Lycurgus, more true to his object, was under the necessity of mixing a portion of violence with the authority of superstition, and of securing his final success by a voluntary renunciation, first of his country, and then of his life. If these lessons teach us, on one hand, to admire the improvement made by America on the ancient mode of preparing and establishing regular plans of government, they serve not less, on the other, to admonish us of the hazards and difficulties incident to such experiments, and of the great imprudence of unnecessarily multiplying them. Is it an unreasonable conjecture, that the errors which may be contained in the plan of the convention are such as have resulted rather from the defect of antecedent experience on this complicated and difficult subject, than from a want of accuracy or care in the investigation of it; and, consequently such as will not be ascertained until an actual trial shall have pointed them out? This conjecture is rendered probable, not only by many considerations of a general nature, but by the particular case of the Articles of Confederation. It is observable that among the numerous objections and amendments suggested by the several States, when these articles were submitted for their ratification, not one is found which alludes to the great and radical error which on actual trial has discovered itself. And if we except the observations which New Jersey was led to make, rather by her local situation, than by her peculiar foresight, it may be questioned whether a single suggestion was of sufficient moment to justify a revision of the system. There is abundant reason, nevertheless, to suppose that immaterial as these objections were, they would have been adhered to with a very dangerous inflexibility, in some States, had not a zeal for their opinions and supposed interests been stifled by the more powerful sentiment of selfpreservation. One State, we may remember, persisted for several years in refusing her concurrence, although the enemy remained the whole period at our gates, or rather in the very bowels of our country. Nor was her pliancy in the end effected by a less motive, than the fear of being chargeable with protracting the public calamities, and endangering the event of the contest. Every candid reader will make the proper reflections on these important facts. A patient who finds his disorder daily growing worse, and that an efficacious remedy can no longer be delayed without extreme danger, after coolly revolving his situation, and the characters of different physicians, selects and calls in such of them as he judges most capable of administering relief, and best entitled to his confidence. The physicians attend; the case of the patient is carefully examined; a consultation is held; they are unanimously agreed that the symptoms are critical, but that the case, with proper and timely relief, is so far from being desperate, that it may be made to issue in an improvement of his constitution. They are equally unanimous in prescribing the remedy, by which this happy effect is to be produced. The prescription is no sooner made known, however, than a number of persons interpose, and, without denying the reality or danger of the disorder, assure the patient that the prescription will be poison to his constitution, and forbid him, under pain of certain death, to make use of it. Might not the patient reasonably demand, before he ventured to follow this advice, that the authors of it should at least agree among themselves on some other remedy to be substituted? And if he found them differing as much from one another as from his first counsellors, would he not act prudently in trying the experiment unanimously recommended by the latter, rather than hearkening to those who could neither deny the necessity of a speedy remedy, nor agree in proposing one? Such a patient and in such a situation is America at this moment. She has been sensible of her malady. She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is warned by others against following this advice under pain of the most fatal consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed, or in the proper one to be substituted? Let them speak for themselves. This one tells us that the proposed Constitution ought to be rejected, because it is not a confederation of the States, but a government over individuals. Another admits that it ought to be a government over individuals to a certain extent, but by no means to the extent proposed. A third does not object to the government over individuals, or to the extent proposed, but to the want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved to the States in their political capacity. A fifth is of opinion that a bill of rights of any sort would be superfluous and misplaced, and that the plan would be unexceptionable but for the fatal power of regulating the times and places of election. An objector in a large State exclaims loudly against the unreasonable equality of representation in the Senate. An objector in a small State is equally loud against the dangerous inequality in the House of Representatives. From this quarter, we are alarmed with the amazing expense, from the number of persons who are to administer the new government. From another quarter, and sometimes from the same quarter, on another occasion, the cry is that the Congress will be but a shadow of a representation, and that the government would be far less objectionable if the number and the expense were doubled. A patriot in a State that does not import or export, discerns insuperable objections against the power of direct taxation. The patriotic adversary in a State of great exports and imports, is not less dissatisfied that the whole burden of taxes may be thrown on consumption. This politician discovers in the Constitution a direct and irresistible tendency to monarchy; that is equally sure it will end in aristocracy. Another is puzzled to say which of these shapes it will ultimately assume, but sees clearly it must be one or other of them; whilst a fourth is not wanting, who with no less confidence affirms that the Constitution is so far from having a bias towards either of these dangers, that the weight on that side will not be sufficient to keep it upright and firm against its opposite propensities. With another class of adversaries to the Constitution the language is that the legislative, executive, and judiciary departments are intermixed in such a manner as to contradict all the ideas of regular government and all the requisite precautions in favor of liberty. Whilst this objection circulates in vague and general expressions, there are but a few who lend their sanction to it. Let each one come forward with his particular explanation, and scarce any two are exactly agreed upon the subject. In the eyes of one the junction of the Senate with the President in the responsible function of appointing to offices, instead of vesting this executive power in the Executive alone, is the vicious part of the organization. To another, the exclusion of the House of Representatives, whose numbers alone could be a due security against corruption and partiality in the exercise of such a power, is equally obnoxious. With another, the admission of the President into any share of a power which ever must be a dangerous engine in the hands of the executive magistrate, is an unpardonable violation of the maxims of republican jealousy. No part of the arrangement, according to some, is more inadmissible than the trial of impeachments by the Senate, which is alternately a member both of the legislative and executive departments, when this power so evidently belonged to the judiciary department. "We concur fully," reply others, "in the objection to this part of the plan, but we can never agree that a reference of impeachments to the judiciary authority would be an amendment of the error. Our principal dislike to the organization arises from the extensive powers already lodged in that department." Even among the zealous patrons of a council of state the most irreconcilable variance is discovered concerning the mode in which it ought to be constituted. The demand of one gentleman is, that the council should consist of a small number to be appointed by the most numerous branch of the legislature. Another would prefer a larger number, and considers it as a fundamental condition that the appointment should be made by the President himself. As it can give no umbrage to the writers against the plan of the federal Constitution, let us suppose, that as they are the most zealous, so they are also the most sagacious, of those who think the late convention were unequal to the task assigned them, and that a wiser and better plan might and ought to be substituted.

Let us further suppose that their country should concur, both in this favorable opinion of their merits, and in their unfavorable opinion of the convention; and should accordingly proceed to form them into a second convention, with full powers, and for the express purpose of revising and remoulding the work of the first. Were the experiment to be seriously made, though it required some effort to view it seriously even in fiction, I leave it to be decided by the sample of opinions just exhibited, whether, with all their enmity to their predecessors, they would, in any one point, depart so widely from their example, as in the discord and ferment that would mark their own deliberations; and whether the Constitution, now before the public, would not stand as fair a chance for immortality, as Lycurgus gave to that of Sparta, by making its change to depend on his own return from exile and death, if it were to be immediately adopted, and were to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of lawgivers. It is a matter both of wonder and regret, that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would refuse to quit a shattered and tottering habitation for a firm and commodious building, because the latter had not a porch to it, or because some of the rooms might be a little larger or smaller, or the ceilings a little higher or lower than his fancy would have planned them. But waiving illustrations of this sort, is it not manifest that most of the capital objections urged against the new system lie with tenfold weight against the existing Confederation? Is an indefinite power to raise money dangerous in the hands of the federal government? The present Congress can make requisitions to any amount they please, and the States are constitutionally bound to furnish them; they can emit bills of credit as long as they will pay for the paper; they can borrow, both abroad and at home, as long as a shilling will be lent. Is an indefinite power to raise troops dangerous? The Confederation gives to Congress that power also; and they have already begun to make use of it. Is it improper and unsafe to intermix the different powers of government in the same body of men? Congress, a single body of men, are the sole depository of all the federal powers. Is it particularly dangerous to give the keys of the treasury, and the command of the army, into the same hands? The Confederation places them both in the hands of Congress. Is a bill of rights essential to liberty? The Confederation has no bill of rights. Is it an objection against the new Constitution, that it empowers the Senate, with the concurrence of the Executive, to make treaties which are to be the laws of the land? The existing Congress, without any such control, can make treaties which they themselves have declared, and most of the States have recognized, to be the supreme law of the land. Is the importation of slaves permitted by the new Constitution for twenty years? By the old it is permitted forever. I shall be told, that however dangerous this mixture of powers may be in theory, it is rendered harmless by the dependence of Congress on the State for the means of carrying them into practice; that however large the mass of powers may be, it is in fact a lifeless mass. Then, say I, in the first place, that the Confederation is chargeable with the still greater folly of declaring certain powers in the federal government to be absolutely necessary, and at the same time rendering them absolutely nugatory; and, in the next place, that if the Union is to continue, and no better government be substituted, effective powers must either be granted to, or assumed by, the existing Congress; in either of which events, the contrast just stated will hold good. But this is not all. Out of this lifeless mass has already grown an excrement power, which tends to realize all the dangers that can be apprehended from a defective construction of the supreme government of the Union. It is now no longer a point of speculation and hope, that the Western territory is a mine of vast wealth to the United States; and although it is not of such a nature as to extricate them from their present distresses, or for some time to come, to yield any regular supplies for the public expenses, yet must it hereafter be able, under proper management, both to effect a gradual discharge of the domestic debt, and to furnish, for a certain period, liberal tributes to the federal treasury. A very large proportion of this fund has been already surrendered by individual States; and it may with reason be expected that the remaining States will not persist in withholding similar proofs of their equity and generosity. We may calculate, therefore, that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock. Congress have assumed the administration of this stock. They have begun to render it productive. Congress have undertaken to do more: they have proceeded to form new States, to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such States shall be admitted into the Confederacy. All this has been done; and done without the least color of constitutional authority. Yet no blame has been whispered; no alarm has been sounded. A GREAT and INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men, who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to their support for an INDEFINITE PERIOD OF TIME. And yet there are men, who have not only been silent spectators of this prospect, but who are advocates for the system which exhibits it; and, at the same time, urge against the new system the objections which we have heard. Would they not act with more consistency, in urging the establishment of the latter, as no less necessary to guard the Union against the future powers and resources of a body constructed like the existing Congress, than to save it from the dangers threatened by the present impotency of that Assembly? I mean not, by any thing here said, to throw censure on the measures which have been pursued by Congress. I am sensible they could not have done otherwise. The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits. But is not the fact an alarming proof of the danger resulting from a government which does not possess regular powers commensurate to its objects? A dissolution or usurpation is the dreadful dilemma to which it is continually exposed. PUBLIUS.

FEDERALIST No. 39

The Conformity of the Plan to Republican Principles For the Independent Journal.

MADISON

To the People of the State of New York: THE last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking. The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible. What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitution of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions. If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly

or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is SUFFICIENT for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior. On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves, the duration of the appointments is equally conformable to the republican standard, and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions. Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter. "But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the FEDERAL form, which regards the Union as a CONFEDERACY of sovereign states; instead of which, they have framed a NATIONAL government, which regards the Union as a CONSOLIDATION of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision. Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority. First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced. On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a NATIONAL, but a FEDERAL act. That it will be a federal and not a national act, as these terms are understood by the objectors; the act of the people, as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a MAJORITY of the people of the Union, nor from that of a MAJORITY of the States. It must result from the UNANIMOUS assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules have been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a FEDERAL, and not a NATIONAL constitution. The next relation is, to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is NATIONAL, not FEDERAL. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is FEDERAL, not NATIONAL. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many FEDERAL as NATIONAL features. The difference between a federal and national government, as it relates to the OPERATION OF THE GOVERNMENT, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the NATIONAL, not the FEDERAL character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a NATIONAL government. But if the government be national with regard to the OPERATION of its powers, it changes its aspect again when we contemplate it in

relation to the EXTENT of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a NATIONAL one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated. If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly NATIONAL nor wholly FEDERAL. Were it wholly national, the supreme and ultimate authority would reside in the MAJORITY of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and principles. In requiring more than a majority, and particularly in computing the proportion by STATES, not by CITIZENS, it departs from the NATIONAL and advances towards the FEDERAL character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the FEDERAL and partakes of the NATIONAL character. The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national. PUBLIUS.

FEDERALIST No. 40 The Powers of the Convention to Form a Mixed Government Examined and Sustained From the New York Packet. Friday, January 18, 1788.

MADISON

To the People of the State of New York: THE SECOND point to be examined is, whether the convention were authorized to frame and propose this mixed Constitution. The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis, in September, 1786, or to that from Congress, in February, 1787, it will be sufficient to recur to these particular acts. The act from Annapolis recommends the "appointment of commissioners to take into consideration the situation of the United States; to devise SUCH FURTHER PROVISIONS as shall appear to them necessary to render the Constitution of the federal government ADEQUATE TO THE EXIGENCIES OF THE UNION; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every State, will effectually provide for the same." "The recommendatory act of Congress is in the words following: "WHEREAS, There is provision in the articles of Confederation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced, that there are defects in the present Confederation; as a mean to remedy which, several of the States, and PARTICULARLY THE STATE OF NEW YORK, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States A FIRM NATIONAL GOVERNMENT: "Resolved, That in the opinion of Congress it is expedient, that on the second Monday of May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose OF REVISING THE ARTICLES OF CONFEDERATION, and reporting to Congress and the several legislatures such ALTERATIONS AND PROVISIONS THEREIN, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution ADEQUATE TO THE EXIGENCIES OF GOVERNMENT AND THE PRESERVATION OF THE UNION." From these two acts, it appears, 1st, that the object of the convention was to establish, in these States, A FIRM NATIONAL GOVERNMENT; 2d, that this government was to be such as would be ADEQUATE TO THE EXIGENCIES OF GOVERNMENT AND THE PRESERVATION OF THE UNION; 3d, that these purposes were to be effected by ALTERATIONS AND PROVISIONS IN THE ARTICLES OF CONFEDERATION, as it is expressed in the act of Congress, or by SUCH FURTHER PROVISIONS AS SHOULD APPEAR NECESSARY, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and confirmed by the latter. From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a NATIONAL GOVERNMENT, adequate to the EXIGENCIES OF GOVERNMENT, and OF THE UNION; and to reduce the articles of Confederation into such form as to accomplish these purposes. There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means. Suppose, then, that the expressions defining the authority of the convention were irreconcilably at variance with each other; that a NATIONAL and ADEQUATE GOVERNMENT could not possibly, in the judgment of the convention, be affected by ALTERATIONS AND PROVISIONS IN THE ARTICLES OF CONFEDERATION; which part of the definition ought to have been embraced, and which rejected? Which was the more important, which the less important part? Which the end; which the means? Let the most scrupulous expositors of delegated powers; let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of Confederation should be disregarded, and an adequate government be provided, and the Union preserved; or that an adequate government should be omitted, and the articles of Confederation preserved. Let them declare, whether the preservation of these articles was the end, for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end; at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed. But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that no ALTERATIONS OR PROVISIONS IN THE ARTICLES OF THE CONFEDERATION could possibly mould them into a national and adequate government; into such a government as has been proposed by the convention? No stress, it is presumed, will, in this case, be laid on the TITLE; a change of that

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could never be deemed an exercise of ungranted power. ALTERATIONS in the body of the instrument are expressly authorized. NEW PROVISIONS therein are also expressly authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative ought at least to mark the boundary between authorized and usurped innovations; between that degree of change which lies within the compass of ALTERATIONS AND FURTHER PROVISIONS, and that which amounts to a TRANSMUTATION of the government. Will it be said that the alterations ought not to have touched the substance of the Confederation? The States would never have appointed a convention with so much solemnity, nor described its objects with so much latitude, if some SUBSTANTIAL reform had not been in contemplation. Will it be said that the FUNDAMENTAL PRINCIPLES of the Confederation were not within the purview of the convention, and ought not to have been varied? I ask, What are these principles? Do they require that, in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. Do they require that the members of the government should derive their appointment from the legislatures, not from the people of the States? One branch of the new government is to be appointed by these legislatures; and under the Confederation, the delegates to Congress MAY ALL be appointed immediately by the people, and in two States are actually so appointed. Do they require that the powers of the government should act on the States, and not immediately on individuals? In some instances, as has been shown, the powers of the new government will act on the States in their collective characters. In some instances, also, those of the existing government act immediately on individuals. In cases of capture; of piracy; of the post office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different States; and, above all, in the case of trials by courts-marshal in the army and navy, by which death may be inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens. Do these fundamental principles require, particularly, that no tax should be levied without the intermediate agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post office. The power of coinage has been so construed by Congress as to levy a tribute immediately from that source also. But pretermittting these instances, was it not an acknowledged object of the convention and the universal expectation of the people, that the regulation of trade should be submitted to the general government in such a form as would render it an immediate source of general revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the fundamental principles of the Confederation? Had not every State but one; had not New York herself, so far complied with the plan of Congress as to recognize the PRINCIPLE of the innovation? Do these principles, in fine, require that the powers of the general government should be limited, and that, beyond this limit, the States should be left in possession of their sovereignty and independence? We have seen that in the new government, as in the old, the general powers are limited; and that the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction. The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old. In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation OF THE LEGISLATURES OF ALL THE STATES, they have reported a plan which is to be confirmed by the PEOPLE, and may be carried into effect by NINE STATES ONLY. It is worthy of remark that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a MAJORITY of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this objection, therefore, has been in a manner waived by those who have criticised the powers of the convention, I dismiss it without further observation. The THIRD point to be inquired into is, how far considerations of duty arising out of the case itself could have supplied any defect of regular authority. In the preceding inquiries the powers of the convention have been analyzed and tried with the same rigor, and by the same rules, as if they had been real and final powers for the establishment of a Constitution for the United States. We have seen in what manner they have borne the trial even on that supposition. It is time now to recollect that the powers were merely advisory and recommendatory; that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention. Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country almost with one voice to make so singular and solemn an experiment for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced that such a reform as they have proposed was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety to the event of their deliberations. They had every reason to believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the PROPOSITION, made by a single State (Virginia), towards a partial amendment of the Confederation, had been attended to and promoted. They had seen the LIBERTY ASSUMED by a VERY FEW deputies from a VERY FEW States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve out of the thirteen States. They had seen, in a variety of instances, assumptions by Congress, not only of recommendatory, but of operative, powers, warranted, in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,"² since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts and defending their rights; and that CONVENTIONS were ELECTED in THE SEVERAL STATES for establishing the constitutions under which they are now governed; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed was to be submitted TO THE PEOPLE THEMSELVES, the disapprobation of this supreme authority would destroy it forever; its approbation blot out antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil

prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever, not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies. Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay and the hazard of events, let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or if there be a man whose propensity to condemn is susceptible of no control, let me then ask what sentence he has in reserve for the twelve States who USURPED THE POWER of sending deputies to the convention, a body utterly unknown to their constitutions; for Congress, who recommended the appointment of this body, equally unknown to the Confederation; and for the State of New York, in particular, which first urged and then complied with this unauthorized interposition? But that the objectors may be disarmed of every pretext, it shall be granted for a moment that the convention were neither authorized by their commission, nor justified by circumstances in proposing a Constitution for their country: does it follow that the Constitution ought, for that reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much FROM WHOM the advice comes, as whether the advice be GOOD. The sum of what has been here advanced and proved is, that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assume; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America. How far this character is due to the Constitution, is the subject under investigation. PUBLIUS.

Connecticut and Rhode Island. Declaration of Independence.

FEDERALIST No. 41 General View of the Powers Conferred by The Constitution For the Independent Journal.

MADISON

To the People of the State of New York: THE Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government, and the distribution of this power among its several branches. Under the FIRST view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States? Is the aggregate power of the general government greater than ought to have been vested in it? This is the FIRST question. It cannot have escaped those who have attended with candor to the arguments employed against the extensive powers of the government, that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power or trust, of which a beneficial use can be made. This method of handling the subject cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking, and may confirm the prejudices of the misthinking; but cool and candid people will at once reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment. That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers. The powers falling within the FIRST class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money. Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils. Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form. Is the power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is involved in the power of self-defense. But was it necessary to give an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE, as well as in war? The answer to these questions has been too far anticipated in another place to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place. With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government, and set bounds to the exertions for its own safety. How could a readiness for war in time of peace be safely prohibited, unless we could prohibit, in like manner, the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. The fifteenth century was the unhappy epoch of military establishments in the time of peace. They were introduced by Charles VII. of France. All Europe has followed, or been forced into, the example. Had the example not been followed by other nations, all Europe must long ago have worn the chains of a universal monarch. Were every nation except France now to disband its peace establishments, the same event might follow. The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations and rendered her the mistress of the world. Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military

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establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision. On the smallest scale it has its inconveniences. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties. The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. It was remarked, on a former occasion, that the want of this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance of the United States from the powerful nations of the world gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never, for a moment, be forgotten that they are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things. The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same example in the New, as Charles VII. did in the Old World. The example will be followed here from the same motives which produced universal imitation there. Instead of deriving from our situation the precious advantage which Great Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty everywhere crushed between standing armies and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambition, jealousy, and revenge. In America the miseries springing from her internal jealousies, contentions, and wars, would form a part only of her lot. A plentiful addition of evils would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe. This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty, ought to have it ever before his eyes, that he may cherish in his heart a due attachment to the Union of America, and be able to set a due value on the means of preserving it. Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added. I will not repeat here the observations which I flatter myself have placed this subject in a just and satisfactory light. But it may not be improper to take notice of an argument against this part of the Constitution, which has been drawn from the policy and practice of Great Britain. It is said that the continuance of an army in that kingdom requires an annual vote of the legislature; whereas the American Constitution has lengthened this critical period to two years. This is the form in which the comparison is usually stated to the public: but is it a just form? Is it a fair comparison? Does the British Constitution restrain the parliamentary discretion to one year? Does the American impose on the Congress appropriations for two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves, that the British Constitution fixes no limit whatever to the discretion of the legislature, and that the American ties down the legislature to two years, as the longest admissible term. Had the argument from the British example been truly stated, it would have stood thus: The term for which supplies may be appropriated to the army establishment, though unlimited by the British Constitution, has nevertheless, in practice, been limited by parliamentary discretion to a single year. Now, if in Great Britain, where the House of Commons is elected for seven years; where so great a proportion of the members are elected by so small a proportion of the people; where the electors are so corrupted by the representatives, and the representatives so corrupted by the Crown, the representative body can possess a power to make appropriations to the army for an indefinite term, without desiring, or without daring, to extend the term beyond a single year, ought not suspicion herself to blush, in pretending that the representatives of the United States, elected FREELY by the WHOLE BODY of the people, every SECOND YEAR, cannot be safely intrusted with the discretion over such appropriations, expressly limited to the short period of TWO YEARS? A bad cause seldom fails to betray itself. Of this truth, the management of the opposition to the federal government is an unvaried exemplification. But among all the blunders which have been committed, none is more striking than the attempt to enlist on that side the prudent jealousy entertained by the people, of standing armies. The attempt has awakened fully the public attention to that important subject; and has led to investigations which must terminate in a thorough and universal conviction, not only that the constitution has provided the most effectual guards against danger from that quarter, but that nothing short of a Constitution fully adequate to the national defense and the preservation of the Union, can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation, of these establishments in each, as will render them as burdensome to the properties and ominous to the liberties of the people, as any establishment that can become necessary, under a united and efficient government, must be tolerable to the former and safe to the latter. The palpable necessity of the power to provide and maintain a navy has protected that part of the Constitution against a spirit of censure, which has spared few other parts. It must, indeed, be numbered among the greatest blessings of America, that as her Union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect our situation bears another likeness to the insular advantage of Great Britain. The batteries most capable of repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious government against our liberties. The inhabitants of the Atlantic frontier are all of them deeply interested in this provision for naval protection, and if they have hitherto been suffered to sleep quietly in their beds; if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terrors of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of the Union ought to feel more anxiety on this subject than New York. Her seacoast is extensive. A very important district of the State is an island. The State itself is penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may almost be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and barbarians. Should a war be the result of the precarious situation of European affairs, and all the unruly passions attending it be let loose on the ocean, our escape from insults and deprivations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of America, the States more immediately exposed to these calamities have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them. The power of regulating and calling forth the militia has been already sufficiently vindicated and explained. The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defense, is properly thrown into the same class with it. This power, also, has been examined already with much attention, and has, I trust, been clearly shown to be necessary, both in the extent and form given to it by the Constitution. I will address one additional reflection only to those who contend that the power ought to have been restrained to external taxation by which they mean, taxes on articles imported from other countries. It

cannot be doubted that this will always be a valuable source of revenue; that for a considerable time it must be a principal source; that at this moment it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of imports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants. As long as agriculture continues the sole field of labor, the importation of manufactures must increase as the consumers multiply. As soon as domestic manufactures are begun by the hands not called for by agriculture, the imported manufactures will decrease as the numbers of people increase. In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties, than to be loaded with discouraging duties. A system of government, meant for duration, ought to contemplate these revolutions, and be able to accommodate itself to them. Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed, that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction. Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the general welfare." But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing, had not its origin with the latter. The objection here is the more extraordinary, as it appears that the language used by the convention is a copy from the articles of Confederation. The objects of the Union among the States, as described in article third, are "their common defense, security of their liberties, and mutual and general welfare." The terms of article eighth are still more identical: "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, shall be defrayed out of a common treasury," etc. A similar language again occurs in article ninth. Construe either of these articles by the rules which would justify the construction put on the new Constitution, and they vest in the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defense and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation! PUBLIUS.

FEDERALIST No. 42 The Powers Conferred by the Constitution Further Considered From the New York Packet. Tuesday, January 22, 1788.

MADISON

To the People of the State of New York: THE SECOND class of powers, lodged in the general government, consists of those which regulate the intercourse with foreign nations, to wit: to make treaties; to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations. This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations. The powers to make treaties and to send and receive ambassadors, speak their own propriety. Both of them are comprised in the articles of Confederation, with this difference only, that the former is disembarrassed, by the plan of the convention, of an exception, under which treaties might be substantially frustrated by regulations of the States; and that a power of appointing and receiving "other public ministers and consuls," is expressly and very properly added to the former provision concerning ambassadors. The term ambassador, if taken strictly, as seems to be required by the second of the articles of Confederation, comprehends the highest grade only of public ministers, and excludes the grades which the United States will be most likely to prefer, where foreign embassies may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has been found expedient, and has been the practice of Congress, to employ the inferior grades of public ministers, and to send and receive consuls. It is true, that where treaties of commerce stipulate for the mutual appointment of consuls, whose functions are connected with commerce, the admission of foreign consuls may fall within the power of making commercial treaties; and that where no such treaties exist, the mission of American consuls into foreign countries may PERHAPS be covered under the authority, given by the ninth article of the Confederation, to appoint all such civil officers as may be necessary for managing the general affairs of the United States. But the admission of consuls into the United States, where no previous treaty has stipulated it, seems to have been nowhere provided for. A supply of the omission is one of the lesser instances in which the convention have improved on the model before them. But the most minute provisions become important when they tend to obviate the necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which Congress have been betrayed, or forced by the defects of the Confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject; and would be no inconsiderable argument in favor of the new Constitution, which seems to have provided no less studiously for the lesser, than the more obvious and striking defects of the old. The power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations, belongs with equal propriety to the general government, and is a still greater improvement on the articles of Confederation. These articles contain no provision for the case of offenses against the law of nations; and consequently leave it in the power of any indiscreet member to embroil the Confederacy with foreign nations. The provision of the federal articles on the subject of piracies and felonies extends no further than to the establishment of courts for the trial of these offenses. The definition of piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative definition of them is found in most municipal codes. A definition of felonies on the high seas is evidently requisite. Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its

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own by legislative adoption. The meaning of the term, as defined in the codes of the several States, would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not precisely the same in any two of the States; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the power of defining felonies in this case was in every respect necessary and proper. The regulation of foreign commerce, having fallen within several views which have been taken of this subject, has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration. It were doubtless to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them of being redeemed from the oppressions of their European brethren! Attempts have been made to pervert this clause into an objection against the Constitution, by representing it on one side as a criminal toleration of an illicit practice, and on another as calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to give them an answer, for they deserve none, but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government. The powers included in the THIRD class are those which provide for the harmony and proper intercourse among the States. Under this head might be included the particular restraints imposed on the authority of the States, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined when we arrive at the structure and organization of the government. I shall confine myself to a cursory review of the remaining powers comprehended under this third description, to wit: to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads. The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks which former papers have brought into view on this subject, it may be added that without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual. A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former. We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors, must appear less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain. The necessity of a superintending authority over the reciprocal trade of confederated States, has been illustrated by other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an augmentation of the tolls. In Germany it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is, that they shall not establish imposts disadvantageous to their neighbors, without the general permission. The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain. All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for this last case, the Constitution has supplied a material omission in the articles of Confederation. The authority of the existing Congress is restrained to the regulation of coin STRUCK by their own authority, or that of the respective States. It must be seen at once that the proposed uniformity in the VALUE of the current coin might be destroyed by subjecting that of foreign coin to the different regulations of the different States. The punishment of counterfeiting the public securities, as well as the current coin, is submitted of course to that authority which is to secure the value of both. The regulation of weights and measures is transferred from the articles of Confederation, and is founded on like considerations with the preceding power of regulating coin. The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared "that the FREE INHABITANTS of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of FREE CITIZENS in the several States; and THE PEOPLE of each State shall, in every other, enjoy all the privileges of trade and commerce," etc. There is a confusion of language here, which is remarkable. Why the terms FREE INHABITANTS are used in one part of the article, FREE CITIZENS in another, and PEOPLE in another; or what was meant by superadding to "all privileges and immunities of free citizens," "all the privileges of trade and commerce," cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of FREE INHABITANTS of a State, although not citizens of such State, are entitled, in every other State, to all the privileges of FREE CITIZENS of the latter; that is, to greater privileges than they may be entitled to in their own State: so that it may be in the power of a particular State, or rather every State is laid under a necessity, not only to confer the rights of citizenship in other States upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term "inhabitants" to be admitted which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each State, of naturalizing aliens in every other State. In one State, residence for a short term confers all the rights of citizenship; in another, qualifications of greater importance are required. An alien,

therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one State be preposterously rendered paramount to the law of another, within the jurisdiction of the other. We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States. The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question. The power of prescribing by general laws, the manner in which the public acts, records and judicial proceedings of each State shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little importance under any interpretation which it will bear. The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous States, where the effects liable to justice may be suddenly and secretly translated, in any stage of the process, within a foreign jurisdiction. The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public convenience. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care. PUBLIUS.

FEDERALIST No. 43 The Same Subject Continued(The Powers Conferred by the Constitution Further Considered) For the Independent Journal.

MADISON

To the People of the State of New York: THE FOURTH class comprises the following miscellaneous powers: 1. A power "to promote the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries." The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress. 2. "To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislatures of the States in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated. The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, requires that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment. 3. "To declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained." As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author. 4. "To admit new States into the 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." In the articles of Confederation, no provision is found on this important subject. Canada was to be admitted of right, on her joining in the measures of the United States; and the other COLONIES, by which were evidently meant the other British colonies, at the discretion of nine States. The eventual establishment of NEW STATES seems to have been overlooked by the compilers of that instrument. We have seen the inconvenience of this omission, and the assumption of power into which Congress have been led by it. With great propriety, therefore, has the new system supplied the defect. The general precaution, that no new States shall be formed, without the concurrence of the federal authority, and that of the States concerned, is consonant to the principles which ought to govern such transactions. The particular precaution against the erection of new States, by the partition of a State without its consent, quiets the jealousy of the larger States; as that of the smaller is quieted by a like precaution, against a junction of States without their consent. 5. "To dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with a proviso, that nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." This is a power of very great importance, and required by considerations similar to those which show the propriety of the former. The proviso annexed is proper in itself, and was probably rendered absolutely necessary by jealousies and questions concerning the Western territory sufficiently known to the public. 6. "To guarantee to every State in the Union a republican form of government; to protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened),

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against domestic violence. "In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government under which the compact was entered into should be SUBSTANTIALLY maintained. But a right implies a remedy; and where else could the remedy be deposited, than where it is deposited by the Constitution? Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort, than those of a kindred nature. "As the confederate republic of Germany," says Montesquieu, "consists of free cities and petty states, subject to different princes, experience shows us that it is more imperfect than that of Holland and Switzerland. " "Greece was undone," he adds, "as soon as the king of Macedon obtained a seat among the Amphictyons. " "In the latter case, no doubt, the disproportionate force, as well as the monarchical form, of the new confederate, had its share of influence on the events. It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event will be a harmless superfluity only in the Constitution. But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? To the second question it may be answered, that if the general government should interpose by virtue of this constitutional authority, it will be, of course, bound to pursue the authority. But the authority extends no further than to a GUARANTY of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for antirepublican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance. A protection against invasion is due from every society to the parts composing it. The latitude of the expression here used seems to secure each State, not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful neighbors. The history, both of ancient and modern confederacies, proves that the weaker members of the union ought not to be insensible to the policy of this article. Protection against domestic violence is added with equal propriety. It has been remarked, that even among the Swiss cantons, which, properly speaking, are not under one government, provision is made for this object; and the history of that league informs us that mutual aid is frequently claimed and afforded; and as well by the most democratic, as the other cantons. A recent and well-known event among ourselves has warned us to be prepared for emergencies of a like nature. At first view, it might seem not to square with the republican theory, to suppose, either that a majority have not the right, or that a minority will have the force, to subvert a government; and consequently, that the federal interposition can never be required, but when it would be improper. But theoretic reasoning, in this as in most other cases, must be qualified by the lessons of practice. Why may not illicit combinations, for purposes of violence, be formed as well by a majority of a State, especially a small State as by a majority of a county, or a district of the same State; and if the authority of the State ought, in the latter case, to protect the local magistracy, ought not the federal authority, in the former, to support the State authority? Besides, there are certain parts of the State constitutions which are so interwoven with the federal Constitution, that a violent blow cannot be given to the one without communicating the wound to the other. Insurrections in a State will rarely induce a federal interposition, unless the number concerned in them bear some proportion to the friends of government. It will be much better that the violence in such cases should be repressed by the superintending power, than that the majority should be left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose, will generally prevent the necessity of exerting it. Is it true that force and right are necessarily on the same side in republican governments? May not the minor party possess such a superiority of pecuniary resources, of military talents and experience, or of secret succors from foreign powers, as will render it superior also in an appeal to the sword? May not a more compact and advantageous position turn the scale on the same side, against a superior number so situated as to be less capable of a prompt and collected exertion of its strength? Nothing can be more chimerical than to imagine that in a trial of actual force, victory may be calculated by the rules which prevail in a census of the inhabitants, or which determine the event of an election! May it not happen, in fine, that the minority of CITIZENS may become a majority of PERSONS, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the rights of suffrage? I take no notice of an unhappy species of population abounding in some of the States, who, during the calm of regular government, are sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into the human character, and give a superiority of strength to any party with which they may associate themselves. In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms, and tearing a State to pieces, than the representatives of confederate States, not heated by the local flame? To the impartiality of judges, they would unite the affection of friends. Happy would it be if such a remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual could be established for the universal peace of mankind! Should it be asked, what is to be the redress for an insurrection pervading all the States, and comprising a superiority of the entire force, though not a constitutional right? the answer must be, that such a case, as it would be without the compass of human remedies, so it is fortunately not within the compass of human probability; and that it is a sufficient recommendation of the federal Constitution, that it diminishes the risk of a calamity for which no possible constitution can provide a cure. Among the advantages of a confederate republic enumerated by Montesquieu, an important one is, "that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. "7. "To consider all debts contracted, and engagements entered into, before the adoption of this Constitution, as being no less valid against the United States, under this Constitution, than under the Confederation. "This can only be considered as a declaratory proposition; and may have been inserted, among other reasons, for the satisfaction of the foreign creditors of the United States, who cannot be strangers to the pretended doctrine, that a change in the political form of civil society has the magical effect of dissolving its moral obligations. Among the lesser criticisms which have been exercised on the Constitution, it has been remarked that the validity of engagements ought to have been asserted in favor of the United States, as well as against them; and in the spirit which usually characterizes little critics, the omission has been transformed and magnified into a plot against the national rights. The authors of this discovery may be told, what few others need to be informed of, that as engagements are in their nature reciprocal, an assertion of their validity on one side, necessarily involves a validity on the other side; and that as the article is merely declaratory, the establishment of the principle in one case is sufficient for every case. They may be further told, that every constitution must limit its precautions to dangers that are not altogether imaginary; and that no real danger can exist that the government would DARE, with, or even without, this constitutional declaration before it, to remit the debts justly due to the public, on the pretext here condemned. 8. "To provide for amendments to be ratified by three fourths of the States under two exceptions only. "That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other. The exception in favor of the equality of suffrage in the Senate,

was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by that principle of representation in one branch of the legislature; and was probably insisted on by the States particularly attached to that equality. The other exception must have been admitted on the same considerations which produced the privilege defended by it. 9. "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States, ratifying the same. "This article speaks for itself. The express authority of the people alone could give due validity to the Constitution. To have required the unanimous ratification of the thirteen States, would have subjected the essential interests of the whole to the caprice or corruption of a single member. It would have marked a want of foresight in the convention, which our own experience would have rendered inexcusable. Two questions of a very delicate nature present themselves on this occasion: 1. On what principle the Confederation, which stands in the solemn form of a compact among the States, can be superseded without the unanimous consent of the parties to it? 2. What relation is to subsist between the nine or more States ratifying the Constitution, and the remaining few who do not become parties to it? The first question is answered at once by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed. PERHAPS, also, an answer may be found without searching beyond the principles of the compact itself. It has been heretofore noted among the defects of the Confederation, that in many of the States it had received no higher sanction than a mere legislative ratification. The principle of reciprocity seems to require that its obligation on the other States should be reduced to the same standard. A compact between independent sovereigns, founded on ordinary acts of legislative authority, can pretend to no higher validity than a league or treaty between the parties. It is an established doctrine on the subject of treaties, that all the articles are mutually conditions of each other; that a breach of any one article is a breach of the whole treaty; and that a breach, committed by either of the parties, absolves the others, and authorizes them, if they please, to pronounce the compact violated and void. Should it unhappily be necessary to appeal to these delicate truths for a justification for dispensing with the consent of particular States to a dissolution of the federal pact, will not the complaining parties find it a difficult task to answer the MULTIPLIED and IMPORTANT infractions with which they may be confronted? The time has been when it was incumbent on us all to veil the ideas which this paragraph exhibits. The scene is now changed, and with it the part which the same motives dictate. The second question is not less delicate; and the flattering prospect of its being merely hypothetical forbids an overcurious discussion of it. It is one of those cases which must be left to provide for itself. In general, it may be observed, that although no political relation can subsist between the assenting and dissenting States, yet the moral relations will remain uncancelled. The claims of justice, both on one side and on the other, will be in force, and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and, above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not urge in vain MODERATION on one side, and PRUDENCE on the other. PUBLIUS.

FEDERALIST No. 44

Restrictions on the Authority of the Several States From the New York Packet. Friday, January 25, 1788.

MADISON

To the People of the State of New York: A FIFTH class of provisions in favor of the federal authority consists of the following restrictions on the authority of the several States:1. "No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver a legal tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts; or grant any title of nobility. "The prohibition against treaties, alliances, and confederations makes a part of the existing articles of Union; and for reasons which need no explanation, is copied into the new Constitution. The prohibition of letters of marque is another part of the old system, but is somewhat extended in the new. According to the former, letters of marque could be granted by the States after a declaration of war; according to the latter, these licenses must be obtained, as well during war as previous to its declaration, from the government of the United States. This alteration is fully justified by the advantage of uniformity in all points which relate to foreign powers; and of immediate responsibility to the nation in all those for whose conduct the nation itself is to be responsible. The right of coining money, which is here taken from the States, was left in their hands by the Confederation, as a concurrent right with that of Congress, under an exception in favor of the exclusive right of Congress to regulate the alloy and value. In this instance, also, the new provision is an improvement on the old. Whilst the alloy and value depended on the general authority, a right of coinage in the particular States could have no other effect than to multiply expensive mints and diversify the forms and weights of the circulating pieces. The latter inconvenience defeats one purpose for which the power was originally submitted to the federal head; and as far as the former might prevent an inconvenient remittance of gold and silver to the central mint for recoinage, the end can be as well attained by local mints established under the general authority. The extension of the prohibition to bills of credit must give pleasure to every citizen, in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it. In addition to these persuasive considerations, it may be observed, that the same reasons which show the necessity of denying to the States the power of regulating coin, prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin. Had every State a right to regulate the value of its coin, there might be as many different currencies as States, and thus the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus the citizens of other States be injured, and animosities be kindled among the States themselves. The subjects of foreign powers might suffer from the same cause, and hence the Union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power in the States to emit paper money, than to coin gold or silver. The power to make any thing but gold and silver a tender in payment of debts, is withdrawn from the States, on the same principle with that of issuing a paper currency. Bills of attainder, ex-post-facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions,

every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society. The prohibition with respect to titles of nobility is copied from the articles of Confederation and needs no comment. 2. "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay." The restraint on the power of the States over imports and exports is enforced by all the arguments which prove the necessity of submitting the regulation of trade to the federal councils. It is needless, therefore, to remark further on this head, than that the manner in which the restraint is qualified seems well calculated at once to secure to the States a reasonable discretion in providing for the convenience of their imports and exports, and to the United States a reasonable check against the abuse of this discretion. The remaining particulars of this clause fall within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark. The SIXTH and last class consists of the several powers and provisions by which efficacy is given to all the rest. 1. Of these the first is, the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. "Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, no part can appear more completely invulnerable. Without the SUBSTANCE of this power, the whole Constitution would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only mean that the FORM of the provision is improper. But have they considered whether a better form could have been substituted? There are four other possible methods which the Constitution might have taken on this subject. They might have copied the second article of the existing Confederation, which would have prohibited the exercise of any power not EXPRESSLY delegated; they might have attempted a positive enumeration of the powers comprehended under the general terms "necessary and proper"; they might have attempted a negative enumeration of them, by specifying the powers excepted from the general definition; they might have been altogether silent on the subject, leaving these necessary and proper powers to construction and inference. Had the convention taken the first method of adopting the second article of Confederation, it is evident that the new Congress would be continually exposed, as their predecessors have been, to the alternative of construing the term "EXPRESSLY" with so much rigor, as to disarm the government of all real authority whatever, or to show so much latitude as to destroy altogether the force of the restriction. It would be easy to say, if it were necessary, that no important power, delegated by the articles of Confederation, has been or can be executed by Congress, without recurring more or less to the doctrine of CONSTRUCTION or IMPLICATION. As the powers delegated under the new system are more extensive, the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not EXPRESSLY granted. Had the convention attempted a positive enumeration of the powers necessary and proper for carrying their other powers into effect, the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated too, not only to the existing state of things, but to all the possible changes which futurity may produce: for in every new application of a general power, the PARTICULAR POWERS, which are the means of attaining the OBJECT of the general power, must always necessarily vary with that object, and be often properly varied whilst the object remains the same. Had they attempted to enumerate the particular powers or means not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical; and would have been liable to this further objection, that every defect in the enumeration would have been equivalent to a positive grant of authority. If, to avoid this consequence, they had attempted a partial enumeration of the exceptions, and described the residue by the general terms, NOT NECESSARY OR PROPER, it must have happened that the enumeration would comprehend a few of the excepted powers only; that these would be such as would be least likely to be assumed or tolerated, because the enumeration would of course select such as would be least necessary or proper; and that the unnecessary and improper powers included in the residuum, would be less forcibly excepted, than if no partial enumeration had been made. Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government, by unavoidable implication. No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. Had this last method, therefore, been pursued by the convention, every objection now urged against their plan would remain in all its plausibility; and the real inconvenience would be incurred of not removing a pretext which may be seized on critical occasions for drawing into question the essential powers of the Union. If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution, and exercise powers not warranted by its true meaning, I answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same, in short, as if the State legislatures should violate the irrespective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers. The truth is, that this ultimate redress may be more confided in against unconstitutional acts of the federal than of the State legislatures, for this plain reason, that as every such act of the former will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives. There being no such intermediate body between the State legislatures and the people interested in watching the conduct of the former, violations of the State constitutions are more likely to remain unnoticed and unredressed. 2. "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding." The indiscreet zeal of the adversaries to the Constitution has betrayed them into an attack on this part of it also, without which would have been evidently and radically defective. To be fully sensible of this, we need only suppose for a moment that the supremacy of the State constitutions had been left complete by a saving clause in their favor. In the first place, as these constitutions invest the State legislatures with absolute sovereignty, in all cases not excepted by the existing articles of Confederation, all the authorities contained in the proposed Constitution, so far as they exceed those enumerated in the Confederation, would have been annulled, and the new Congress would have been reduced to the same impotent condition with their predecessors. In the next place, as the constitutions of some of the States do not even expressly and fully recognize the existing powers of the Confederacy, an express saving of the supremacy of the former would, in such States, have brought into question every power contained in the proposed Constitution. In the third place, as the constitutions of the States differ much from each other, it might happen that a treaty or national law, of great and equal importance to the States, would interfere with some and not with other constitutions, and would consequently be valid in some of the States, at the same time that it would have no effect in others. In fine, the world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all

government; it would have seen the authority of the whole society every where subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members. 3. "The Senators and Representatives, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound by oath or affirmation to support this Constitution." It has been asked why it was thought necessary, that the State magistracy should be bound to support the federal Constitution, and unnecessary that a like oath should be imposed on the officers of the United States, in favor of the State constitutions. Several reasons might be assigned for the distinction. I content myself with one, which is obvious and conclusive. The members of the federal government will have no agency in carrying the State constitutions into effect. The members and officers of the State governments, on the contrary, will have an essential agency in giving effect to the federal Constitution. The election of the President and Senate will depend, in all cases, on the legislatures of the several States. And the election of the House of Representatives will equally depend on the same authority in the first instance; and will, probably, forever be conducted by the officers, and according to the laws, of the States. 4. Among the provisions for giving efficacy to the federal powers might be added those which belong to the executive and judiciary departments; but as these are reserved for particular examination in another place, I pass them over in this. We have now reviewed, in detail, all the articles composing the sum or quantity of power delegated by the proposed Constitution to the federal government, and are brought to this undeniable conclusion, that no part of the power is unnecessary or improper for accomplishing the necessary objects of the Union. The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, whether or not a government commensurate to the exigencies of the Union shall be established; or, in other words, whether the Union itself shall be preserved. PUBLIUS.

FEDERALIST No. 45

The Alleged Danger From the Powers of the Union to the State Governments Considered For the Independent Fournal.

MADISON

To the People of the State of New York: HAVING shown that no one of the powers transferred to the federal government is unnecessary or improper, the next question to be considered is, whether the whole mass of them will be dangerous to the portion of authority left in the several States. The adversaries to the plan of the convention, instead of considering in the first place what degree of power was absolutely necessary for the purposes of the federal government, have exhausted themselves in a secondary inquiry into the possible consequences of the proposed degree of power to the governments of the particular States. But if the Union, as has been shown, be essential to the security of the people of America against foreign danger; if it be essential to their security against contentions and wars among the different States; if it be essential to guard them against those violent and oppressive factions which embitter the blessings of liberty, and against those military establishments which must gradually poison its very fountain; if, in a word, the Union be essential to the happiness of the people of America, is it not preposterous, to urge as an objection to a government, without which the objects of the Union cannot be attained, that such a government may derogate from the importance of the governments of the individual States? Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the Old World, that the people were made for kings, not kings for the people. Is the same doctrine to be revived in the New, in another shape that the solid happiness of the people is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. Were the plan of the convention adverse to the public happiness, my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union. In like manner, as far as the sovereignty of the States cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter. How far the sacrifice is necessary, has been shown. How far the unsacrificed residue will be endangered, is the question before us. Several important considerations have been touched in the course of these papers, which discountenance the supposition that the operation of the federal government will by degrees prove fatal to the State governments. The more I revolve the subject, the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first scale. We have seen, in all the examples of ancient and modern confederacies, the strongest tendency continually betraying itself in the members, to despoil the general government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments. Although, in most of these examples, the system has been so dissimilar from that under consideration as greatly to weaken any inference concerning the latter from the fate of the former, yet, as the States will retain, under the proposed Constitution, a very extensive portion of active sovereignty, the inference ought not to be wholly disregarded. In the Achaean league it is probable that the federal head had a degree and species of power, which gave it a considerable likeness to the government framed by the convention. The Lycian Confederacy, as far as its principles and form are transmitted, must have borne a still greater analogy to it. Yet history does not inform us that either of them ever degenerated, or tended to degenerate, into one consolidated government. On the contrary, we know that the ruin of one of them proceeded from the incapacity of the federal authority to prevent the dissensions, and finally the disunion, of the subordinate authorities. These cases are the more worthy of our attention, as the external causes by which the component parts were pressed together were much more numerous and powerful than in our case; and consequently less powerful ligaments within would be sufficient to bind the members to the head, and to each other. In the feudal system, we have seen a similar propensity exemplified. Notwithstanding the want of proper sympathy in every instance between the local sovereigns and the people, and the sympathy in some instances between the general sovereign and the latter, it usually happened that the local sovereigns prevailed in the rivalry for encroachments. Had no external dangers enforced internal harmony and subordination, and particularly, had the local sovereigns possessed the affections of the people, the great kingdoms in Europe would at this time consist of as many independent princes as there were formerly feudatory barons. The State government will have the advantage of the Federal government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other. The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures. Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a

disposition too obsequious than too overbearing towards them. On the other side, the component parts of the State governments will in no instance be indebted for their appointment to the direct agency of the federal government, and very little, if at all, to the local influence of its members. The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen and more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed, and having particular acquaintance with every class and circle of people, must exceed, beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. Compare the members of the three great departments of the thirteen States, excluding from the judiciary department the justices of peace, with the members of the corresponding departments of the single government of the Union; compare the militia officers of three millions of people with the military and marine officers of any establishment which is within the compass of probability, or, I may add, of possibility, and in this view alone, we may pronounce the advantage of the States to be decisive. If the federal government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. Indeed it is extremely probable, that in other instances, particularly in the organization of the judicial power, the officers of the States will be clothed with the correspondent authority of the Union. Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them persons of character and weight, whose influence would lie on the side of the State. The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating to taxation may be regarded as the most important; and yet the present Congress have as complete authority to REQUIRE of the States indefinite supplies of money for the common defense and general welfare, as the future Congress will have to require them of individual citizens; and the latter will be no more bound than the States themselves have been, to pay the quotas respectively taxed on them. Had the States complied punctually with the articles of Confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that the State governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event would have ensued, would be to say at once, that the existence of the State governments is incompatible with any system whatever that accomplishes the essential purposes of the Union.

PUBLIUS.

FEDERALIST No. 46

The Influence of the State and Federal Governments Compared From the New York Packet. Tuesday, January 29, 1788.

MADISON

To the People of the State of New York: RESUMING the subject of the last paper, I proceed to inquire whether the federal government or the State governments will have the advantage with regard to the predilection and support of the people. Notwithstanding the different modes in which they are appointed, we must consider both of them as substantially dependent on the great body of the citizens of the United States. I assume this position here as it respects the first, reserving the proofs for another place. The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone, and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires that the event in every case should be supposed to depend on the sentiments and sanction of their common constituents. Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States. Into the administration of these a greater number of individuals will expect to rise. From the gift of these a greater number of offices and emoluments will flow. By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these, the people will be more familiarly and minutely conversant. And with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments; on the side of these, therefore, the popular bias may well be expected most strongly to incline. Experience speaks the same language in this case. The federal administration, though hitherto very defective in comparison with what may be hoped under a better system, had, during the war, and particularly whilst the independent fund of paper emissions was in credit, an activity and importance as great as it can well have in any future circumstances whatever. It was engaged, too, in a course of measures which had for their object the protection of everything that was dear, and the acquisition of everything that could be desirable to the people at large. It was, nevertheless, invariably found, after the transient enthusiasm

for the early Congresses was over, that the attention and attachment of the people were turned anew to their own particular governments; that the federal council was at no time the idol of popular favor; and that opposition to proposed enlargements of its powers and importance was the side usually taken by the men who wished to build their political consequence on the prepossessions of their fellow-citizens. If, therefore, as has been elsewhere remarked, the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration, as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due; but even in that case the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered. The remaining points on which I propose to compare the federal and State governments, are the disposition and the faculty they may respectively possess, to resist and frustrate the measures of each other. It has been already proved that the members of the federal will be more dependent on the members of the State governments, than the latter will be on the former. It has appeared also, that the prepossessions of the people, on whom both will depend, will be more on the side of the State governments, than of the federal government. So far as the disposition of each towards the other may be influenced by these causes, the State governments must clearly have the advantage. But in a distinct and very important point of view, the advantage will lie on the same side. The prepossessions, which the members themselves will carry into the federal government, will generally be favorable to the States; whilst it will rarely happen, that the members of the State governments will carry into the public councils a bias in favor of the general government. A local spirit will infallibly prevail much more in the members of Congress, than a national spirit will prevail in the legislatures of the particular States. Every one knows that a great proportion of the errors committed by the State legislatures proceeds from the disposition of the members to sacrifice the comprehensive and permanent interest of the State, to the particular and separate views of the counties or districts in which they reside. And if they do not sufficiently enlarge their policy to embrace the collective welfare of their particular State, how can it be imagined that they will make the aggregate prosperity of the Union, and the dignity and respectability of its government, the objects of their affections and consultations? For the same reason that the members of the State legislatures will be unlikely to attach themselves sufficiently to national objects, the members of the federal legislature will be likely to attach themselves too much to local objects. The States will be to the latter what counties and towns are to the former. Measures will too often be decided according to their probable effect, not on the national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments and people of the individual States. What is the spirit that has in general characterized the proceedings of Congress? A perusal of their journals, as well as the candid acknowledgments of such as have had a seat in that assembly, will inform us, that the members have but too frequently displayed the character, rather of partisans of their respective States, than of impartial guardians of a common interest; that where on one occasion improper sacrifices have been made of local considerations, to the aggrandizement of the federal government, the great interests of the nation have suffered on a hundred, from an undue attention to the local prejudices, interests, and views of the particular States. I mean not by these reflections to insinuate, that the new federal government will not embrace a more enlarged plan of policy than the existing government may have pursued; much less, that its views will be as confined as those of the State legislatures; but only that it will partake sufficiently of the spirit of both, to be disinclined to invade the rights of the individual States, or the prerogatives of their governments. The motives on the part of the State governments, to augment their prerogatives by defalcations from the federal government, will be overruled by no reciprocal predispositions in the members. Were it admitted, however, that the Federal government may feel an equal disposition with the State governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments. If an act of a particular State, though unfriendly to the national government, be generally popular in that State and should not too grossly violate the oaths of the State officers, it is executed immediately and, of course, by means on the spot and depending on the State alone. The opposition of the federal government, or the interposition of federal officers, would but inflame the zeal of all parties on the side of the State, and the evil could not be prevented or repaired, if at all, without the employment of means which must always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to cooperate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would open, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter. But ambitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign, yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other. But what degree of madness could ever drive the federal government to such an extremity. In the contest with Great Britain, one part of the empire was employed against the other. The more numerous part invaded the rights of the less numerous part. The attempt was unjust and unwise; but it was not in speculation absolutely chimerical. But what would be the contest in the case we are supposing? Who would be the parties? A few representatives of the people would be opposed to the people themselves; or rather one set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter. 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

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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. The argument under the present head may be put into a very concise form, which appears altogether conclusive. Either the mode in which the federal government is to be constructed will render it sufficiently dependent on the people, or it will not. On the first supposition, it will be restrained by that dependence from forming schemes obnoxious to their constituents. On the other supposition, it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people. On summing up the considerations stated in this and the last paper, they seem to amount to the most convincing evidence, that the powers proposed to be lodged in the federal government are as little formidable to those reserved to the individual States, as they are indispensably necessary to accomplish the purposes of the Union; and that all those alarms which have been sounded, of a meditated and consequential annihilation of the State governments, must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them. PUBLIUS.

FEDERALIST No. 47

The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts From the New York Packet, Friday, February 1, 1788.

MADISON

To the People of the State of New York: HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts. One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts. No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct. The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point. The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depository of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote. From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate

officers in the executive department. The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest THE SAME monarch or senate should ENACT tyrannical laws to EXECUTE them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR. Were it joined to the executive power, THE JUDGE might behave with all the violence of AN OPPRESSOR." Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other AS THE NATURE OF A FREE GOVERNMENT WILL ADMIT; OR AS IS CONSISTENT WITH THAT CHAIN OF CONNECTION THAT BINDS THE WHOLE FABRIC OF THE CONSTITUTION IN ONE INDISSOLUBLE BOND OF UNITY AND AMITY." Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department. The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares "that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves. I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution, and even before the principle under examination had become an object of political attention. The constitution of New York contains no declaration on this subject; but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate, a partial control over the legislative department; and, what is more, gives a like control to the judiciary department; and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment members of the legislative are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors is to consist of one branch of the legislature and the principal members of the judiciary department. The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The same legislative branch acts again as executive council of the governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department and removable by one branch of it, on the impeachment of the other. According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department, and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning in certain cases, to be referred to the same department. The members of the executive council are made EX-OFFICIO justices of peace throughout the State. In Delaware, the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others, appointed, three by each of the legislative branches constitutes the Supreme Court of Appeals; he is joined with the legislative department in the appointment of the other judges. Throughout the States, it appears that the members of the legislature may at the same time be justices of the peace; in this State, the members of one branch of it are EX-OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislature; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature. Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other. Her constitution, notwithstanding, makes the executive magistrate appointable by the legislative department; and the members of the judiciary by the executive department. The language of Virginia is still more pointed on this subject. Her constitution declares, "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly." Yet we find not only this express exception, with respect to the members of the inferior courts, but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department. The executive prerogative of pardon, also, is in one case vested in the legislative department. The constitution of North Carolina, which declares "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other," refers, at the same time, to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department. In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State. In the constitution of Georgia, where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature. In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State

governments. I am fully aware that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation, of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is, that the charge brought against the proposed Constitution, of violating the sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper. PUBLIUS.

FEDERALIST No. 48

These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other From the New York Packet. Friday, February 1, 1788.

MADISON

To the People of the State of New York: IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained. It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved. Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations. In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions. The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former. I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities. The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the State of Virginia," p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An ELECTIVE DESPOTISM was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. BUT NO BARRIER WAS PROVIDED BETWEEN THESE SEVERAL POWERS. The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, IN MANY instances, DECIDED RIGHTS which should have been left to JUDICIARY CONTROVERSY, and THE DIRECTION OF THE EXECUTIVE, DURING THE WHOLE TIME OF THEIR SESSION, IS BECOMING HABITUAL AND FAMILIAR." "The other State which I shall take for an example is

Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances. A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature. The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution. Executive powers had been usurped. The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination. Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government. It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: FIRST, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; SECONDLY, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; THIRDLY, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands. The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands. PUBLIUS.

FEDERALIST No. 49

Method of Guarding Against the Encroachments of Any One Department of Government by Appealing to the People Through a Convention From the New York Packet. Tuesday, February 5, 1788.

HAMILTON OR MADISON

To the People of the State of New York: THE author of the "Notes on the State of Virginia," quoted in the last paper, has subjected to that valuable work the draught of a constitution, which had been prepared in order to be laid before a convention, expected to be called in 1783, by the legislature, for the establishment of a constitution for that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking, original, comprehensive, and accurate; and is the more worthy of attention as it equally displays a fervent attachment to republican government and an enlightened view of the dangerous propensities against which it ought to be guarded. One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked. His proposition is, "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT, a convention shall be called for the purpose." "As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce its observance? There is certainly great force in this reasoning, and it must be allowed to prove that a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits. In the first place, the provision does not reach the case of a combination of two of the departments against the third. If the legislative authority, which possesses so many means of operating on the motives of the other departments, should be able to gain to its interest either of the others, or even one third of its members, the remaining department could derive no advantage from its remedial provision. I do not dwell, however, on this objection, because it may be thought to be rather against the modification of the principle, than against the principle itself. In the next place, it may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ANCIENT as well as NUMEROUS, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side. The danger of disturbing the public tranquillity by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the ancient government; and whilst no spirit of party connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against

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the danger which is apprehended. But the greatest objection of all is, that the decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government. We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments. But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy, and their administration is always liable to be discolored and rendered unpopular. The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people. With these advantages, it can hardly be supposed that the adverse party would have an equal chance for a favorable issue. But the legislative party would not only be able to plead their cause most successfully with the people. They would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who actually were, or who expected to be, members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them. It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious coloring. A strong party among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government. We found in the last paper, that mere declarations in the written constitution are not sufficient to restrain the several departments within their legal rights. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision for that purpose. How far the provisions of a different nature contained in the plan above quoted might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision. PUBLIUS.

FEDERALIST No. 50

Periodical Appeals to the People Considered From the New York Packet. Tuesday, February 5, 1788.

HAMILTON OR MADISON

To the People of the State of New York: IT MAY be contended, perhaps, that instead of OCCASIONAL appeals to the people, which are liable to the objections urged against them, PERIODICAL appeals are the proper and adequate means of PREVENTING AND CORRECTING INFRACTIONS OF THE CONSTITUTION. It will be attended to, that in the examination of these expedients, I confine myself to their aptitude for ENFORCING the Constitution, by keeping the several departments of power within their due bounds, without particularly considering them as provisions for ALTERING the Constitution itself. In the first view, appeals to the people at fixed periods appear to be nearly as ineligible as appeals on particular occasions as they emerge. If the periods be separated by short intervals, the measures to be reviewed and rectified will have been of recent date, and will be connected with all the circumstances which tend to vitiate and pervert the result of occasional revisions. If the periods be distant from each other, the same remark will be applicable to all recent measures; and in proportion as the remoteness of the others may favor a dispassionate review of them, this advantage is inseparable from inconveniences which seem to counterbalance it. In the first place, a distant prospect of public censure would be a very feeble restraint on power from those excesses to which it might be urged by the force of present motives. Is it to be imagined that a legislative assembly, consisting of a hundred or two hundred members, eagerly bent on some favorite object, and breaking through the restraints of the Constitution in pursuit of it, would be arrested in their career, by considerations drawn from a censorial revision of their conduct at the future distance of ten, fifteen, or twenty years? In the next place, the abuses would often have completed their mischievous effects before the remedial provision would be applied. And in the last place, where this might not be the case, they would be of long standing, would have taken deep root, and would not easily be extirpated. The scheme of revising the constitution, in order to correct recent breaches of it, as well as for other purposes, has been actually tried in one of the States. One of the objects of the Council of Censors which met in Pennsylvania in 1783 and 1784, was, as we have seen, to inquire, "whether the constitution had been violated, and whether the legislative and executive departments had encroached upon each other." This important and novel experiment in politics merits, in several points of view, very particular attention. In some of them it may, perhaps, as a single experiment, made under circumstances somewhat peculiar, be thought to be not absolutely conclusive. But as applied to the case under consideration, it involves some facts, which I venture to remark, as a complete and satisfactory illustration of the reasoning which I have employed. First, it appears, from the names of the gentlemen who composed the council, that some, at least, of its most active members had also been active and leading characters in the parties which pre-existed in the State. Secondly, it appears that the same active and leading members of the council had been active and influential members of the legislative and executive branches, within the period to be reviewed; and even patrons or opponents of the very measures to be thus brought to the test of the constitution. Two of the members had been vice-presidents of the State, and several other members of the executive council, within the seven preceding years. One of them had been speaker, and a number of others distinguished members, of the legislative assembly within the same period. Thirdly, Every page of their proceedings witnesses the effect of all these circumstances on the temper of their deliberations. Throughout the continuance of the council, it was split into two fixed and violent parties. The fact is acknowledged and lamented by themselves. Had this not been the case, the face of their proceedings exhibits a proof equally satisfactory. In all questions, however unimportant in themselves, or unconnected with each other, the same names stand invariably contrasted on the opposite columns. Every unbiased observer may infer, without danger of mistake, and at the same time without meaning to reflect on either party, or any individuals of either party, that, unfortunately, PASSION, not REASON, must have presided over their decisions. When men exercise their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same. Fourthly, It is at least problematical, whether the decisions of this body do not, in several instances, misconstrue the limits prescribed for the legislative and executive departments, instead of reducing and limiting them within their constitutional places. Fifthly, I have never understood that the decisions of the council on

constitutional questions, whether rightly or erroneously formed, have had any effect in varying the practice founded on legislative constructions. It even appears, if I mistake not, that in one instance the contemporary legislature denied the constructions of the council, and actually prevailed in the contest. This censorial body, therefore, proves at the same time, by its researches, the existence of the disease, and by its example, the inefficacy of the remedy. This conclusion cannot be invalidated by alleging that the State in which the experiment was made was at that crisis, and had been for a long time before, violently heated and distracted by the rage of party. Is it to be presumed, that at any future septennial epoch the same State will be free from parties? Is it to be presumed that any other State, at the same or any other given period, will be exempt from them? Such an event ought to be neither presumed nor desired; because an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty. Were the precaution taken of excluding from the assemblies elected by the people, to revise the preceding administration of the government, all persons who should have been concerned with the government within the given period, the difficulties would not be obviated. The important task would probably devolve on men, who, with inferior capacities, would in other respects be little better qualified. Although they might not have been personally concerned in the administration, and therefore not immediately agents in the measures to be examined, they would probably have been involved in the parties connected with these measures, and have been elected under their auspices. PUBLIUS.

FEDERALIST No. 51

The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments From the New York Packet. Friday, February 8, 1788.

HAMILTON OR MADISON

To the People of the State of New York: TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention. In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them. It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveincy is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test. There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First, In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. Second, It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against

this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE. PUBLIUS.

FEDERALIST No. 52

The House of Representatives From the New York Packet. Friday, February 8, 1788.

HAMILTON OR MADISON

To the People of the State of New York: FROM the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the government. I shall begin with the House of Representatives. The first view to be taken of this part of the government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution. The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the convention. A representative of the United States must be of the age of twenty-five years; must have been seven years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent; and, during the time of his service, must be in no office under the United States. Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith. The term for which the representatives are to be elected falls under a second view which may be taken of this branch. In order to decide on the propriety of this article, two questions must be considered: first, whether biennial elections will, in this case, be safe; secondly, whether they be necessary or useful. First, as it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected. Let us consult experience, the guide that ought always to be followed whenever it can be found. The scheme of representation, as a substitute for a meeting of the citizens in person, being at most but very imperfectly known to ancient polity, it is in more modern times only that we are to expect instructive examples. And even here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the few examples which are best known, and which bear the greatest analogy to our particular case. The first to which this character ought to be applied, is the House of Commons in Great Britain. The history of this branch of the English Constitution, anterior to the date of Magna Charta, is too obscure to yield instruction. The very existence of it has been made a question among political antiquaries. The earliest records of subsequent date prove that parliaments were to SIT only every year; not that they were to be ELECTED every year. And even these annual sessions were left so much at the discretion of the monarch, that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambition. To remedy this grievance, it was provided by a statute in the reign of Charles II., that the intermissions should not be protracted beyond a period of three years. On the accession of William III., when a revolution took place in the government, the subject was still more seriously

resumed, and it was declared to be among the fundamental rights of the people that parliaments ought to be held FREQUENTLY. By another statute, which passed a few years later in the same reign, the term " frequently," which had alluded to the triennial period settled in the time of Charles II., is reduced to a precise meaning, it being expressly enacted that a new parliament shall be called within three years after the termination of the former. The last change, from three to seven years, is well known to have been introduced pretty early in the present century, under an alarm for the Hanoverian succession. From these facts it appears that the greatest frequency of elections which has been deemed necessary in that kingdom, for binding the representatives to their constituents, does not exceed a triennial return of them. And if we may argue from the degree of liberty retained even under septennial elections, and all the other vicious ingredients in the parliamentary constitution, we cannot doubt that a reduction of the period from seven to three years, with the other necessary reforms, would so far extend the influence of the people over their representatives as to satisfy us that biennial elections, under the federal system, cannot possibly be dangerous to the requisite dependence of the House of Representatives on their constituents. Elections in Ireland, till of late, were regulated entirely by the discretion of the crown, and were seldom repeated, except on the accession of a new prince, or some other contingent event. The parliament which commenced with George II. was continued throughout his whole reign, a period of about thirty-five years. The only dependence of the representatives on the people consisted in the right of the latter to supply occasional vacancies by the election of new members, and in the chance of some event which might produce a general new election. The ability also of the Irish parliament to maintain the rights of their constituents, so far as the disposition might exist, was extremely shackled by the control of the crown over the subjects of their deliberation. Of late these shackles, if I mistake not, have been broken; and octennial parliaments have besides been established. What effect may be produced by this partial reform, must be left to further experience. The example of Ireland, from this view of it, can throw but little light on the subject. As far as we can draw any conclusion from it, it must be that if the people of that country have been able under all these disadvantages to retain any liberty whatever, the advantage of biennial elections would secure to them every degree of liberty, which might depend on a due connection between their representatives and themselves. Let us bring our inquiries nearer home. The example of these States, when British colonies, claims particular attention, at the same time that it is so well known as to require little to be said on it. The principle of representation, in one branch of the legislature at least, was established in all of them. But the periods of election were different. They varied from one to seven years. Have we any reason to infer, from the spirit and conduct of the representatives of the people, prior to the Revolution, that biennial elections would have been dangerous to the public liberties? The spirit which everywhere displayed itself at the commencement of the struggle, and which vanquished the obstacles to independence, is the best of proofs that a sufficient portion of liberty had been everywhere enjoyed to inspire both a sense of its worth and a zeal for its proper enlargement. This remark holds good, as well with regard to the then colonies whose elections were least frequent, as to those whose elections were most frequent Virginia was the colony which stood first in resisting the parliamentary usurpations of Great Britain; it was the first also in espousing, by public act, the resolution of independence. In Virginia, nevertheless, if I have not been misinformed, elections under the former government were septennial. This particular example is brought into view, not as a proof of any peculiar merit, for the priority in those instances was probably accidental; and still less of any advantage in SEPTENNIAL elections, for when compared with a greater frequency they are inadmissible; but merely as a proof, and I conceive it to be a very substantial proof, that the liberties of the people can be in no danger from BIENNIAL elections. The conclusion resulting from these examples will be not a little strengthened by recollecting three circumstances. The first is, that the federal legislature will possess a part only of that supreme legislative authority which is vested completely in the British Parliament; and which, with a few exceptions, was exercised by the colonial assemblies and the Irish legislature. It is a received and well-founded maxim, that where no other circumstances affect the case, the greater the power is, the shorter ought to be its duration; and, conversely, the smaller the power, the more safely may its duration be protracted. In the second place, it has, on another occasion, been shown that the federal legislature will not only be restrained by its dependence on its people, as other legislative bodies are, but that it will be, moreover, watched and controlled by the several collateral legislatures, which other legislative bodies are not. And in the third place, no comparison can be made between the means that will be possessed by the more permanent branches of the federal government for seducing, if they should be disposed to seduce, the House of Representatives from their duty to the people, and the means of influence over the popular branch possessed by the other branches of the government above cited. With less power, therefore, to abuse, the federal representatives can be less tempted on one side, and will be doubly watched on the other. PUBLIUS.

FEDERALIST No. 53

The Same Subject Continued(The House of Representatives) From the New York Packet. Tuesday, February 12, 1788.

HAMILTON OR MADISON

To the People of the State of New York: I SHALL here, perhaps, be reminded of a current observation, " that where annual elections end, tyranny begins. " If it be true, as has often been remarked, that sayings which become proverbial are generally founded in reason, it is not less true, that when once established, they are often applied to cases to which the reason of them does not extend. I need not look for a proof beyond the case before us. What is the reason on which this proverbial observation is founded? No man will subject himself to the ridicule of pretending that any natural connection subsists between the sun or the seasons, and the period within which human virtue can bear the temptations of power. Happily for mankind, liberty is not, in this respect, confined to any single point of time; but lies within extremes, which afford sufficient latitude for all the variations which may be required by the various situations and circumstances of civil society. The election of magistrates might be, if it were found expedient, as in some instances it actually has been, daily, weekly, or monthly, as well as annual; and if circumstances may require a deviation from the rule on one side, why not also on the other side? Turning our attention to the periods established among ourselves, for the election of the most numerous branches of the State legislatures, we find them by no means coinciding any more in this instance, than in the elections of other civil magistrates. In Connecticut and Rhode Island, the periods are half-yearly. In the other States, South Carolina excepted, they are annual. In South Carolina they are biennial as is proposed in the federal government. Here is a difference, as four to one, between the longest and shortest periods; and yet it would be not easy to show, that Connecticut or Rhode Island is better governed, or enjoys a greater share of rational liberty, than South Carolina; or that either the one or the other of these States is distinguished in these respects, and by these causes, from the States whose elections are different from both. In searching for the grounds of this doctrine, I can discover but one, and that is wholly inapplicable to our case. The important distinction so well understood in America, between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable, as well with regard to the Constitution, as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. They have in particular,

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on several occasions, changed the period of election; and, on the last occasion, not only introduced septennial in place of triennial elections, but by the same act, continued themselves in place four years beyond the term for which they were elected by the people. An attention to these dangerous practices has produced a very natural alarm in the votaries of free government, of which frequency of elections is the corner-stone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government, either existed or could be obtained, no constitutional security, similar to that established in the United States, was to be attempted. Some other security, therefore, was to be sought for; and what better security would the case admit, than that of selecting and appealing to some simple and familiar portion of time, as a standard for measuring the danger of innovations, for fixing the national sentiment, and for uniting the patriotic exertions? The most simple and familiar portion of time, applicable to the subject was that of a year; and hence the doctrine has been inculcated by a laudable zeal, to erect some barrier against the gradual innovations of an unlimited government, that the advance towards tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government? The second question stated is, whether biennial elections be necessary or useful. The propriety of answering this question in the affirmative will appear from several very obvious considerations.

No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service, ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service. The period of legislative service established in most of the States for the more numerous branch is, as we have seen, one year. The question then may be put into this simple form: does the period of two years bear no greater proportion to the knowledge requisite for federal legislation than one year does to the knowledge requisite for State legislation? The very statement of the question, in this form, suggests the answer that ought to be given to it. In a single State, the requisite knowledge relates to the existing laws which are uniform throughout the State, and with which all the citizens are more or less conversant; and to the general affairs of the State, which lie within a small compass, are not very diversified, and occupy much of the attention and conversation of every class of people. The great theatre of the United States presents a very different scene. The laws are so far from being uniform, that they vary in every State: whilst the public affairs of the Union are spread throughout a very extensive region, and are extremely diversified by the local affairs connected with them, and can with difficulty be correctly learnt in any other place than in the central councils to which a knowledge of them will be brought by the representatives of every part of the empire. Yet some knowledge of the affairs, and even of the laws, of all the States, ought to be possessed by the members from each of the States. How can foreign trade be properly regulated by uniform laws, without some acquaintance with the commerce, the ports, the usages, and the regulations of the different States? How can the trade between the different States be duly regulated, without some knowledge of their relative situations in these and other respects? How can taxes be judiciously imposed and effectually collected, if they be not accommodated to the different laws and local circumstances relating to these objects in the different States? How can uniform regulations for the militia be duly provided, without a similar knowledge of many internal circumstances by which the States are distinguished from each other? These are the principal objects of federal legislation, and suggest most forcibly the extensive information which the representatives ought to acquire. The other interior objects will require a proportional degree of information with regard to them. It is true that all these difficulties will, by degrees, be very much diminished. The most laborious task will be the proper inauguration of the government and the primeval formation of a federal code. Improvements on the first draughts will every year become both easier and fewer. Past transactions of the government will be a ready and accurate source of information to new members. The affairs of the Union will become more and more objects of curiosity and conversation among the citizens at large. And the increased intercourse among those of different States will contribute not a little to diffuse a mutual knowledge of their affairs, as this again will contribute to a general assimilation of their manners and laws. But with all these abatements, the business of federal legislation must continue so far to exceed, both in novelty and difficulty, the legislative business of a single State, as to justify the longer period of service assigned to those who are to transact it. A branch of knowledge which belongs to the acquirements of a federal representative, and which has not been mentioned is that of foreign affairs. In regulating our own commerce he ought to be not only acquainted with the treaties between the United States and other nations, but also with the commercial policy and laws of other nations. He ought not to be altogether ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is submitted to the federal government. And although the House of Representatives is not immediately to participate in foreign negotiations and arrangements, yet from the necessary connection between the several branches of public affairs, those particular branches will frequently deserve attention in the ordinary course of legislation, and will sometimes demand particular legislative sanction and co-operation. Some portion of this knowledge may, no doubt, be acquired in a man's closet; but some of it also can only be derived from the public sources of information; and all of it will be acquired to best effect by a practical attention to the subject during the period of actual service in the legislature. There are other considerations, of less importance, perhaps, but which are not unworthy of notice. The distance which many of the representatives will be obliged to travel, and the arrangements rendered necessary by that circumstance, might be much more serious objections with fit men to this service, if limited to a single year, than if extended to two years. No argument can be drawn on this subject, from the case of the delegates to the existing Congress. They are elected annually, it is true; but their re-election is considered by the legislative assemblies almost as a matter of course. The election of the representatives by the people would not be governed by the same principle. A few of the members, as happens in all such assemblies, will possess superior talents; will, by frequent reelections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members, and the less the information of the bulk of the members the more apt will they be to fall into the snares that may be laid for them. This remark is no less applicable to the relation which will subsist between the House of Representatives and the Senate. It is an inconvenience mingled with the advantages of our frequent elections even in single States, where they are large, and hold but one legislative session in a year, that spurious elections cannot be investigated and annulled in time for the decision to have its due effect. If a return can be obtained, no matter by what unlawful means, the irregular member, who takes his seat of course, is sure of holding it a sufficient time to answer his purposes. Hence, a very pernicious encouragement is given to the use of unlawful means, for obtaining irregular returns. Were elections for the federal legislature to be annual, this practice might become a very serious abuse, particularly in the more distant States. Each house is, as it necessarily must be, the judge of the elections, qualifications, and returns of its members; and whatever improvements may be suggested by experience, for simplifying and accelerating the process in disputed cases, so great a portion of a year would unavoidably elapse, before an illegitimate member could be dispossessed of his seat, that the prospect of such an event would be little check to unfair and illicit means of obtaining a seat. All these considerations taken together warrant us in affirming, that biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberty of the people. PUBLIUS.

FEDERALIST No. 54

The Apportionment of Members Among the States

From the New York Packet, Tuesday, February 12, 1788.

HAMILTON OR MADISON

To the People of the State of New York: THE next view which I shall take of the House of Representatives relates to the appointment of its members to the several States which is to be determined by the same rule with that of direct taxes. It is not contended that the number of people in each State ought not to be the standard for regulating the proportion of those who are to represent the people of each State. The establishment of the same rule for the appointment of taxes, will probably be as little contested; though the rule itself in this case, is by no means founded on the same principle. In the former case, the rule is understood to refer to the personal rights of the people, with which it has a natural and universal connection. In the latter, it has reference to the proportion of wealth, of which it is in no case a precise measure, and in ordinary cases a very unfit one. But notwithstanding the imperfection of the rule as applied to the relative wealth and contributions of the States, it is evidently the least objectionable among the practicable rules, and had too recently obtained the general sanction of America, not to have found a ready preference with the convention. All this is admitted, it will perhaps be said; but does it follow, from an admission of numbers for the measure of representation, or of slaves combined with free citizens as a ratio of taxation, that slaves ought to be included in the numerical rule of representation? Slaves are considered as property, not as persons. They ought therefore to be comprehended in estimates of taxation which are founded on property, and to be excluded from representation which is regulated by a census of persons. This is the objection, as I understand it, stated in its full force. It shall be equally candid in stating the reasoning which may be offered on the opposite side. "We subscribe to the doctrine," might one of our Southern brethren observe, "that representation relates more immediately to persons, and taxation more immediately to property, and we join in the application of this distinction to the case of our slaves. But we must deny the fact, that slaves are considered merely as property, and in no respect whatever as persons. The true state of the case is, that they partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another, the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others, the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character. It is the character bestowed on them by the laws under which they live; and it will not be denied, that these are the proper criterion; because it is only under the pretext that the laws have transformed the negroes into subjects of property, that a place is disputed them in the computation of numbers; and it is admitted, that if the laws were to restore the rights which have been taken away, the negroes could no longer be refused an equal share of representation with the other inhabitants." "This question may be placed in another light. It is agreed on all sides, that numbers are the best scale of wealth and taxation, as they are the only proper scale of representation. Would the convention have been impartial or consistent, if they had rejected the slaves from the list of inhabitants, when the shares of representation were to be calculated, and inserted them on the lists when the tariff of contributions was to be adjusted? Could it be reasonably expected, that the Southern States would concur in a system, which considered their slaves in some degree as men, when burdens were to be imposed, but refused to consider them in the same light, when advantages were to be conferred? Might not some surprise also be expressed, that those who reproach the Southern States with the barbarous policy of considering as property a part of their human brethren, should themselves contend, that the government to which all the States are to be parties, ought to consider this unfortunate race more completely in the unnatural light of property, than the very laws of which they complain?" "It may be replied, perhaps, that slaves are not included in the estimate of representatives in any of the States possessing them. They neither vote themselves nor increase the votes of their masters. Upon what principle, then, ought they to be taken into the federal estimate of representation? In rejecting them altogether, the Constitution would, in this respect, have followed the very laws which have been appealed to as the proper guide." "This objection is repelled by a single observation. It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such part of the inhabitants as the State itself may designate. The qualifications on which the right of suffrage depend are not, perhaps, the same in any two States. In some of the States the difference is very material. In every State, a certain proportion of inhabitants are deprived of this right by the constitution of the State, who will be included in the census by which the federal Constitution apportions the representatives. In this point of view the Southern States might retort the complaint, by insisting that the principle laid down by the convention required that no regard should be had to the policy of particular States towards their own inhabitants; and consequently, that the slaves, as inhabitants, should have been admitted into the census according to their full number, in like manner with other inhabitants, who, by the policy of other States, are not admitted to all the rights of citizens. A rigorous adherence, however, to this principle, is waived by those who would be gainers by it. All that they ask is that equal moderation be shown on the other side. Let the case of the slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude below the equal level of free inhabitants, which regards the SLAVE as divested of two fifths of the MAN." "After all, may not another ground be taken on which this article of the Constitution will admit of a still more ready defense? We have hitherto proceeded on the idea that representation related to persons only, and not at all to property. But is it a just idea? Government is instituted no less for protection of the property, than of the persons, of individuals. The one as well as the other, therefore, may be considered as represented by those who are charged with the government. Upon this principle it is, that in several of the States, and particularly in the State of New York, one branch of the government is intended more especially to be the guardian of property, and is accordingly elected by that part of the society which is most interested in this object of government. In the federal Constitution, this policy does not prevail. The rights of property are committed into the same hands with the personal rights. Some attention ought, therefore, to be paid to property in the choice of those hands." "For another reason, the votes allowed in the federal legislature to the people of each State, ought to bear some proportion to the comparative wealth of the States. States have not, like individuals, an influence over each other, arising from superior advantages of fortune. If the law allows an opulent citizen but a single vote in the choice of his representative, the respect and consequence which he derives from his fortunate situation very frequently guide the votes of others to the objects of his choice; and through this imperceptible channel the rights of property are conveyed into the public representation. A State possesses no such influence over other States. It is not probable that the richest State in the Confederacy will ever influence the choice of a single representative in any other State. Nor will the representatives of the larger and richer States possess any other advantage in the federal legislature, over the representatives of other States, than what may result from their

superior number alone. As far, therefore, as their superior wealth and weight may justly entitle them to any advantage, it ought to be secured to them by a superior share of representation. The new Constitution is, in this respect, materially different from the existing Confederation, as well as from that of the United Netherlands, and other similar confederacies. In each of the latter, the efficacy of the federal resolutions depends on the subsequent and voluntary resolutions of the states composing the union. Hence the states, though possessing an equal vote in the public councils, have an unequal influence, corresponding with the unequal importance of these subsequent and voluntary resolutions. Under the proposed Constitution, the federal acts will take effect without the necessary intervention of the individual States. They will depend merely on the majority of votes in the federal legislature, and consequently each vote, whether proceeding from a larger or smaller State, or a State more or less wealthy or powerful, will have an equal weight and efficacy: in the same manner as the votes individually given in a State legislature, by the representatives of unequal counties or other districts, have each a precise equality of value and effect; or if there be any difference in the case, it proceeds from the difference in the personal character of the individual representative, rather than from any regard to the extent of the district from which he comes. "Such is the reasoning which an advocate for the Southern interests might employ on this subject; and although it may appear to be a little strained in some points, yet, on the whole, I must confess that it fully reconciles me to the scale of representation which the convention have established. In one respect, the establishment of a common measure for representation and taxation will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will necessarily depend, in a considerable degree on the disposition, if not on the co-operation, of the States, it is of great importance that the States should feel as little bias as possible, to swell or to reduce the amount of their numbers. Were their share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the States will have opposite interests, which will control and balance each other, and produce the requisite impartiality. PUBLIUS.

FEDERALIST No. 55

The Total Number of the House of Representatives From the New York Packet. Friday, February 15, 1788.

HAMILTON OR MADISON

To the People of the State of New York: THE number of which the House of Representatives is to consist, forms another and a very interesting point of view, under which this branch of the federal legislature may be contemplated. Scarce any article, indeed, in the whole Constitution seems to be rendered more worthy of attention, by the weight of character and the apparent force of argument with which it has been assailed. The charges exhibited against it are, first, that so small a number of representatives will be an unsafe depository of the public interests; secondly, that they will not possess a proper knowledge of the local circumstances of their numerous constituents; thirdly, that they will be taken from that class of citizens which will sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few on the depression of the many; fourthly, that defective as the number will be in the first instance, it will be more and more disproportionate, by the increase of the people, and the obstacles which will prevent a correspondent increase of the representatives. In general it may be remarked on this subject, that no political problem is less susceptible of a precise solution than that which relates to the number most convenient for a representative legislature; nor is there any point on which the policy of the several States is more at variance, whether we compare their legislative assemblies directly with each other, or consider the proportions which they respectively bear to the number of their constituents. Passing over the difference between the smallest and largest States, as Delaware, whose most numerous branch consists of twenty-one representatives, and Massachusetts, where it amounts to between three and four hundred, a very considerable difference is observable among States nearly equal in population. The number of representatives in Pennsylvania is not more than one fifth of that in the State last mentioned. New York, whose population is that of South Carolina as six to five, has little more than one third of the number of representatives. As great a disparity prevails between the States of Georgia and Delaware or Rhode Island. In Pennsylvania, the representatives do not bear a greater proportion to their constituents than of one for every four or five thousand. In Rhode Island, they bear a proportion of at least one for every thousand. And according to the constitution of Georgia, the proportion may be carried to one to every ten electors; and must unavoidably far exceed the proportion in any of the other States. Another general remark to be made is, that the ratio between the representatives and the people ought not to be the same where the latter are very numerous as where they are very few. Were the representatives in Virginia to be regulated by the standard in Rhode Island, they would, at this time, amount to between four and five hundred; and twenty or thirty years hence, to a thousand. On the other hand, the ratio of Pennsylvania, if applied to the State of Delaware, would reduce the representative assembly of the latter to seven or eight members. Nothing can be more fallacious than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob. It is necessary also to recollect here the observations which were applied to the case of biennial elections. For the same reason that the limited powers of the Congress, and the control of the State legislatures, justify less frequent elections than the public safety might otherwise require, the members of the Congress need be less numerous than if they possessed the whole power of legislation, and were under no other than the ordinary restraints of other legislative bodies. With these general ideas in our mind, let us weigh the objections which have been stated against the number of members proposed for the House of Representatives. It is said, in the first place, that so small a number cannot be safely trusted with so much power. The number of which this branch of the legislature is to consist, at the outset of the government, will be sixtyfive. Within three years a census is to be taken, when the number may be augmented to one for every thirty thousand inhabitants; and within every successive period of ten years the census is to be renewed, and augmentations may continue to be made under the above limitation. It will not be thought an extravagant conjecture that the first census will, at the rate of one for every thirty thousand, raise the number of representatives to at least one hundred. Estimating the negroes in the proportion of three fifths, it can scarcely be doubted that the population of the United States will by that time, if it does not already, amount to three millions. At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred, and of fifty years, to four hundred. This is a number which, I presume, will put an end to all fears arising from the smallness of the body. I take for granted here what I shall, in answering the fourth objection, hereafter show, that the number of representatives will be augmented from time to time in the manner provided by the Constitution. On a contrary supposition, I should admit the objection to have very great weight indeed. The true question to be decided then is, whether the smallness of the number, as a temporary regulation, be dangerous to the public liberty? Whether sixty-five members for a few years, and a hundred or two hundred for a few more, be a safe depository for a

limited and well-guarded power of legislating for the United States? I must own that I could not give a negative answer to this question, without first obliterating every impression which I have received with regard to the present genius of the people of America, the spirit which actuates the State legislatures, and the principles which are incorporated with the political character of every class of citizens I am unable to conceive that the people of America, in their present temper, or under any circumstances which can speedily happen, will choose, and every second year repeat the choice of, sixty-five or a hundred men who would be disposed to form and pursue a scheme of tyranny or treachery. I am unable to conceive that the State legislatures, which must feel so many motives to watch, and which possess so many means of counteracting, the federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents. I am equally unable to conceive that there are at this time, or can be in any short time, in the United States, any sixty-five or a hundred men capable of recommending themselves to the choice of the people at large, who would either desire or dare, within the short space of two years, to betray the solemn trust committed to them. What change of circumstances, time, and a fuller population of our country may produce, requires a prophetic spirit to declare, which makes no part of my pretensions. But judging from the circumstances now before us, and from the probable state of them within a moderate period of time, I must pronounce that the liberties of America cannot be unsafe in the number of hands proposed by the federal Constitution. From what quarter can the danger proceed? Are we afraid of foreign gold? If foreign gold could so easily corrupt our federal rulers and enable them to ensnare and betray their constituents, how has it happened that we are at this time a free and independent nation? The Congress which conducted us through the Revolution was a less numerous body than their successors will be; they were not chosen by, nor responsible to, their fellowcitizens at large; though appointed from year to year, and recallable at pleasure, they were generally continued for three years, and prior to the ratification of the federal articles, for a still longer term. They held their consultations always under the veil of secrecy; they had the sole transaction of our affairs with foreign nations; through the whole course of the war they had the fate of their country more in their hands than it is to be hoped will ever be the case with our future representatives; and from the greatness of the prize at stake, and the eagerness of the party which lost it, it may well be supposed that the use of other means than force would not have been scrupled. Yet we know by happy experience that the public trust was not betrayed; nor has the purity of our public councils in this particular ever suffered, even from the whispers of calumny. Is the danger apprehended from the other branches of the federal government? But where are the means to be found by the President, or the Senate, or both? Their emoluments of office, it is to be presumed, will not, and without a previous corruption of the House of Representatives cannot, more than suffice for very different purposes; their private fortunes, as they must all be American citizens, cannot possibly be sources of danger. The only means, then, which they can possess, will be in the dispensation of appointments. Is it here that suspicion rests her charge? Sometimes we are told that this fund of corruption is to be exhausted by the President in subduing the virtue of the Senate. Now, the fidelity of the other House is to be the victim. The improbability of such a mercenary and perfidious combination of the several members of government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension. But, fortunately, the Constitution has provided a still further safeguard. The members of the Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased, during the term of their election. No offices therefore can be dealt out to the existing members but such as may become vacant by ordinary casualties: and to suppose that these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events ought to be calculated, and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain. The sincere friends of liberty, who give themselves up to the extravagancies of this passion, are not aware of the injury they do their own cause. As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another. PUBLIUS.

FEDERALIST No. 56

The Same Subject Continued(The Total Number of the House of Representatives) From the New York Packet. Tuesday, February 19, 1788.

HAMILTON OR MADISON

To the People of the State of New York: THE SECOND charge against the House of Representatives is, that it will be too small to possess a due knowledge of the interests of its constituents. As this objection evidently proceeds from a comparison of the proposed number of representatives with the great extent of the United States, the number of their inhabitants, and the diversity of their interests, without taking into view at the same time the circumstances which will distinguish the Congress from other legislative bodies, the best answer that can be given to it will be a brief explanation of these peculiarities. It is a sound and important principle that the representative ought to be acquainted with the interests and circumstances of his constituents. But this principle can extend no further than to those circumstances and interests to which the authority and care of the representative relate. An ignorance of a variety of minute and particular objects, which do not lie within the compass of legislation, is consistent with every attribute necessary to a due performance of the legislative trust. In determining the extent of information required in the exercise of a particular authority, recourse then must be had to the objects within the purview of that authority. What are to be the objects of federal legislation? Those which are of most importance, and which seem most to require local knowledge, are commerce, taxation, and the militia. A proper regulation of commerce requires much information, as has been elsewhere remarked; but as far as this information relates to the laws and local situation of each individual State, a very few representatives would be very sufficient vehicles of it to the federal councils. Taxation will consist, in a great measure, of duties which will be involved in the regulation of commerce. So far the preceding remark is applicable to this object. As far as it may consist of internal collections, a more diffusive knowledge of the circumstances of the State may be necessary. But will not this also be possessed in sufficient degree by a very few intelligent men, diffusively elected within the State? Divide the largest State into ten or twelve districts, and it will be found that there will be no peculiar local interests in either, which will not be within the knowledge of the representative of the district. Besides this source of information, the laws of the State, framed by representatives from every part of it, will be almost of themselves a sufficient guide. In every State there have been made, and must continue to be made, regulations on this subject which will, in many cases, leave little more to be done by the federal legislature, than to review the different laws, and reduce them in one general act. A skillful individual in his closet with all the local codes before him, might compile a law on some subjects of taxation for the whole union, without any aid from oral information, and it may be expected that whenever internal taxes may be necessary, and particularly in cases requiring uniformity throughout the States, the more simple objects will be preferred. To be fully sensible of the facility which will be given to this branch of federal legislation by the assistance of the State codes, we need only suppose for a moment that this or any other State were divided into a number of parts, each having and exercising within itself a power of local legislation. Is it not evident that a degree of local information and preparatory labor would be found in the several volumes of their proceedings, which

would very much shorten the labors of the general legislature, and render a much smaller number of members sufficient for it? The federal councils will derive great advantage from another circumstance. The representatives of each State will not only bring with them a considerable knowledge of its laws, and a local knowledge of their respective districts, but will probably in all cases have been members, and may even at the very time be members, of the State legislature, where all the local information and interests of the State are assembled, and from whence they may easily be conveyed by a very few hands into the legislature of the United States. The observations made on the subject of taxation apply with greater force to the case of the militia. For however different the rules of discipline may be in different States, they are the same throughout each particular State; and depend on circumstances which can differ but little in different parts of the same State. The attentive reader will discern that the reasoning here used, to prove the sufficiency of a moderate number of representatives, does not in any respect contradict what was urged on another occasion with regard to the extensive information which the representatives ought to possess, and the time that might be necessary for acquiring it. This information, so far as it may relate to local objects, is rendered necessary and difficult, not by a difference of laws and local circumstances within a single State, but of those among different States. Taking each State by itself, its laws are the same, and its interests but little diversified. A few men, therefore, will possess all the knowledge requisite for a proper representation of them. Were the interests and affairs of each individual State perfectly simple and uniform, a knowledge of them in one part would involve a knowledge of them in every other, and the whole State might be competently represented by a single member taken from any part of it. On a comparison of the different States together, we find a great dissimilarity in their laws, and in many other circumstances connected with the objects of federal legislation, with all of which the federal representatives ought to have some acquaintance. Whilst a few representatives, therefore, from each State, may bring with them a due knowledge of their own State, every representative will have much information to acquire concerning all the other States. The changes of time, as was formerly remarked, on the comparative situation of the different States, will have an assimilating effect. The effect of time on the internal affairs of the States, taken singly, will be just the contrary. At present some of the States are little more than a society of husbandmen. Few of them have made much progress in those branches of industry which give a variety and complexity to the affairs of a nation. These, however, will in all of them be the fruits of a more advanced population, and will require, on the part of each State, a fuller representation. The foresight of the convention has accordingly taken care that the progress of population may be accompanied with a proper increase of the representative branch of the government. The experience of Great Britain, which presents to mankind so many political lessons, both of the monitory and exemplary kind, and which has been frequently consulted in the course of these inquiries, corroborates the result of the reflections which we have just made. The number of inhabitants in the two kingdoms of England and Scotland cannot be stated at less than eight millions. The representatives of these eight millions in the House of Commons amount to five hundred and fifty-eight. Of this number, one ninth are elected by three hundred and sixty-four persons, and one half, by five thousand seven hundred and twenty-three persons. It cannot be supposed that the half thus elected, and who do not even reside among the people at large, can add any thing either to the security of the people against the government, or to the knowledge of their circumstances and interests in the legislative councils. On the contrary, it is notorious, that they are more frequently the representatives and instruments of the executive magistrate, than the guardians and advocates of the popular rights. They might therefore, with great propriety, be considered as something more than a mere deduction from the real representatives of the nation. We will, however, consider them in this light alone, and will not extend the deduction to a considerable number of others, who do not reside among their constituents, are very faintly connected with them, and have very little particular knowledge of their affairs. With all these concessions, two hundred and seventy-nine persons only will be the depository of the safety, interest, and happiness of eight millions that is to say, there will be one representative only to maintain the rights and explain the situation OF TWENTY-EIGHT THOUSAND SIX HUNDRED AND SEVENTY constituents, in an assembly exposed to the whole force of executive influence, and extending its authority to every object of legislation within a nation whose affairs are in the highest degree diversified and complicated. Yet it is very certain, not only that a valuable portion of freedom has been preserved under all these circumstances, but that the defects in the British code are chargeable, in a very small proportion, on the ignorance of the legislature concerning the circumstances of the people. Allowing to this case the weight which is due to it, and comparing it with that of the House of Representatives as above explained it seems to give the fullest assurance, that a representative for every THIRTY THOUSAND INHABITANTS will render the latter both a safe and competent guardian of the interests which will be confided to it. PUBLIUS. Burgh's ``Political Disquisitions.``

FEDERALIST No. 57

The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation From the New York Packet. Tuesday, February 19, 1788.

HAMILTON OR MADISON

To the People of the State of New York: THE THIRD charge against the House of Representatives is, that it will be taken from that class of citizens which will have least sympathy with the mass of the people, and be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few. Of all the objections which have been framed against the federal Constitution, this is perhaps the most extraordinary. Whilst the objection itself is levelled against a pretended oligarchy, the principle of it strikes at the very root of republican government. The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one, is such a limitation of the term of appointments as will maintain a proper responsibility to the people. Let me now ask what circumstance there is in the constitution of the House of Representatives that violates the principles of republican government, or favors the elevation of the few on the ruins of the many? Let me ask whether every circumstance is not, on the contrary, strictly conformable to these principles, and scrupulously impartial to the rights and pretensions of every class and description of citizens? Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State. Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people. If we consider the situation of the men on whom the free suffrages of their fellow-citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents. In the first place, as they will have been distinguished by the preference of their fellow-citizens, we are to presume that in general they will be somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere and scrupulous regard to the nature of their engagements. In the second place, they will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their constituents. There is in every breast a sensibility to marks of honor, of favor,

of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent returns. Ingratitude is a common topic of declamation against human nature; and it must be confessed that instances of it are but too frequent and flagrant, both in public and in private life. But the universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of the contrary sentiment. In the third place, those ties which bind the representative to his constituents are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of government which favors his pretensions and gives him a share in its honors and distinctions. Whatever hopes or projects might be entertained by a few aspiring characters, it must generally happen that a great proportion of the men deriving their advancement from their influence with the people, would have more to hope from a preservation of the favor, than from innovations in the government subversive of the authority of the people. All these securities, however, would be found very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it. I will add, as a fifth circumstance in the situation of the House of Representatives, restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America, a spirit which nourishes freedom, and in return is nourished by it. If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty. Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people. It is possible that these may all be insufficient to control the caprice and wickedness of man. But are they not all that government will admit, and that human prudence can devise? Are they not the genuine and the characteristic means by which republican government provides for the liberty and happiness of the people? Are they not the identical means on which every State government in the Union relies for the attainment of these important ends? What then are we to understand by the objection which this paper has combated? What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them? Were the objection to be read by one who had not seen the mode prescribed by the Constitution for the choice of representatives, he could suppose nothing less than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes; or at least that the mode prescribed by the State constitutions was in some respect or other, very grossly departed from. We have seen how far such a supposition would err, as to the two first points. Nor would it, in fact, be less erroneous as to the last. The only difference discoverable between the two cases is, that each representative of the United States will be elected by five or six thousand citizens; whilst in the individual States, the election of a representative is left to about as many hundreds. Will it be pretended that this difference is sufficient to justify an attachment to the State governments, and an abhorrence to the federal government? If this be the point on which the objection turns, it deserves to be examined. Is it supported by REASON? This cannot be said, without maintaining that five or six thousand citizens are less capable of choosing a fit representative, or more liable to be corrupted by an unfit one, than five or six hundred. Reason, on the contrary, assures us, that as in so great a number a fit representative would be most likely to be found, so the choice would be less likely to be diverted from him by the intrigues of the ambitious or the ambitious or the bribes of the rich. Is the CONSEQUENCE from this doctrine admissible? If we say that five or six hundred citizens are as many as can jointly exercise their right of suffrage, must we not deprive the people of the immediate choice of their public servants, in every instance where the administration of the government does not require as many of them as will amount to one for that number of citizens? Is the doctrine warranted by FACTS? It was shown in the last paper, that the real representation in the British House of Commons very little exceeds the proportion of one for every thirty thousand inhabitants. Besides a variety of powerful causes not existing here, and which favor in that country the pretensions of rank and wealth, no person is eligible as a representative of a county, unless he possess real estate of the clear value of six hundred pounds sterling per year; nor of a city or borough, unless he possess a like estate of half that annual value. To this qualification on the part of the county representatives is added another on the part of the county electors, which restrains the right of suffrage to persons having a freehold estate of the annual value of more than twenty pounds sterling, according to the present rate of money. Notwithstanding these unfavorable circumstances, and notwithstanding some very unequal laws in the British code, it cannot be said that the representatives of the nation have elevated the few on the ruins of the many. But we need not resort to foreign experience on this subject. Our own is explicit and decisive. The districts in New Hampshire in which the senators are chosen immediately by the people, are nearly as large as will be necessary for her representatives in the Congress. Those of Massachusetts are larger than will be necessary for that purpose; and those of New York still more so. In the last State the members of Assembly for the cities and counties of New York and Albany are elected by very nearly as many voters as will be entitled to a representative in the Congress, calculating on the number of sixty-five representatives only. It makes no difference that in these senatorial districts and counties a number of representatives are voted for by each elector at the same time. If the same electors at the same time are capable of choosing four or five representatives, they cannot be incapable of choosing one. Pennsylvania is an additional example. Some of her counties, which elect her State representatives, are almost as large as her districts will be by which her federal representatives will be elected. The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of federal representatives. It forms, however, but one county, in which every elector votes for each of its representatives in the State legislature. And what may appear to be still more directly to our purpose, the whole city actually elects a SINGLE MEMBER for the executive council. This is the case in all the other counties of the State. Are not these facts the most satisfactory proofs of the fallacy which has been employed against the branch of the federal government under consideration? Has it appeared on trial that the senators of New Hampshire, Massachusetts, and New York, or the executive council of Pennsylvania, or the members of the Assembly in the two last States, have betrayed any peculiar disposition to sacrifice the many to the few, or are in any respect less worthy of their places than the representatives and magistrates appointed in other States by very small divisions of the people? But there are cases of a stronger complexion than any which I have yet quoted. One branch of the legislature of Connecticut is so constituted that each member of it is elected by the whole State. So is the governor of that State, of Massachusetts, and of this State, and the president of New Hampshire. I leave every man to decide whether the result of any one of these experiments can be said to countenance a suspicion, that a diffusive mode of choosing representatives of the people tends to elevate traitors and to undermine the public liberty. PUBLIUS.

FEDERALIST No. 58 Objection That The Number of Members Will Not Be Augmented as the

Progress of Population Demands Considered

MADISON

To the People of the State of New York: THE remaining charge against the House of Representatives, which I am to examine, is grounded on a supposition that the number of members will not be augmented from time to time, as the progress of population may demand. It has been admitted, that this objection, if well supported, would have great weight. The following observations will show that, like most other objections against the Constitution, it can only proceed from a partial view of the subject, or from a jealousy which discolors and disfigures every object which is beheld. 1. Those who urge the objection seem not to have recollected that the federal Constitution will not suffer by a comparison with the State constitutions, in the security provided for a gradual augmentation of the number of representatives. The number which is to prevail in the first instance is declared to be temporary. Its duration is limited to the short term of three years. Within every successive term of ten years a census of inhabitants is to be repeated. The unequivocal objects of these regulations are, first, to readjust, from time to time, the apportionment of representatives to the number of inhabitants, under the single exception that each State shall have one representative at least; secondly, to augment the number of representatives at the same periods, under the sole limitation that the whole number shall not exceed one for every thirty thousand inhabitants. If we review the constitutions of the several States, we shall find that some of them contain no determinate regulations on this subject, that others correspond pretty much on this point with the federal Constitution, and that the most effectual security in any of them is resolvable into a mere directory provision. 2. As far as experience has taken place on this subject, a gradual increase of representatives under the State constitutions has at least kept pace with that of the constituents, and it appears that the former have been as ready to concur in such measures as the latter have been to call for them. 3. There is a peculiarity in the federal Constitution which insures a watchful attention in a majority both of the people and of their representatives to a constitutional augmentation of the latter. The peculiarity lies in this, that one branch of the legislature is a representation of citizens, the other of the States: in the former, consequently, the larger States will have most weight; in the latter, the advantage will be in favor of the smaller States. From this circumstance it may with certainty be inferred that the larger States will be strenuous advocates for increasing the number and weight of that part of the legislature in which their influence predominates. And it so happens that four only of the largest will have a majority of the whole votes in the House of Representatives. Should the representatives or people, therefore, of the smaller States oppose at any time a reasonable addition of members, a coalition of a very few States will be sufficient to overrule the opposition; a coalition which, notwithstanding the rivalry and local prejudices which might prevent it on ordinary occasions, would not fail to take place, when not merely prompted by common interest, but justified by equity and the principles of the Constitution. It may be alleged, perhaps, that the Senate would be prompted by like motives to an adverse coalition; and as their concurrence would be indispensable, the just and constitutional views of the other branch might be defeated. This is the difficulty which has probably created the most serious apprehensions in the jealous friends of a numerous representation. Fortunately it is among the difficulties which, existing only in appearance, vanish on a close and accurate inspection. The following reflections will, if I mistake not, be admitted to be conclusive and satisfactory on this point. Notwithstanding the equal authority which will subsist between the two houses on all legislative subjects, except the originating of money bills, it cannot be doubted that the House, composed of the greater number of members, when supported by the more powerful States, and speaking the known and determined sense of a majority of the people, will have no small advantage in a question depending on the comparative firmness of the two houses. This advantage must be increased by the consciousness, felt by the same side of being supported in its demands by right, by reason, and by the Constitution; and the consciousness, on the opposite side, of contending against the force of all these solemn considerations. It is farther to be considered, that in the gradation between the smallest and largest States, there are several, which, though most likely in general to arrange themselves among the former are too little removed in extent and population from the latter, to second an opposition to their just and legitimate pretensions. Hence it is by no means certain that a majority of votes, even in the Senate, would be unfriendly to proper augmentations in the number of representatives. It will not be looking too far to add, that the senators from all the new States may be gained over to the just views of the House of Representatives, by an expedient too obvious to be overlooked. As these States will, for a great length of time, advance in population with peculiar rapidity, they will be interested in frequent reapportionments of the representatives to the number of inhabitants. The large States, therefore, who will prevail in the House of Representatives, will have nothing to do but to make reapportionments and augmentations mutually conditions of each other; and the senators from all the most growing States will be bound to contend for the latter, by the interest which their States will feel in the former. These considerations seem to afford ample security on this subject, and ought alone to satisfy all the doubts and fears which have been indulged with regard to it. Admitting, however, that they should all be insufficient to subdue the unjust policy of the smaller States, or their predominant influence in the councils of the Senate, a constitutional and infallible resource still remains with the larger States, by which they will be able at all times to accomplish their just purposes. The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure. But will not the House of Representatives be as much interested as the Senate in maintaining the government in its proper functions, and will they not therefore be unwilling to stake its existence or its reputation on the pliancy of the Senate? Or, if such a trial of firmness between the two branches were hazarded, would not the one be as likely first to yield as the other? These questions will create no difficulty with those who reflect that in all cases the smaller the number, and the more permanent and conspicuous the station, of men in power, the stronger must be the interest which they will individually feel in whatever concerns the government. Those who represent the dignity of their country in the eyes of other nations, will be particularly sensible to every prospect of public danger, or of dishonorable stagnation in public affairs. To those causes we are to ascribe the continual triumph of the British House of Commons over the other branches of the government, whenever the engine of a money bill has been employed. An absolute inflexibility on the side of the latter, although it could not have failed to involve every department of the state in the general confusion, has neither been apprehended nor experienced. The utmost degree of firmness that can be displayed by the federal Senate or President, will not be more than equal to a resistance in which they will be supported by constitutional and patriotic principles. In this review of the Constitution of the House of Representatives, I have passed over the circumstances of economy, which, in the present state of affairs, might have had some effect in lessening the temporary number of representatives, and a disregard of which would probably have been as rich a theme of declamation against the Constitution as has been shown by the smallness of the number proposed. I omit also any remarks on the difficulty which might be found, under present circumstances, in engaging in the federal service a large number of such characters as the people will probably elect. One observation, however, I must be permitted to add on this subject as claiming, in my judgment, a very serious attention. It is, that in all legislative assemblies the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. In the first place, the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendancy of passion over reason. In the next

place, the larger the number, the greater will be the proportion of members of limited information and of weak capacities. Now, it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force. In the ancient republics, where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre had been placed in his single hand. On the same principle, the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation. The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, AFTER SECURING A SUFFICIENT NUMBER FOR THE PURPOSES OF SAFETY, OF LOCAL INFORMATION, AND OF DIFFUSIVE SYMPATHY WITH THE WHOLE SOCIETY, they will counteract their own views by every addition to their representatives. The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed. As connected with the objection against the number of representatives, may properly be here noticed, that which has been suggested against the number made competent for legislative business. It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution, cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences. Lastly, it would facilitate and foster the baneful practice of secessions; a practice which has shown itself even in States where a majority only is required; a practice subversive of all the principles of order and regular government; a practice which leads more directly to public convulsions, and the ruin of popular governments, than any other which has yet been displayed among us. PUBLIUS.

FEDERALIST No. 59

Concerning the Power of Congress to Regulate the Election of Members From the New York Packet. Friday, February 22, 1788.

HAMILTON

To the People of the State of New York: THE natural order of the subject leads us to consider, in this place, that provision of the Constitution which authorizes the national legislature to regulate, in the last resort, the election of its own members. It is in these words: "THE TIMES, PLACES, and MANNER of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter SUCH REGULATIONS, except as to the PLACES of choosing senators." "1 This provision has not only been declaimed against by those who condemn the Constitution in the gross, but it has been censured by those who have objected with less latitude and greater moderation; and, in one instance it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system. I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that EVERY GOVERNMENT OUGHT TO CONTAIN IN ITSELF THE MEANS OF ITS OWN PRESERVATION. Every just reasoner will, at first sight, approve an adherence to this rule, in the work of the convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seed of future weakness, and perhaps anarchy. It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will therefore not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety. Nothing can be more evident, than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk. The extravagant surmises of a distempered jealousy can never be dignified with that character. If we are in a humor to presume abuses of power, it is as fair to presume them on the part of the State governments as on the part of the general government. And as it is more consonant to the rules of a just theory, to trust the Union with the care of its own existence, than to transfer that care to any other hands, if abuses of power are to be hazarded on the one side or on the other, it is more rational to hazard them where the power would naturally be placed, than where it would unnaturally be placed. Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments? The violation of principle, in this case, would have required no comment; and, to an unbiased observer, it will not be less apparent in the project of subjecting the existence of the national government, in a similar respect, to the pleasure of the State governments. An impartial view of the matter cannot fail to result in a conviction, that each, as far as possible, ought to depend on itself for its own preservation. As an objection to this position, it may be remarked that the constitution of the national Senate would involve, in its full extent, the danger which it is suggested might flow from an exclusive power in the State legislatures to regulate the federal elections. It may be alleged, that by declining the appointment of Senators, they might at any time give a fatal blow to the Union; and from this it may be inferred, that as its existence would be thus rendered dependent upon them in so essential a point, there can be no objection to intrusting them with it in the particular case under consideration. The interest of each State, it may be added, to maintain its representation in the national councils, would be a complete security against an abuse of the trust. This argument, though specious, will not, upon examination, be found solid. It is certainly true that the State legislatures, by forbearing the appointment of senators, may destroy the national government. But it will not follow that, because they have a power to do this in one instance, they ought to have it in every other. There are cases in which the pernicious tendency of such a power may be far more decisive, without any

motive equally cogent with that which must have regulated the conduct of the convention in respect to the formation of the Senate, to recommend their admission into the system. So far as that construction may expose the Union to the possibility of injury from the State legislatures, it is an evil; but it is an evil which could not have been avoided without excluding the States, in their political capacities, wholly from a place in the organization of the national government. If this had been done, it would doubtless have been interpreted into an entire dereliction of the federal principle; and would certainly have deprived the State governments of that absolute safeguard which they will enjoy under this provision. But however wise it may have been to have submitted in this instance to an inconvenience, for the attainment of a necessary advantage or a greater good, no inference can be drawn from thence to favor an accumulation of the evil, where no necessity urges, nor any greater good invites. It may be easily discerned also that the national government would run a much greater risk from a power in the State legislatures over the elections of its House of Representatives, than from their power of appointing the members of its Senate. The senators are to be chosen for the period of six years; there is to be a rotation, by which the seats of a third part of them are to be vacated and replenished every two years; and no State is to be entitled to more than two senators; a quorum of the body is to consist of sixteen members. The joint result of these circumstances would be, that a temporary combination of a few States to intermit the appointment of senators, could neither annul the existence nor impair the activity of the body; and it is not from a general and permanent combination of the States that we can have any thing to fear. The first might proceed from sinister designs in the leading members of a few of the State legislatures; the last would suppose a fixed and rooted disaffection in the great body of the people, which will either never exist at all, or will, in all probability, proceed from an experience of the inaptitude of the general government to the advancement of their happiness in which event no good citizen could desire its continuance. But with regard to the federal House of Representatives, there is intended to be a general election of members once in two years. If the State legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation, which might issue in a dissolution of the Union, if the leaders of a few of the most important States should have entered into a previous conspiracy to prevent an election. I shall not deny, that there is a degree of weight in the observation, that the interests of each State, to be represented in the federal councils, will be a security against the abuse of a power over its elections in the hands of the State legislatures. But the security will not be considered as complete, by those who attend to the force of an obvious distinction between the interest of the people in the public felicity, and the interest of their local rulers in the power and consequence of their offices. The people of America may be warmly attached to the government of the Union, at times when the particular rulers of particular States, stimulated by the natural rivalry of power, and by the hopes of personal aggrandizement, and supported by a strong faction in each of those States, may be in a very opposite temper. This diversity of sentiment between a majority of the people, and the individuals who have the greatest credit in their councils, is exemplified in some of the States at the present moment, on the present question. The scheme of separate confederacies, which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the State administrations as are capable of preferring their own emolument and advancement to the public weal. With so effectual a weapon in their hands as the exclusive power of regulating elections for the national government, a combination of a few such men, in a few of the most considerable States, where the temptation will always be the strongest, might accomplish the destruction of the Union, by seizing the opportunity of some casual dissatisfaction among the people (and which perhaps they may themselves have excited), to discontinue the choice of members for the federal House of Representatives. It ought never to be forgotten, that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues of foreign powers, and will seldom fail to be patronized and abetted by some of them. Its preservation, therefore ought in no case that can be avoided, to be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust. PUBLIUS. 1st clause, 4th section, of the 1st article.

FEDERALIST No. 60

The Same Subject Continued (Concerning the Power of Congress to Regulate the Election of Members) From the New York Packet. Tuesday, February 26, 1788.

HAMILTON

To the People of the State of New York: WE HAVE seen, that an uncontrollable power over the elections to the federal government could not, without hazard, be committed to the State legislatures. Let us now see, what would be the danger on the other side; that is, from confiding the ultimate right of regulating its own elections to the Union itself. It is not pretended, that this right would ever be used for the exclusion of any State from its share in the representation. The interest of all would, in this respect at least, be the security of all. But it is alleged, that it might be employed in such a manner as to promote the election of some favorite class of men in exclusion of others, by confining the places of election to particular districts, and rendering it impracticable to the citizens at large to partake in the choice. Of all chimerical suppositions, this seems to be the most chimerical. On the one hand, no rational calculation of probabilities would lead us to imagine that the disposition which a conduct so violent and extraordinary would imply, could ever find its way into the national councils; and on the other, it may be concluded with certainty, that if so improper a spirit should ever gain admittance into them, it would display itself in a form altogether different and far more decisive. The improbability of the attempt may be satisfactorily inferred from this single reflection, that it could never be made without causing an immediate revolt of the great body of the people, headed and directed by the State governments. It is not difficult to conceive that this characteristic right of freedom may, in certain turbulent and factious seasons, be violated, in respect to a particular class of citizens, by a victorious and overbearing majority; but that so fundamental a privilege, in a country so situated and enlightened, should be invaded to the prejudice of the great mass of the people, by the deliberate policy of the government, without occasioning a popular revolution, is altogether inconceivable and incredible. In addition to this general reflection, there are considerations of a more precise nature, which forbid all apprehension on the subject. The dissimilarity in the ingredients which will compose the national government, and Ustill more in the manner in which they will be brought into action in its various branches, must form a powerful obstacle to a concert of views in any partial scheme of elections. There is sufficient diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the different ranks and conditions in society. And though an intimate intercourse under the same government will promote a gradual assimilation in some of these respects, yet there are causes, as well physical as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this respect. But the circumstance which will be likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the several component parts of the government. The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors. As to the Senate, it is impossible that any regulation of time and manner, which is all that is proposed to be submitted to the national government in respect to that body, can affect the spirit which will direct the choice of its members. The collective sense of the State legislatures can never be influenced by extraneous circumstances of that sort; a consideration which alone ought to satisfy us that the

discrimination apprehended would never be attempted. For what inducement could the Senate have to concur in a preference in which itself would not be included? Or to what purpose would it be established, in reference to one branch of the legislature, if it could not be extended to the other? The composition of the one would in this case counteract that of the other. And we can never suppose that it would embrace the appointments to the Senate, unless we can at the same time suppose the voluntary co-operation of the State legislatures. If we make the latter supposition, it then becomes immaterial where the power in question is placed whether in their hands or in those of the Union. But what is to be the object of this capricious partiality in the national councils? Is it to be exercised in a discrimination between the different departments of industry, or between the different kinds of property, or between the different degrees of property? Will it lean in favor of the landed interest, or the moneyed interest, or the mercantile interest, or the manufacturing interest? Or, to speak in the fashionable language of the adversaries to the Constitution, will it court the elevation of "the wealthy and the well-born," to the exclusion and debasement of all the rest of the society? If this partiality is to be exerted in favor of those who are concerned in any particular description of industry or property, I presume it will readily be admitted, that the competition for it will lie between landed men and merchants. And I scruple not to affirm, that it is infinitely less likely that either of them should gain an ascendancy in the national councils, than that the one or the other of them should predominate in all the local councils. The inference will be, that a conduct tending to give an undue preference to either is much less to be dreaded from the former than from the latter. The several States are in various degrees addicted to agriculture and commerce. In most, if not all of them, agriculture is predominant. In a few of them, however, commerce nearly divides its empire, and in most of them has a considerable share of influence. In proportion as either prevails, it will be conveyed into the national representation; and for the very reason, that this will be an emanation from a greater variety of interests, and in much more various proportions, than are to be found in any single State, it will be much less apt to espouse either of them with a decided partiality, than the representation of any single State. In a country consisting chiefly of the cultivators of land, where the rules of an equal representation obtain, the landed interest must, upon the whole, preponderate in the government. As long as this interest prevails in most of the State legislatures, so long it must maintain a correspondent superiority in the national Senate, which will generally be a faithful copy of the majorities of those assemblies. It cannot therefore be presumed, that a sacrifice of the landed to the mercantile class will ever be a favorite object of this branch of the federal legislature. In applying thus particularly to the Senate a general observation suggested by the situation of the country, I am governed by the consideration, that the credulous votaries of State power cannot, upon their own principles, suspect, that the State legislatures would be warped from their duty by any external influence. But in reality the same situation must have the same effect, in the primitive composition at least of the federal House of Representatives: an improper bias towards the mercantile class is as little to be expected from this quarter as from the other. In order, perhaps, to give countenance to the objection at any rate, it may be asked, is there not danger of an opposite bias in the national government, which may dispose it to endeavor to secure a monopoly of the federal administration to the landed class? As there is little likelihood that the supposition of such a bias will have any terrors for those who would be immediately injured by it, a labored answer to this question will be dispensed with. It will be sufficient to remark, first, that for the reasons elsewhere assigned, it is less likely that any decided partiality should prevail in the councils of the Union than in those of any of its members. Secondly, that there would be no temptation to violate the Constitution in favor of the landed class, because that class would, in the natural course of things, enjoy as great a preponderancy as itself could desire. And thirdly, that men accustomed to investigate the sources of public prosperity upon a large scale, must be too well convinced of the utility of commerce, to be inclined to inflict upon it so deep a wound as would result from the entire exclusion of those who would best understand its interest from a share in the management of them. The importance of commerce, in the view of revenue alone, must effectually guard it against the enmity of a body which would be continually importuned in its favor, by the urgent calls of public necessity. I rather consult brevity in discussing the probability of a preference founded upon a discrimination between the different kinds of industry and property, because, as far as I understand the meaning of the objectors, they contemplate a discrimination of another kind. They appear to have in view, as the objects of the preference with which they endeavor to alarm us, those whom they designate by the description of "the wealthy and the well-born." These, it seems, are to be exalted to an odious pre-eminence over the rest of their fellow-citizens. At one time, however, their elevation is to be a necessary consequence of the smallness of the representative body; at another time it is to be effected by depriving the people at large of the opportunity of exercising their right of suffrage in the choice of that body. But upon what principle is the discrimination of the places of election to be made, in order to answer the purpose of the meditated preference? Are "the wealthy and the well-born," as they are called, confined to particular spots in the several States? Have they, by some miraculous instinct or foresight, set apart in each of them a common place of residence? Are they only to be met with in the towns or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may have happened to cast their own lot or that of their predecessors? If the latter is the case, (as every intelligent man knows it to be,) is it not evident that the policy of confining the places of election to particular districts would be as subversive of its own aim as it would be exceptionable on every other account? The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the TIMES, the PLACES, the MANNER of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature. Let it, however, be admitted, for argument sake, that the expedient suggested might be successful; and let it at the same time be equally taken for granted that all the scruples which a sense of duty or an apprehension of the danger of the experiment might inspire, were overcome in the breasts of the national rulers, still I imagine it will hardly be pretended that they could ever hope to carry such an enterprise into execution without the aid of a military force sufficient to subdue the resistance of the great body of the people. The improbability of the existence of a force equal to that object has been discussed and demonstrated in different parts of these papers; but that the futility of the objection under consideration may appear in the strongest light, it shall be conceded for a moment that such a force might exist, and the national government shall be supposed to be in the actual possession of it. What will be the conclusion? With a disposition to invade the essential rights of the community, and with the means of gratifying that disposition, is it presumable that the persons who were actuated by it would assume themselves in the ridiculous task of fabricating election laws for securing a preference to a favorite class of men? Would they not be likely to prefer a conduct better adapted to their own immediate aggrandizement? Would they not rather boldly resolve to perpetuate themselves in office by one decisive act of usurpation, than to trust to precarious expedients which, in spite of all the precautions that might accompany them, might terminate in the dismissal, disgrace, and ruin of their authors? Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective States to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people? PUBLIUS. 1 Particularly in the Southern States and in this State.

FEDERALIST No. 61

The Same Subject Continued (Concerning the Power of Congress to Regulate the Election of Members) From the New York Packet. Tuesday, February 26, 1788.

HAMILTON

To the People of the State of New York: THE more candid opposers of the provision respecting elections, contained in the plan of the convention, when pressed in argument, will sometimes concede the propriety of that provision; with this qualification, however, that it ought to have been accompanied with a declaration, that all elections should be had in the counties where the electors resided. This, say they, was a necessary precaution against an abuse of the power. A declaration of this nature would certainly have been harmless; so far as it would have had the effect of quieting apprehensions, it might not have been undesirable. But it would, in fact, have afforded little or no additional security against the danger apprehended; and the want of it will never be considered, by an impartial and judicious examiner, as a serious, still less as an insuperable, objection to the plan. The different views taken of the subject in the two preceding papers must be sufficient to satisfy all dispassionate and discerning men, that if the public liberty should ever be the victim of the ambition of the national rulers, the power under examination, at least, will be fruitful of the sacrifice. If those who are inclined to consult their jealousy only, would exercise it in a careful inspection of the several State constitutions, they would find little less room for disquietude and alarm, from the latitude which most of them allow in respect to elections, than from the latitude which is proposed to be allowed to the national government in the same respect. A review of their situation, in this particular, would tend greatly to remove any ill impressions which may remain in regard to this matter. But as that view would lead into long and tedious details, I shall content myself with the single example of the State in which I write. The constitution of New York makes no other provision for LOCALITY of elections, than that the members of the Assembly shall be elected in the COUNTIES; those of the Senate, in the great districts into which the State is or may be divided: these at present are four in number, and comprehend each from two to six counties. It may readily be perceived that it would not be more difficult to the legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the legislature of the United States to defeat the suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members both of the Senate and Assembly for that county and district? Can we imagine that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, etc., or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the federal House of Representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnishes a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine, that when the place of election is at an INCONVENIENT DISTANCE from the elector, the effect upon his conduct will be the same whether that distance be twenty miles or twenty thousand miles. Hence it must appear, that objections to the particular modification of the federal power of regulating elections will, in substance, apply with equal force to the modification of the like power in the constitution of this State; and for this reason it will be impossible to acquit the one, and to condemn the other. A similar comparison would lead to the same conclusion in respect to the constitutions of most of the other States. If it should be said that defects in the State constitutions furnish no apology for those which are to be found in the plan proposed, I answer, that as the former have never been thought chargeable with inattention to the security of liberty, where the imputations thrown on the latter can be shown to be applicable to them also, the presumption is that they are rather the cavilling refinements of a predetermined opposition, than the well-founded inferences of a candid research after truth. To those who are disposed to consider, as innocent omissions in the State constitutions, what they regard as unpardonable blemishes in the plan of the convention, nothing can be said; or at most, they can only be asked to assign some substantial reason why the representatives of the people in a single State should be more impregnable to the lust of power, or other sinister motives, than the representatives of the people of the United States? If they cannot do this, they ought at least to prove to us that it is easier to subvert the liberties of three millions of people, with the advantage of local governments to head their opposition, than of two hundred thousand people who are destitute of that advantage. And in relation to the point immediately under consideration, they ought to convince us that it is less probable that a predominant faction in a single State should, in order to maintain its superiority, incline to a preference of a particular class of electors, than that a similar spirit should take possession of the representatives of thirteen States, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests. Hitherto my observations have only aimed at a vindication of the provision in question, on the ground of theoretic propriety, on that of the danger of placing the power elsewhere, and on that of the safety of placing it in the manner proposed. But there remains to be mentioned a positive advantage which will result from this disposition, and which could not as well have been obtained from any other: I allude to the circumstance of uniformity in the time of elections for the federal House of Representatives. It is more than possible that this uniformity may be found by experience to be of great importance to the public welfare, both as a security against the perpetuation of the same spirit in the body, and as a cure for the diseases of faction. If each State may choose its own time of election, it is possible there may be at least as many different periods as there are months in the year. The times of election in the several States, as they are now established for local purposes, vary between extremes as wide as March and November. The consequence of this diversity would be that there could never happen a total dissolution or renovation of the body at one time. If an improper spirit of any kind should happen to prevail in it, that spirit would be apt to infuse itself into the new members, as they come forward in succession. The mass would be likely to remain nearly the same, assimilating constantly to itself its gradual accretions. There is a contagion in example which few men have sufficient force of mind to resist. I am inclined to think that treble the duration in office, with the condition of a total dissolution of the body at the same time, might be less formidable to liberty than one third of that duration subject to gradual and successive alterations. Uniformity in the time of elections seems not less requisite for executing the idea of a regular rotation in the Senate, and for conveniently assembling the legislature at a stated period in each year. It may be asked, Why, then, could not a time have been fixed in the Constitution? As the most zealous adversaries of the plan of the convention in this State are, in general, not less zealous admirers of the constitution of the State, the question may be retorted, and it may be asked, Why was not a time for the like purpose fixed in the constitution of this State? No better answer can be given than that it was a matter which might safely be entrusted to legislative discretion; and that if a time had been appointed, it might, upon experiment, have been found less convenient than some other time. The same answer may be given to the question put on the other side. And it may be added that the supposed danger of a gradual change being merely speculative, it would have been hardly advisable upon that speculation to establish, as a fundamental point, what would deprive several States of the convenience of having the elections for their own governments and for the national government at the same epochs. PUBLIUS.

FEDERALIST No. 62

The Senate For the Independent Journal.

HAMILTON OR MADISON

To the People of the State of New York: HAVING examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next

on the examination of the Senate. The heads into which this member of the government may be considered are: I. The qualification of senators; II. The appointment of them by the State legislatures; III. The equality of representation in the Senate; IV. The number of senators, and the term for which they are to be elected; V. The powers vested in the Senate. I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils. II. It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems. III. The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small States, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a PROPORTIONAL share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an EQUAL share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable." A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger States, is not likely to be obtained from the smaller States. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice. In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic. Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be more rational, if any interests common to them, and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation. IV. The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution. First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government. Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration. Thirdly. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate? A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first. Fourthly. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. The remark is

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verified in private life, and becomes more just, as well as more important, in national transactions. To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others. In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs. The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed? Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY. In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy. But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability. PUBLIUS.

FEDERALIST. No. 63

The Senate Continued For the Independent Journal.

HAMILTON OR MADISON

To the People of the State of New York: A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence. An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind? Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring. I add, as a SIXTH defect the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important. Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents. The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects. Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free

governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next. It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining for a longer time under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them. It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never willfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act. The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance. In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and REPRESENTING the people in their EXECUTIVE capacity. Prior to the reform of Solon, Athens was governed by nine Archons, annually ELECTED BY THE PEOPLE AT LARGE. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually ELECTED BY THE PEOPLE; and PARTIALLY representing them in their LEGISLATIVE capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been ELECTIVE by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity. Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually ELECTED BY THE WHOLE BODY OF THE PEOPLE, and considered as the REPRESENTATIVES of the people, almost in their PLENIPOTENTIARY capacity. The Cosmi of Crete were also annually ELECTED BY THE PEOPLE, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people. From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies IN THE TOTAL EXCLUSION OF THE PEOPLE, IN THEIR COLLECTIVE CAPACITY, from any share in the LATTER, and not in the TOTAL EXCLUSION OF THE REPRESENTATIVES OF THE PEOPLE from the administration of the FORMER. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece. In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy. To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given. Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions? If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The Senate of that State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and, at the same time, is not under the control of any such rotation as is provided for the federal Senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained

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the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union. But if any thing could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch. As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable, as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion. Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves. PUBLIUS.

FEDERALIST No. 64

The Powers of the Senate From the New York Packet. Friday, March 7, 1788.

JAY

To the People of the State of New York: IT IS a just and not a new observation, that enemies to particular persons, and opponents to particular measures, seldom confine their censures to such things only in either as are worthy of blame. Unless on this principle, it is difficult to explain the motives of their conduct, who condemn the proposed Constitution in the aggregate, and treat with severity some of the most unexceptionable articles in it. The second section gives power to the President, "BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO MAKE TREATIES, PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR." The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode, and with such precautions, as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. The convention appears to have been attentive to both these points: they have directed the President to be chosen by select bodies of electors, to be deputed by the people for that express purpose; and they have committed the appointment of senators to the State legislatures. This mode has, in such cases, vastly the advantage of elections by the people in their collective capacity, where the activity of party zeal, taking the advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors. As the select assemblies for choosing the President, as well as the State legislatures who appoint the senators, will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence. The Constitution manifests very particular attention to this object. By excluding men under thirty-five from the first office, and those under thirty from the second, it confines the electors to men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle. If the observation be well founded, that wise kings will always be served by able ministers, it is fair to argue, that as an assembly of select electors possess, in a greater degree than kings, the means of extensive and accurate information relative to men and characters, so will their appointments bear at least equal marks of discretion and discernment. The inference which naturally results from these considerations is this, that the President and senators so chosen will always be of the number of those who best understand our national interests, whether considered in relation to the several States or to foreign nations, who are best able to promote those interests, and whose reputation for integrity inspires and merits confidence. With such men the power of making treaties may be safely lodged. Although the absolute necessity of system, in the conduct of any business, is universally known and acknowledged, yet the high importance of it in national affairs has not yet become sufficiently impressed on the public mind. They who wish to commit the power under consideration to a popular assembly, composed of members constantly coming and going in quick succession, seem not to recollect that such a body must necessarily be inadequate to the attainment of those great objects, which require to be steadily contemplated in all their relations and circumstances, and which can only be approached and achieved by measures which not only talents, but also exact information, and often much time, are necessary to concert and to execute. It was wise, therefore, in the convention to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them. The duration prescribed is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country. Nor has the convention discovered less prudence in providing for the frequent elections of senators in such a way as to obviate the inconvenience of periodically transferring those great affairs entirely to new men; for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant succession of official information will be preserved. There are a few who will not admit that the affairs of trade and navigation should be regulated by a system cautiously formed and steadily pursued; and that both our treaties and our laws should correspond with and be made to promote it. It is of such consequence that this correspondence and conformity be carefully maintained; and they who assent to the truth of this position will see and confess that it is well provided for by making concurrence of the Senate necessary both to treaties and to laws. It seldom happens in the negotiation of treaties, of whatever nature, but that perfect SECRECY and immediate DESPATCH are sometimes requisite. These are cases where the most useful intelligence may be obtained, if the persons possessing it can be

relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest. They who have turned their attention to the affairs of men, must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us, that there frequently are occasions when days, nay, even when hours, are precious. The loss of a battle, the death of a prince, the removal of a minister, or other circumstances intervening to change the present posture and aspect of affairs, may turn the most favorable tide into a course opposite to our wishes. As in the field, so in the cabinet, there are moments to be seized as they pass, and they who preside in either should be left in capacity to improve them. So often and so essentially have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have been inexcusably defective, if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most despatch, are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these, the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them. Thus we see that the Constitution provides that our negotiations for treaties shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and despatch on the other. But to this plan, as to most others that have ever appeared, objections are contrived and urged. Some are displeased with it, not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority. These gentlemen seem not to consider that the judgments of our courts, and the commissions constitutionally given by our governor, are as valid and as binding on all persons whom they concern, as the laws passed by our legislature. All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature; and therefore, whatever name be given to the power of making treaties, or however obligatory they may be when made, certain it is, that the people may, with much propriety, commit the power to a distinct body from the legislature, the executive, or the judicial. It surely does not follow, that because they have given the power of making laws to the legislature, that therefore they should likewise give them the power to do every other act of sovereignty by which the citizens are to be bound and affected. Others, though content that treaties should be made in the mode proposed, are averse to their being the SUPREME laws of the land. They insist, and profess to believe, that treaties like acts of assembly, should be repealable at pleasure. This idea seems to be new and peculiar to this country, but new errors, as well as new truths, often appear. These gentlemen would do well to reflect that a treaty is only another name for a bargain, and that it would be impossible to find a nation who would make any bargain with us, which should be binding on them ABSOLUTELY, but on us only so long and so far as we may think proper to be bound by it. They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both; and consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period, or under any form of government. However useful jealousy may be in republics, yet when like bile in the natural, it abounds too much in the body politic, the eyes of both become very liable to be deceived by the delusive appearances which that malady casts on surrounding objects. From this cause, probably, proceed the fears and apprehensions of some, that the President and Senate may make treaties without an equal eye to the interests of all the States. Others suspect that two thirds will oppress the remaining third, and ask whether those gentlemen are made sufficiently responsible for their conduct; whether, if they act corruptly, they can be punished; and if they make disadvantageous treaties, how are we to get rid of those treaties? As all the States are equally represented in the Senate, and by men the most able and the most willing to promote the interests of their constituents, they will all have an equal degree of influence in that body, especially while they continue to be careful in appointing proper persons, and to insist on their punctual attendance. In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention, and the government must be a weak one indeed, if it should forget that the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole. It will not be in the power of the President and Senate to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the community; and, having no private interests distinct from that of the nation, they will be under no temptations to neglect the latter. As to corruption, the case is not supposable. He must either have been very unfortunate in his intercourse with the world, or possess a heart very susceptible of such impressions, who can think it probable that the President and two thirds of the Senate will ever be capable of such unworthy conduct. The idea is too gross and too invidious to be entertained. But in such a case, if it should ever happen, the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the law of nations. With respect to their responsibility, it is difficult to conceive how it could be increased. Every consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the love of country, and family affections and attachments, afford security for their fidelity. In short, as the Constitution has taken the utmost care that they shall be men of talents and integrity, we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments. PUBLIUS.

FEDERALIST No. 65

The Powers of the Senate Continued From the New York Packet. Friday, March 7, 1788.

HAMILTON

To the People of the State of New York: THE remaining powers which the plan of the convention allots to the Senate, in a distinct capacity, are comprised in their participation with the executive in the appointment to offices, and in their judicial character as a court for the trial of impeachments. As in the business of appointments the executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will, therefore, conclude this head with a view of the judicial character of the Senate. A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will

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enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt. The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves. The difficulty of placing it rightly, in a government resting entirely on the basis of periodical elections, will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny. The convention, it appears, thought the Senate the most fit depository of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it. What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of NATIONAL INQUEST into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation themselves? It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body. Will not the reasons which indicate the propriety of this arrangement strongly plead for an admission of the other branch of that body to a share of the inquiry? The model from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State constitutions have followed the example. As well the latter, as the former, seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it ought to be regarded? Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel CONFIDENCE ENOUGH IN ITS OWN SITUATION, to preserve, unawed and uninfluenced, the necessary impartiality between an INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS? Could the Supreme Court have been relied upon as answering this description? It is much to be doubted, whether the members of that tribunal would at all times be endowed with so eminent a portion of fortitude, as would be called for in the execution of so difficult a task; and it is still more to be doubted, whether they would possess the degree of credit and authority, which might, on certain occasions, be indispensable towards reconciling the people to a decision that should happen to clash with an accusation brought by their immediate representatives. A deficiency in both these respects, could only be avoided, if at all, by rendering that tribunal more numerous than would consist with a reasonable attention to economy. The necessity of a numerous court for the trial of impeachments, is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security. There will be no jury to stand between the judges who are to pronounce the sentence of the law, and the party who is to receive or suffer it. The awful discretion which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons. These considerations seem alone sufficient to authorize a conclusion, that the Supreme Court would have been an improper substitute for the Senate, as a court of impeachments. There remains a further consideration, which will not a little strengthen this conclusion. It is this: The punishment which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law. Would it be proper that the persons who had disposed of his fame, and his most valuable rights as a citizen in one trial, should, in another trial, for the same offense, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend, that error, in the first sentence, would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision? Those who know anything of human nature, will not hesitate to answer these questions in the affirmative; and will be at no loss to perceive, that by making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial. The loss of life and estate would often be virtually included in a sentence which, in its terms, imported nothing more than dismissal from a present, and disqualification for a future, office. It may be said, that the intervention of a jury, in the second instance, would obviate the danger. But juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt? Would it have been an improvement of the plan, to have united the Supreme Court with the Senate, in the formation of the court of impeachments? This union would certainly have been attended with several advantages; but would they not have been overbalanced by the signal disadvantage, already stated, arising from the agency of the same judges in the double prosecution to which the offender would be liable? To a certain extent, the benefits of that union will be obtained from making the chief justice of the Supreme Court the president of the court of impeachments, as is proposed to be done in the plan of the convention; while the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was perhaps the prudent mean. I forbear to remark upon the additional pretext for clamor against the judiciary, which so considerable an augmentation of its authority would have afforded. Would it have been desirable to have composed the court for the trial of impeachments, of persons wholly distinct from the other departments of the government? There are weighty arguments, as well against, as in favor of, such a plan. To some minds it will not appear a trivial objection, that it could tend to increase the complexity of the political machine, and to add a new spring to the government, the utility of which would at best be questionable. But an objection which will not be thought by any unworthy of attention, is this: a court formed upon such a plan, would either be attended with a heavy expense, or might in practice be subject to a variety of casualties and inconveniences. It must either consist of permanent officers, stationary at the seat of government, and of course entitled to fixed and regular stipends, or of certain officers of the State governments to be called upon whenever an impeachment was actually depending. It will not be easy to imagine any third mode materially different, which could rationally be proposed. As the court, for reasons already given, ought to be numerous, the first scheme will be reprobated by every man who can compare the extent of the public wants with the means of supplying them. The second will be espoused with caution by those who will seriously consider the difficulty of collecting men dispersed over the whole Union; the injury to the innocent, from the procrastinated determination of the charges which might be brought against them; the advantage to the guilty, from the opportunities which delay would afford to intrigue and corruption; and in some cases the detriment to the State, from the prolonged inaction of men whose firm and faithful execution of their duty might have exposed them to the persecution of an intemperate or designing majority in the House of Representatives. Though this latter supposition may seem harsh, and might not be likely often to be verified, yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men. But though one or the other of the substitutes which have been examined, or some other that might be devised, should be thought preferable to the plan in this respect, reported by the convention, it will not follow that the Constitution ought for this reason to be rejected. If mankind were to resolve to agree in no institution of government, until every part of it had been adjusted to the

most exact standard of perfection, society would soon become a general scene of anarchy, and the world a desert. Where is the standard of perfection to be found? Who will undertake to unite the discordant opinions of a whole community, in the same judgment of it; and to prevail upon one conceited projector to renounce his INFALLIBLE criterion for the FALLIBLE criterion of his more CONCEITED NEIGHBOR? To answer the purpose of the adversaries of the Constitution, they ought to prove, not merely that particular provisions in it are not the best which might have been imagined, but that the plan upon the whole is bad and pernicious. PUBLIUS.

FEDERALIST No. 66

Objections to the Power of the Senate To Set as a Court for Impeachments Further Considered From the New York Packet. Tuesday, March 11, 1788.

HAMILTON

To the People of the State of New York: A REVIEW of the principal objections that have appeared against the proposed court for the trial of impeachments, will not impossibly eradicate the remains of any unfavorable impressions which may still exist in regard to this matter. The FIRST of these objections is, that the provision in question confounds legislative and judiciary authorities in the same body, in violation of that important and well-established maxim which requires a separation between the different departments of power. The true meaning of this maxim has been discussed and ascertained in another place, and has been shown to be entirely compatible with a partial intermixture of those departments for special purposes, preserving them, in the main, distinct and unconnected. This partial intermixture is even, in some cases, not only proper but necessary to the mutual defense of the several members of the government against each other. An absolute or qualified negative in the executive upon the acts of the legislative body, is admitted, by the ablest adepts in political science, to be an indispensable barrier against the encroachments of the latter upon the former. And it may, perhaps, with no less reason be contended, that the powers relating to impeachments are, as before intimated, an essential check in the hands of that body upon the encroachments of the executive. The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalency of a factious spirit in either of those branches. As the concurrence of two thirds of the Senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire. It is curious to observe, with what vehemence this part of the plan is assailed, on the principle here taken notice of, by men who profess to admire, without exception, the constitution of this State; while that constitution makes the Senate, together with the chancellor and judges of the Supreme Court, not only a court of impeachments, but the highest judicatory in the State, in all causes, civil and criminal. The proportion, in point of numbers, of the chancellor and judges to the senators, is so inconceivable, that the judiciary authority of New York, in the last resort, may, with truth, be said to reside in its Senate. If the plan of the convention be, in this respect, chargeable with a departure from the celebrated maxim which has been so often mentioned, and seems to be so little understood, how much more culpable must be the constitution of New York? A SECOND objection to the Senate, as a court of impeachments, is, that it contributes to an undue accumulation of power in that body, tending to give to the government a countenance too aristocratic. The Senate, it is observed, is to have concurrent authority with the Executive in the formation of treaties and in the appointment to offices; if, say the objectors, to these prerogatives is added that of deciding in all cases of impeachment, it will give a decided predominancy to senatorial influence. To an objection so little precise in itself, it is not easy to find a very precise answer. Where is the measure or criterion to which we can appeal, for determining what will give the Senate too much, too little, or barely the proper degree of influence? Will it not be more safe, as well as more simple, to dismiss such vague and uncertain calculations, to examine each power by itself, and to decide, on general principles, where it may be deposited with most advantage and least inconvenience? If we take this course, it will lead to a more intelligible, if not to a more certain result. The disposition of the power of making treaties, which has obtained in the plan of the convention, will, then, if I mistake not, appear to be fully justified by the considerations stated in a former number, and by others which will occur under the next head of our inquiries. The expediency of the junction of the Senate with the Executive, in the power of appointing to offices, will, I trust, be placed in a light not less satisfactory, in the disquisitions under the same head. And I flatter myself the observations in my last paper must have gone no inconsiderable way towards proving that it was not easy, if practicable, to find a more fit receptacle for the power of determining impeachments, than that which has been chosen. If this be truly the case, the hypothetical dread of the too great weight of the Senate ought to be discarded from our reasonings. But this hypothesis, such as it is, has already been refuted in the remarks applied to the duration in office prescribed for the senators. It was by them shown, as well on the credit of historical examples, as from the reason of the thing, that the most POPULAR branch of every government, partaking of the republican genius, by being generally the favorite of the people, will be as generally a full match, if not an overmatch, for every other member of the Government. But independent of this most active and operative principle, to secure the equilibrium of the national House of Representatives, the plan of the convention has provided in its favor several important counterpoises to the additional authorities to be conferred upon the Senate. The exclusive privilege of originating money bills will belong to the House of Representatives. The same house will possess the sole right of instituting impeachments: is not this a complete counterbalance to that of determining them? The same house will be the umpire in all elections of the President, which do not unite the suffrages of a majority of the whole number of electors; a case which it cannot be doubted will sometimes, if not frequently, happen. The constant possibility of the thing must be a fruitful source of influence to that body. The more it is contemplated, the more important will appear this ultimate though contingent power, of deciding the competitions of the most illustrious citizens of the Union, for the first office in it. It would not perhaps be rash to predict, that as a mean of influence it will be found to outweigh all the peculiar attributes of the Senate. A THIRD objection to the Senate as a court of impeachments, is drawn from the agency they are to have in the appointments to office. It is imagined that they would be too indulgent judges of the conduct of men, in whose official creation they had participated. The principle of this objection would condemn a practice, which is to be seen in all the State governments, if not in all the governments with which we are acquainted: I mean that of rendering those who hold offices during pleasure, dependent on the pleasure of those who appoint them. With equal plausibility might it be alleged in this case, that the favoritism of the latter would always be an asylum for the misbehavior of the former. But that practice, in contradiction to this principle, proceeds upon the presumption, that the responsibility of those who appoint, for the fitness and competency of the persons on whom they bestow their choice, and the interest they will have in the respectable and prosperous administration of affairs, will inspire a sufficient disposition to dismiss from a share in it all such who, by their conduct, shall have proved themselves unworthy of the confidence reposed in them. Though facts may not always correspond with this presumption, yet if it be, in the main, just, it must destroy the supposition that the Senate, who will merely sanction the choice of the Executive, should feel a bias, towards the objects of that choice, strong enough to blind them to the evidences of guilt so extraordinary, as to have induced the representatives of the nation to become its accusers. If any further arguments were necessary to evince the improbability of such a bias, it might be found in the nature of the agency of the Senate in the business of appointments. It will be the office of the President to NOMINATE, and, with the advice and consent of the Senate, to APPOINT. There will, of course, be no exertion of CHOICE on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves CHOOSE,

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they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen, that the majority of the Senate would feel any other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy. A FOURTH objection to the Senate in the capacity of impeachments, is derived from its union with the Executive in the power of making treaties. This, it has been said, would constitute the senators their own judges, in every case of a corrupt or perfidious execution of that trust. After having combined with the Executive in betraying the interests of the nation in a ruinous treaty, what prospect, it is asked, would there be of their being made to suffer the punishment they would deserve, when they were themselves to decide upon the accusation brought against them for the treachery of which they have been guilty? This objection has been circulated with more earnestness and with greater show of reason than any other which has appeared against this part of the plan; and yet I am deceived if it does not rest upon an erroneous foundation. The security essentially intended by the Constitution against corruption and treachery in the formation of treaties, is to be sought for in the numbers and characters of those who are to make them. The JOINT AGENCY of the Chief Magistrate of the Union, and of two thirds of the members of a body selected by the collective wisdom of the legislatures of the several States, is designed to be the pledge for the fidelity of the national councils in this particular. The convention might with propriety have meditated the punishment of the Executive, for a deviation from the instructions of the Senate, or a want of integrity in the conduct of the negotiations committed to him; they might also have had in view the punishment of a few leading individuals in the Senate, who should have prostituted their influence in that body as the mercenary instruments of foreign corruption; but they could not, with more or with equal propriety, have contemplated the impeachment and punishment of two thirds of the Senate, consenting to an improper treaty, than of a majority of that or of the other branch of the national legislature, consenting to a pernicious or unconstitutional law, a principle which, I believe, has never been admitted into any government. How, in fact, could a majority in the House of Representatives impeach themselves? Not better, it is evident, than two thirds of the Senate might try themselves. And yet what reason is there, that a majority of the House of Representatives, sacrificing the interests of the society by an unjust and tyrannical act of legislation, should escape with impunity, more than two thirds of the Senate, sacrificing the same interests in an injurious treaty with a foreign power? The truth is, that in all such cases it is essential to the freedom and to the necessary independence of the deliberations of the body, that the members of it should be exempt from punishment for acts done in a collective capacity; and the security to the society must depend on the care which is taken to confide the trust to proper hands, to make it their interest to execute it with fidelity, and to make it as difficult as possible for them to combine in any interest opposite to that of the public good. So far as might concern the misbehavior of the Executive in perverting the instructions or contravening the views of the Senate, we need not be apprehensive of the want of a disposition in that body to punish the abuse of their confidence or to vindicate their own authority. We may thus far count upon their pride, if not upon their virtue. And so far even as might concern the corruption of leading members, by whose arts and influence the majority may have been inveigled into measures odious to the community, if the proofs of that corruption should be satisfactory, the usual propensity of human nature will warrant us in concluding that there would be commonly no defect of inclination in the body to divert the public resentment from themselves by a ready sacrifice of the authors of their mismanagement and disgrace. PUBLIUS. In that of New Jersey, also, the final judiciary authority is in a branch of the legislature. In New Hampshire, Massachusetts, Pennsylvania, and South Carolina, one branch of the legislature is the court for the trial of impeachments.

FEDERALIST No. 67

The Executive Department From the New York Packet. Tuesday, March 11, 1788.

HAMILTON

To the People of the State of New York: THE constitution of the executive department of the proposed government, claims next our attention. There is hardly any part of the system which could have been attended with greater difficulty in the arrangement of it than this; and there is, perhaps, none which has been inveighed against with less candor or criticised with less judgment. Here the writers against the Constitution seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to monarchy, they have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President of the United States; not merely as the embryo, but as the full-grown progeny, of that detested parent. To establish the pretended affinity, they have not scrupled to draw resources even from the regions of fiction. The authorities of a magistrate, in few instances greater, in some instances less, than those of a governor of New York, have been magnified into more than royal prerogatives. He has been decorated with attributes superior in dignity and splendor to those of a king of Great Britain. He has been shown to us with the diadem sparkling on his brow and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness have scarcely been wanting to crown the exaggerated scene. We have been taught to tremble at the terrific visages of murdering janizaries, and to blush at the unveiled mysteries of a future seraglio. Attempts so extravagant as these to disfigure or, it might rather be said, to metamorphose the object, render it necessary to take an accurate view of its real nature and form: in order as well to ascertain its true aspect and genuine appearance, as to unmask the disingenuity and expose the fallacy of the counterfeit resemblances which have been so insidiously, as well as industriously, propagated. In the execution of this task, there is no man who would not find it an arduous effort either to behold with moderation, or to treat with seriousness, the devices, not less weak than wicked, which have been contrived to pervert the public opinion in relation to the subject. They so far exceed the usual though unjustifiable licenses of party artifice, that even in a disposition the most candid and tolerant, they must force the sentiments which favor an indulgent construction of the conduct of political adversaries to give place to a voluntary and unreserved indignation. It is impossible not to bestow the imputation of deliberate imposture and deception upon the gross pretense of a similitude between a king of Great Britain and a magistrate of the character marked out for that of the President of the United States. It is still more impossible to withhold that imputation from the rash and barefaced expedients which have been employed to give success to the attempted imposition. In one instance, which I cite as a sample of the general spirit, the temerity has proceeded so far as to ascribe to the President of the United States a power which by the instrument reported is EXPRESSLY allotted to the Executives of the individual States. I mean the power of filling casual vacancies in the Senate. This bold experiment upon the discernment of his countrymen has been hazarded by a writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party; and who, upon this false and unfounded suggestion, has built a series of observations equally false and unfounded. Let him now be confronted with the evidence of the fact, and let him, if he be able, justify or extenuate the shameful outrage he has offered to the dictates of truth and to the rules of fair dealing. The second clause of the second section of the second article empowers the President of the United States "to nominate, and by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other OFFICERS of United States whose appointments are NOT in the Constitution OTHERWISE PROVIDED FOR, and WHICH SHALL BE ESTABLISHED

BY LAW." Immediately after this clause follows another in these words: "The President shall have power to fill up ?? VACANCIES that may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE AT THE END OF THEIR NEXT SESSION." It is from this last provision that the pretended power of the President to fill vacancies in the Senate has been deduced. A slight attention to the connection of the clauses, and to the obvious meaning of the terms, will satisfy us that the deduction is not even colorable. The first of these two clauses, it is clear, only provides a mode for appointing such officers. "whose appointments are NOT OTHERWISE PROVIDED FOR in the Constitution, and which SHALL BE ESTABLISHED BY LAW"; of course it cannot extend to the appointments of senators, whose appointments are OTHERWISE PROVIDED FOR in the Constitution, and who are ESTABLISHED BY THE CONSTITUTION, and will not require a future establishment by law. This position will hardly be contested. The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the Senate, for the following reasons: First. The relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other, for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate. The ordinary power of appointment is confined to the President and Senate JOINTLY, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers and as vacancies might happen IN THEIR RECESS, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, SINGLY, to make temporary appointments "during the recess of the Senate, by granting commissions which shall expire at the end of their next session." Secondly. If this clause is to be considered as supplementary to the one which precedes, the VACANCIES of which it speaks must be construed to relate to the "officers" described in the preceding one; and this, we have seen, excludes from its description the members of the Senate. Thirdly. The time within which the power is to operate, "during the recess of the Senate," and the duration of the appointments, "to the end of the next session" of that body, conspire to elucidate the sense of the provision, which, if it had been intended to comprehend senators, would naturally have referred the temporary power of filling vacancies to the recess of the State legislatures, who are to make the permanent appointments, and not to the recess of the national Senate, who are to have no concern in those appointments; and would have extended the duration in office of the temporary senators to the next session of the legislature of the State, in whose representation the vacancies had happened, instead of making it to expire at the end of the ensuing session of the national Senate. The circumstances of the body authorized to make the permanent appointments would, of course, have governed the modification of a power which related to the temporary appointments; and as the national Senate is the body, whose situation is alone contemplated in the clause upon which the suggestion under examination has been founded, the vacancies to which it alludes can only be deemed to respect those officers in whose appointment that body has a concurrent agency with the President. But lastly, the first and second clauses of the third section of the first article, not only obviate all possibility of doubt, but destroy the pretext of misconception. The former provides, that "the Senate of the United States shall be composed of two Senators from each State, chosen BY THE LEGISLATURE THEREOF for six years"; and the latter directs, that, "if vacancies in that body should happen by resignation or otherwise, DURING THE RECESS OF THE LEGISLATURE OF ANY STATE, the Executive THEREOF may make temporary appointments until the NEXT MEETING OF THE LEGISLATURE, which shall then fill such vacancies." Here is an express power given, in clear and unambiguous terms, to the State Executives, to fill casual vacancies in the Senate, by temporary appointments; which not only invalidates the supposition, that the clause before considered could have been intended to confer that power upon the President of the United States, but proves that this supposition, destitute as it is even of the merit of plausibility, must have originated in an intention to deceive the people, too palpable to be obscured by sophistry, too atrocious to be palliated by hypocrisy. I have taken the pains to select this instance of misrepresentation, and to place it in a clear and strong light, as an unequivocal proof of the unwarrantable arts which are practiced to prevent a fair and impartial judgment of the real merits of the Constitution submitted to the consideration of the people. Nor have I scrupled, in so flagrant a case, to allow myself a severity of animadversion little congenial with the general spirit of these papers. I hesitate not to submit it to the decision of any candid and honest adversary of the proposed government, whether language can furnish epithets of too much asperity, for so shameless and so prostitute an attempt to impose on the citizens of America. PUBLIUS. 1 See CATO, No. V. 2 Article I, section 3, clause 1.

FEDERALIST No. 68

The Mode of Electing the President From the New York Packet. Friday, March 14, 1788.

HAMILTON

To the People of the State of New York: THE mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded. I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for. It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture. It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations. It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place. Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendancy in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the

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appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty. Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice. All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office. The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminant for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says: "For forms of government let fools contest That which is best administered is best," yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration. The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter. The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President. PUBLIUS. 1 Vide FEDERAL FARMER.

FEDERALIST No. 69

The Real Character of the Executive From the New York Packet. Friday, March 14, 1788.

HAMILTON

To the People of the State of New York: I PROCEED now to trace the real characters of the proposed Executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it. The first thing which strikes our attention is, that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the king of Great Britain, there is not less a resemblance to the Grand Seigneur, to the Khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York. That magistrate is to be elected for FOUR years; and is to be re-eligible as often as the people of the United States shall think him worthy of their confidence. In these circumstances there is a total dissimilitude between HIM and a king of Great Britain, who is an HEREDITARY monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between HIM and a governor of New York, who is elected for THREE years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of FOUR years for the Chief Magistrate of the Union is a degree of permanency far less to be dreaded in that office, than a duration of THREE years for a corresponding office in a single State. The President of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the king of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President of Confederated America would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Maryland and Delaware. The President of the United States is to have power to return a bill, which shall have passed the two branches of the legislature, for reconsideration; and the bill so returned is to become a law, if, upon that reconsideration, it be approved by two thirds of both houses. The king of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the council of revision of this State, of which the governor is a constituent part. In this respect the power of the President would exceed that of the governor of New York, because the former would possess, singly, what the latter shares with the chancellor and judges; but it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have

copied. The President is to be the commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offenses against the United States, EXCEPT IN CASES OF IMPEACHMENT; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene, on extraordinary occasions, both houses of the legislature, or either of them, and, in case of disagreement between them WITH RESPECT TO THE TIME OF ADJOURNMENT, to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the President will resemble equally that of the king of Great Britain and of the governor of New York. The most material points of difference are these: First. The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. Secondly. The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature. The governor of New York, on the other hand, is by the constitution of the State vested only with the command of its militia and navy. But the constitutions of several of the States expressly declare their governors to be commanders-in-chief, as well of the army as navy; and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States. Thirdly. The power of the President, in respect to pardons, would extend to all cases, EXCEPT THOSE OF IMPEACHMENT. The governor of New York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the governor, in this article, on a calculation of political consequences, greater than that of the President? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a governor of New York, therefore, should be at the head of any such conspiracy, until the design had been ripened into actual hostility he could insure his accomplices and adherents an entire impunity. A President of the Union, on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender, in any degree, from the effects of impeachment and conviction. Would not the prospect of a total indemnity for all the preliminary steps be a greater temptation to undertake and persevere in an enterprise against the public liberty, than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed, that the person who was to afford that exemption might himself be involved in the consequences of the measure, and might be incapacitated by his agency in it from affording the desired impunity? The better to judge of this matter, it will be necessary to recollect, that, by the proposed Constitution, the offense of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort"; and that by the laws of New York it is confined within similar bounds. Fourthly. The President can only adjourn the national legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The governor of New York may also prorogue the legislature of this State for a limited time; a power which, in certain situations, may be employed to very important purposes. The President is to have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification, of Parliament. But I believe this doctrine was never heard of, until it was broached upon the present occasion. Every jurist of that kingdom, and every other man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plenitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction. The Parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the stipulations in a new treaty; and this may have possibly given birth to the imagination, that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause: from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws, to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature. It must be admitted, that, in this instance, the power of the federal Executive would exceed that of any State Executive. But this arises naturally from the sovereign power which relates to treaties. If the Confederacy were to be dissolved, it would become a question, whether the Executives of the several States were not solely invested with that delicate and important prerogative. The President is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor. The President is to nominate, and, WITH THE ADVICE AND CONSENT OF THE SENATE, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the Constitution. The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority in the power of the President, in this particular, to that of the British king; nor is it equal to that of the governor of New York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment is with us lodged in a council, composed of the governor and four members of the Senate, chosen by the Assembly. The governor CLAIMS, and has frequently EXERCISED, the right of nomination, and is ENTITLED to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the President, and exceeds it in the article of the casting vote. In the national government, if the Senate should be divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale, and confirm his own nomination. If we compare the publicity which must necessarily attend the mode of appointment by the President and an entire branch of the national legislature, with the privacy in the mode of appointment by the governor of New York, closeted in a secret apartment with at most four, and frequently with only two persons; and if we at the same time consider how much more easy it must be to influence the small number of which a council of appointment consists, than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce that the power of the chief magistrate of this State, in the disposition of offices, must, in practice, be greatly superior to that of the Chief Magistrate of the Union. Hence it appears that, except as to the

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concurrent authority of the President in the article of treaties, it would be difficult to determine whether that magistrate would, in the aggregate, possess more or less power than the Governor of New York. And it appears yet more unequivocally, that there is no pretense for the parallel which has been attempted between him and the king of Great Britain. But to render the contrast in this respect still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer group. The President of the United States would be an officer elected by the people for FOUR years; the king of Great Britain is a perpetual and HEREDITARY prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. The one would have a QUALIFIED negative upon the acts of the legislative body; the other has an ABSOLUTE negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of DECLARING war, and of RAISING and REGULATING fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the SOLE POSSESSOR of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments. The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the commerce or currency of the nation; the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church! What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism. PUBLIUS. 1 A writer in a Pennsylvania paper, under the signature of TAMONY, has asserted that the king of Great Britain owes his prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed. "contrary to all reason and precedent," as Blackstone vol. i., page 262, expresses it, by the Long Parliament of Charles I. but by the statute the 13th of Charles II., chap. 6, it was declared to be in the king alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, EVER WAS AND IS the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same. 2 Vide Blackstone's "Commentaries," vol i., p. 257. 3 Candor, however, demands an acknowledgment that I do not think the claim of the governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government, till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.

*There are two slightly different versions of No. 70 included here.

FEDERALIST No. 70

The Executive Department Further Considered From the New York Packet. Tuesday, March 18, 1788.

HAMILTON

To the People of the State of New York: THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome. There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention? The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers. The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility. Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests. That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished. This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men. Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction. The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamoured of plurality in the Executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities

and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the Consuls to divide the administration between themselves by lot one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic. But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever. Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy. Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character. Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality. It must be confessed that these observations apply with principal weight to the first case supposed that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness. But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. "I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties? In the single instance in which the governor of this State is coupled with a council that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars. It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it. In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion. But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate

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himself. The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";² that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty. A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,³ were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults. I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution. PUBLIUS. 1 New York has no council except for the single purpose of appointing to offices; New Jersey has a council whom the governor may consult. But I think, from the terms of the constitution, their resolutions do not bind him. 2 De Lolme. 3 Ten.

*There are two slightly different versions of No. 70 included here.

FEDERALIST No. 70

The Executive Department Further Considered From the New York Packet. Tuesday, March 18, 1788.

HAMILTON

To the People of the State of New York: THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome. There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention? The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers. The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility. Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests. That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished. This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men. Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction. The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamoured of plurality in the Executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it

became an established custom with the Consuls to divide the administration between themselves by lot one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic. But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever. Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy. Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character. Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and thus without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality. It must be confessed that these observations apply with principal weight to the first case supposed that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness. But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. "I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretences are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties? In the single instance in which the governor of this State is coupled with a council that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars. It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it. In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion. But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself. The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be

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applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";² that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty. A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,³ were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults. I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution. PUBLIUS. 1 New York has no council except for the single purpose of appointing to offices; New Jersey has a council whom the governor may consult. But I think, from the terms of the constitution, their resolutions do not bind him. 2 De Lolme. 3 Ten.

FEDERALIST No. 71

The Duration in Office of the Executive From the New York Packet. Tuesday, March 18, 1788.

HAMILTON

To the People of the State of New York: DURATION in office has been mentioned as the second requisite to the energy of the Executive authority. This has relation to two objects: to the personal firmness of the executive magistrate, in the employment of his constitutional powers; and to the stability of the system of administration which may have been adopted under his auspices. With regard to the first, it must be evident, that the longer the duration in office, the greater will be the probability of obtaining so important an advantage. It is a general principle of human nature, that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a durable or certain title; and, of course, will be willing to risk more for the sake of the one, than for the sake of the other. This remark is not less applicable to a political privilege, or honor, or trust, than to any article of ordinary property. The inference from it is, that a man acting in the capacity of chief magistrate, under a consciousness that in a very short time he MUST lay down his office, will be apt to feel himself too little interested in it to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill-humors, however transient, which may happen to prevail, either in a considerable part of the society itself, or even in a predominant faction in the legislative body. If the case should only be, that he MIGHT lay it down, unless continued by a new choice, and if he should be desirous of being continued, his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude. In either case, feebleness and irresolution must be the characteristics of the station. There are some who would be inclined to regard the servile pliancy of the Executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly INTEND the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always REASON RIGHT about the MEANS of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure. But however inclined we might be to insist upon an unbounded complaisance in the Executive to the inclinations of the people, we can with no propriety contend for a like complaisance to the humors of the legislature. The latter may sometimes stand in opposition to the former, and at other times the people may be entirely neutral. In either supposition, it is certainly desirable that the Executive should be in a situation to dare to act his own opinion with vigor and decision. The same rule which teaches the propriety of a partition between the various branches of power, teaches us likewise that this partition ought to be so contrived as to render the one independent of the other. To what purpose separate the executive or the judiciary from the legislative, if both the executive and the judiciary are so constituted as to be at the absolute devotion of the legislative? Such a separation must be merely nominal, and incapable of producing the ends for which it was established. It is one thing to subordinate to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government; and, whatever may be the forms of the Constitution, unites all power in the same hands. The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and as they commonly have the people on their side, they always act with such momentum as to make it very difficult for the other members of the government to maintain the

balance of the Constitution. It may perhaps be asked, how the shortness of the duration in office can affect the independence of the Executive on the legislature, unless the one were possessed of the power of appointing or displacing the other. One answer to this inquiry may be drawn from the principle already remarked that is, from the slender interest a man is apt to take in a short-lived advantage, and the little inducement it affords him to expose himself, on account of it, to any considerable inconvenience or hazard. Another answer, perhaps more obvious, though not more conclusive, will result from the consideration of the influence of the legislative body over the people; which might be employed to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, should have made himself obnoxious to its resentment. It may be asked also, whether a duration of four years would answer the end proposed; and if it would not, whether a less period, which would at least be recommended by greater security against ambitious designs, would not, for that reason, be preferable to a longer period, which was, at the same time, too short for the purpose of inspiring the desired firmness and independence of the magistrate. It cannot be affirmed, that a duration of four years, or any other limited duration, would completely answer the end proposed; but it would contribute towards it in a degree which would have a material influence upon the spirit and character of the government. Between the commencement and termination of such a period, there would always be a considerable interval, in which the prospect of annihilation would be sufficiently remote, not to have an improper effect upon the conduct of a man inducted with a tolerable portion of fortitude; and in which he might reasonably promise himself, that there would be time enough before it arrived, to make the community sensible of the propriety of the measures he might incline to pursue. Though it be probable that, as he approached the moment when the public were, by a new election, to signify their sense of his conduct, his confidence, and with it his firmness, would decline; yet both the one and the other would derive support from the opportunities which his previous continuance in the station had afforded him, of establishing himself in the esteem and goodwill of his constituents. He might, then, hazard with safety, in proportion to the proofs he had given of his wisdom and integrity, and to the title he had acquired to the respect and attachment of his fellow-citizens. As, on the one hand, a duration of four years will contribute to the firmness of the Executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not enough to justify any alarm for the public liberty. If a British House of Commons, from the most feeble beginnings, FROM THE MERE POWER OF ASSENTING OR DISAGREEING TO THE IMPOSITION OF A NEW TAX, have, by rapid strides, reduced the prerogatives of the crown and the privileges of the nobility within the limits they conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a coequal branch of the legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the Church as State; if they have been able, on a recent occasion, to make the monarch tremble at the prospect of an innovation attempted by them, what would be to be feared from an elective magistrate of four years' duration, with the confined authorities of a President of the United States? What, but that he might be unequal to the task which the Constitution assigns him? I shall only add, that if his duration be such as to leave a doubt of his firmness, that doubt is inconsistent with a jealousy of his encroachments. PUBLIUS. 1 This was the case with respect to Mr. Fox's India bill, which was carried in the House of Commons, and rejected in the House of Lords, to the entire satisfaction, as it is said, of the people.

FEDERALIST No. 72

The Same Subject Continued, and Re-Eligibility of the Executive Considered From the New York Packet. Friday, March 21, 1788.

HAMILTON

To the People of the State of New York: THE administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual, and perhaps its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the directions of the operations of war, these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account, they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendance. This view of the subject will at once suggest to us the intimate connection between the duration of the executive magistrate in office and the stability of the system of administration. To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert; and in addition to this propensity, where the alteration has been the result of public choice, the person substituted is warranted in supposing that the dismission of his predecessor has proceeded from a dislike to his measures; and that the less he resembles him, the more he will recommend himself to the favor of his constituents. These considerations, and the influence of personal confidences and attachments, would be likely to induce every new President to promote a change of men to fill the subordinate stations; and these causes together could not fail to occasion a disgraceful and ruinous mutability in the administration of the government. With a positive duration of considerable extent, I connect the circumstance of re-eligibility. The first is necessary to give to the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in his station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration. Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates. I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effects, and these effects would be for the most part rather pernicious than salutary. One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of OBTAINING, by MERITING, a continuance of them. This position will not be disputed so long as it is admitted that the desire of reward is one of the strongest incentives of human conduct; or that the best security for the fidelity of mankind is to make their interests coincide with their duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself with the prospect of being allowed to finish what he had begun, would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men, in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good. Another ill effect of the exclusion would be the temptation to sordid views, to peculation, and in some instances, to usurpation. An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity, not easy

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to be resisted by such a man, to make the best use of the opportunity he enjoyed while it lasted, and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory; though the same man, probably, with a different prospect before him, might content himself with the regular perquisites of his situation, and might even be unwilling to risk the consequences of an abuse of his opportunities. His avarice might be a guard upon his avarice. Add to this that the same man might be vain or ambitious, as well as avaricious. And if he could expect to prolong his honors by his good conduct, he might hesitate to sacrifice his appetite for them to his appetite for gain. But with the prospect before him of approaching an inevitable annihilation, his avarice would be likely to get the victory over his caution, his vanity, or his ambition. An ambitious man, too, when he found himself seated on the summit of his country's honors, when he looked forward to the time at which he must descend from the exalted eminence for ever, and reflected that no exertion of merit on his part could save him from the unwelcome reverse; such a man, in such a situation, would be much more violently tempted to embrace a favorable conjuncture for attempting the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty. Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess? A third ill effect of the exclusion would be, the depriving the community of the advantage of the experience gained by the chief magistrate in the exercise of his office. That experience is the parent of wisdom, is an adage the truth of which is recognized by the wisest as well as the simplest of mankind. What more desirable or more essential than this quality in the governors of nations? Where more desirable or more essential than in the first magistrate of a nation? Can it be wise to put this desirable and essential quality under the ban of the Constitution, and to declare that the moment it is acquired, its possessor shall be compelled to abandon the station in which it was acquired, and to which it is adapted? This, nevertheless, is the precise import of all those regulations which exclude men from serving their country, by the choice of their fellowcitizens, after they have by a course of service fitted themselves for doing it with a greater degree of utility. A fourth ill effect of the exclusion would be the banishing men from stations in which, in certain emergencies of the state, their presence might be of the greatest moment to the public interest or safety. There is no nation which has not, at one period or another, experienced an absolute necessity of the services of particular men in particular situations; perhaps it would not be too strong to say, to the preservation of its political existence. How unwise, therefore, must be every such self-denying ordinance as serves to prohibit a nation from making use of its own citizens in the manner best suited to its exigencies and circumstances! Without supposing the personal essentiality of the man, it is evident that a change of the chief magistrate, at the breaking out of a war, or at any similar crisis, for another, even of equal merit, would at all times be detrimental to the community, inasmuch as it would substitute inexperience to experience, and would tend to unhinge and set afloat the already settled train of the administration. A fifth ill effect of the exclusion would be, that it would operate as a constitutional interdiction of stability in the administration. By NECESSITATING a change of men, in the first office of the nation, it would necessitate a mutability of measures. It is not generally to be expected, that men will vary and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy. These are some of the disadvantages which would flow from the principle of exclusion. They apply most forcibly to the scheme of a perpetual exclusion; but when we consider that even a partial exclusion would always render the readmission of the person a remote and precarious object, the observations which have been made will apply nearly as fully to one case as to the other. What are the advantages promised to counterbalance these disadvantages? They are represented to be: 1st, greater independence in the magistrate; 2d, greater security to the people. Unless the exclusion be perpetual, there will be no pretense to infer the first advantage. But even in that case, may he have no object beyond his present station, to which he may sacrifice his independence? May he have no connections, no friends, for whom he may sacrifice it? May he not be less willing by a firm conduct, to make personal enemies, when he acts under the impression that a time is fast approaching, on the arrival of which he not only MAY, but MUST, be exposed to their resentments, upon an equal, perhaps upon an inferior, footing? It is not an easy point to determine whether his independence would be most promoted or impaired by such an arrangement. As to the second supposed advantage, there is still greater reason to entertain doubts concerning it. If the exclusion were to be perpetual, a man of irregular ambition, of whom alone there could be reason in any case to entertain apprehension, would, with infinite reluctance, yield to the necessity of taking his leave forever of a post in which his passion for power and pre-eminence had acquired the force of habit. And if he had been fortunate or adroit enough to conciliate the good-will of the people, he might induce them to consider as a very odious and unjustifiable restraint upon themselves, a provision which was calculated to debar them of the right of giving a fresh proof of their attachment to a favorite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favorite, might occasion greater danger to liberty, than could ever reasonably be dreaded from the possibility of a perpetuation in office, by the voluntary suffrages of the community, exercising a constitutional privilege. There is an excess of refinement in the idea of disabling the people to continue in office men who had entitled themselves, in their opinion, to approbation and confidence; the advantages of which are at best speculative and equivocal, and are overbalanced by disadvantages far more certain and decisive. PUBLIUS.

FEDERALIST No. 73 The Provision For The Support of the Executive, and the Veto Power From the New York Packet. Friday, March 21, 1788.

HAMILTON

To the People of the State of New York: THE third ingredient towards constituting the vigor of the executive authority, is an adequate provision for its support. It is evident that, without proper attention to this article, the separation of the executive from the legislative department would be merely nominal and nugatory. The legislature, with a discretionary power over the salary and emoluments of the Chief Magistrate, could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations. These expressions, taken in all the latitude of the terms, would no doubt convey more than is intended. There are men who could neither be distressed nor won into a sacrifice of their duty; but this stern virtue is the growth of few soils; and in the main it will be found that a power over a man's support is a power over his will. If it were necessary to confirm so plain a truth by facts, examples would not be wanting, even in this country, of the intimidation or seduction of the Executive by the terrors or allurements of the pecuniary arrangements of the legislative body. It is not easy, therefore, to commend too highly the judicious attention which has been paid to this subject in the proposed Constitution. It is there provided that "The President of the United States shall, at stated times, receive for his services a compensation WHICH SHALL NEITHER BE INCREASED NOR DIMINISHED DURING THE PERIOD FOR WHICH HE SHALL HAVE BEEN ELECTED; and he SHALL NOT RECEIVE WITHIN THAT PERIOD ANY OTHER EMOLUMENT from the United States, or any of them." It is impossible to imagine any provision which would have been more eligible than this. The legislature, on the appointment of a President, is once for all to declare what shall be the compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it,

either by increase or diminution, till a new period of service by a new election commences. They can neither weaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act. He can, of course, have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution. The last of the requisites to energy, which have been enumerated, are competent powers. Let us proceed to consider those which are proposed to be vested in the President of the United States. The first thing that offers itself to our observation, is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, to have the effect of preventing their becoming laws, unless they should afterwards be ratified by two thirds of each of the component members of the legislative body. The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already suggested and repeated; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of self-defense. But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enactment of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body. The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body. But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on a maturer reflexion, would condemn. The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them. It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones. Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would often be room for a charge of timidity than of rashness in the exercise of it. A King of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of Parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogatives, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised. If a magistrate so powerful and so well fortified as a British monarch, would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican? It is evident that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might be rarely exercised, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defense, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents, who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain case. I speak now with an eye to a magistrate possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard. But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute negative, it is proposed to give the Executive the qualified negative already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterpoising weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive, will often have a silent and

unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared. This qualified negative, as has been elsewhere remarked, is in this State vested in a council, consisting of the governor, with the chancellor and judges of the Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers. I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this State, in favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive. PUBLIUS. I Mr. Abraham Yates, a warm opponent of the plan of the convention is of this number.

FEDERALIST No. 74

The Command of the Military and Naval Forces, and the Pardoning Power of the Executive From the New York Packet. Tuesday, March 25, 1788.

HAMILTON

To the People of the State of New York: THE President of the United States is to be the commander-in-chief of the army and navy of the United States, and of the militia of the several States WHEN CALLED INTO THE ACTUAL SERVICE of the United States." The propriety of this provision is so evident in itself, and it is, at the same time, so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it. Even those of them which have, in other respects, coupled the chief magistrate with a council, have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength, forms a usual and essential part in the definition of the executive authority. The President may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective officers." This I consider as a mere redundancy in the plan, as the right for which it provides would result of itself from the office. He is also to be authorized to grant reprieves and pardons for offenses against the United States, EXCEPT IN CASES OF IMPEACHMENT." Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always strongest, in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance. The reflection that the fate of a fellow-creature depended on his sole fiat, would naturally inspire scrupulousness and caution; the dread of being accused of weakness or connivance, would beget equal circumspection, though of a different kind. On the other hand, as men generally derive confidence from their numbers, they might often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency. On these accounts, one man appears to be a more eligible dispenser of the mercy of government, than a body of men. The expediency of vesting the power of pardoning in the President has, if I mistake not, been only contested in relation to the crime of treason. This, it has been urged, ought to have depended upon the assent of one, or both, of the branches of the legislative body. I shall not deny that there are strong reasons to be assigned for requiring in this particular the concurrence of that body, or of a part of it. As treason is a crime levelled at the immediate being of the society, when the laws have once ascertained the guilt of the offender, there seems a fitness in referring the expediency of an act of mercy towards him to the judgment of the legislature. And this ought the rather to be the case, as the supposition of the connivance of the Chief Magistrate ought not to be entirely excluded. But there are also strong objections to such a plan. It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever. It deserves particular attention, that treason will often be connected with seditions which embrace a large proportion of the community; as lately happened in Massachusetts. In every such case, we might expect to see the representation of the people tainted with the same spirit which had given birth to the offense. And when parties were pretty equally matched, the secret sympathy of the friends and favorers of the condemned person, availing itself of the good-nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary. On the other hand, when the sedition had proceeded from causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable, when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a welltimed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed, that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the President, it may be answered in the first place, that it is questionable, whether, in a limited Constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt. PUBLIUS.

FEDERALIST No. 75 The Treaty-Making Power of the Executive For the Independent Journal.

HAMILTON

To the People of the State of New York: THE President is to have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur." Though this provision has been assailed, on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion, that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is the trite topic of the intermixture of powers; some contending that the President ought alone to possess the power of making treaties; others, that it ought to have been exclusively deposited in the Senate. Another source of objection is derived from the small number of persons by whom a treaty may be made. Of those who espouse this objection, a part are of

opinion that the House of Representatives ought to have been associated in the business, while another part seem to think that nothing more was necessary than to have substituted two thirds of ALL the members of the Senate, to two thirds of the members PRESENT. As I flatter myself the observations made in a preceding number upon this part of the plan must have sufficed to place it, to a discerning eye, in a very favorable light, I shall here content myself with offering only some supplementary remarks, principally with a view to the objections which have been just stated. With regard to the intermixture of powers, I shall rely upon the explanations already given in other places, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference from them, that the union of the Executive with the Senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties indicates a peculiar propriety in that union. Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enactment of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them. However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration. It has been remarked, upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much stake in the government to be in any material danger of being corrupted by foreign powers. But a man raised from the station of a private citizen to the rank of chief magistrate, possessed of a moderate or slender fortune, and looking forward to a period not very remote when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States. To have intrusted the power of making treaties to the Senate alone, would have been to relinquish the benefits of the constitutional agency of the President in the conduct of foreign negotiations. It is true that the Senate would, in that case, have the option of employing him in this capacity, but they would also have the option of letting it alone, and pique or cabal might induce the latter rather than the former. Besides this, the ministerial servant of the Senate could not be expected to enjoy the confidence and respect of foreign powers in the same degree with the constitutional representatives of the nation, and, of course, would not be able to act with an equal degree of weight or efficacy. While the Union would, from this cause, lose a considerable advantage in the management of its external concerns, the people would lose the additional security which would result from the co-operation of the Executive. Though it would be imprudent to confide in him solely so important a trust, yet it cannot be doubted that his participation would materially add to the safety of the society. It must indeed be clear to a demonstration that the joint possession of the power in question, by the President and Senate, would afford a greater prospect of security, than the separate possession of it by either of them. And whoever has maturely weighed the circumstances which must concur in the appointment of a President, will be satisfied that the office will always bid fair to be filled by men of such characters as to render their concurrence in the formation of treaties peculiarly desirable, as well on the score of wisdom, as on that of integrity. The remarks made in a former number, which have been alluded to in another part of this paper, will apply with conclusive force against the admission of the House of Representatives to a share in the formation of treaties. The fluctuating and, taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, SECRECY, and despatch, are incompatible with the genius of a body so variable and so numerous. The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. The greater frequency of the calls upon the House of Representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense as alone ought to condemn the project. The only objection which remains to be canvassed, is that which would substitute the proportion of two thirds of all the members composing the senatorial body, to that of two thirds of the members PRESENT. It has been shown, under the second head of our inquiries, that all provisions which require more than the majority of any body to its resolutions, have a direct tendency to embarrass the operations of the government, and an indirect one to subject the sense of the majority to that of the minority. This consideration seems sufficient to determine our opinion, that the convention have gone as far in the endeavor to secure the advantage of numbers in the formation of treaties as could have been reconciled either with the activity of the public councils or with a reasonable regard to the major sense of the community. If two thirds of the whole number of members had been required, it would, in many cases, from the non-attendance of a part, amount in practice to a necessity of unanimity. And the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder. Proofs of this position might be adduced from the examples of the Roman Tribuneship, the Polish Diet, and the States-General of the Netherlands, did not an example at home render foreign precedents unnecessary. To require a fixed proportion of the whole body would not, in all probability, contribute to the advantages of a numerous agency, better than merely to require a proportion of the attending members. The former, by making a determinate number at all times requisite to a resolution, diminishes the motives to punctual attendance. The latter, by making the capacity of the body to depend on a PROPORTION which may be varied by the absence or presence of a single member, has the contrary effect. And as, by promoting punctuality, it tends to keep the body complete, there is great likelihood that its resolutions would generally be dictated by as great a number in this case as in the other; while there would be much fewer occasions of delay. It ought not to be forgotten that, under the existing Confederation, two members MAY, and usually DO, represent a State; whence it happens that Congress, who now are solely invested with ALL THE POWERS of the Union, rarely consist of a greater number of persons than would compose the intended Senate. If we add to this, that as the members vote by States, and that where there is only a single member present from a State, his vote is lost, it will justify a supposition that the active voices in the Senate, where the members are to vote individually, would rarely fall short in number of the active voices in the existing Congress. When, in addition to these considerations, we take into view the co-operation of the President, we shall not

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hesitate to infer that the people of America would have greater security against an improper use of the power of making treaties, under the new Constitution, than they now enjoy under the Confederation. And when we proceed still one step further, and look forward to the probable augmentation of the Senate, by the erection of new States, we shall not only perceive ample ground of confidence in the sufficiency of the members to whose agency that power will be intrusted, but we shall probably be led to conclude that a body more numerous than the Senate would be likely to become, would be very little fit for the proper discharge of the trust. PUBLIUS.

FEDERALIST No. 76 The Appointing Power of the Executive From the New York Packet. Tuesday, April 1, 1788.

HAMILTON

To the People of the State of New York: THE President is to NOMINATE, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, or in the courts of law, or in the heads of departments. The President shall have power to fill up ALL VACANCIES which may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE at the end of their next session." It has been observed in a former paper, that "the true test of a good government is its aptitude and tendency to produce a good administration." If the justness of this observation be admitted, the mode of appointing the officers of the United States contained in the foregoing clauses, must, when examined, be allowed to be entitled to particular commendation. It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union; and it will not need proof, that on this point must essentially depend the character of its administration. It will be agreed on all hands, that the power of appointment, in ordinary cases, ought to be modified in one of three ways. It ought either to be vested in a single man, or in a SELECT assembly of a moderate number; or in a single man, with the concurrence of such an assembly. The exercise of it by the people at large will be readily admitted to be impracticable; as waiving every other consideration, it would leave them little time to do anything else. When, therefore, mention is made in the subsequent reasonings of an assembly or body of men, what is said must be understood to relate to a select body or assembly, of the description already given. The people collectively, from their number and from their dispersed situation, cannot be regulated in their movements by that systematic spirit of cabal and intrigue, which will be urged as the chief objections to reposing the power in question in a body of men. Those who have themselves reflected upon the subject, or who have attended to the observations made in other parts of these papers, in relation to the appointment of the President, will, I presume, agree to the position, that there would always be great probability of having the place supplied by a man of abilities, at least respectable. Premising this, I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment. The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have FEWER personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body. There is nothing so apt to agitate the passions of mankind as personal considerations whether they relate to ourselves or to others, who are to be the objects of our choice or preference. Hence, in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations. The truth of the principles here advanced seems to have been felt by the most intelligent of those who have found fault with the provision made, in this respect, by the convention. They contend that the President ought solely to have been authorized to make the appointments under the federal government. But it is easy to show, that every advantage to be expected from such an arrangement would, in substance, be derived from the power of NOMINATION, which is proposed to be conferred upon him; while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man who, with the approbation of the Senate, should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference others, who are to be the objects of our choice or preference. Hence, in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. 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And as no man could be appointed but on his previous nomination, every man who might be appointed would be, in fact, his choice. But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could

not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal. To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration. It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure. To this reasoning it has been objected that the President, by the influence of the power of nomination, may secure the complaisance of the Senate to his views. This supposition of universal venality in human nature is little less an error in political reasoning, than the supposition of universal rectitude. The institution of delegated power implies, that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence; and experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. The venality of the British House of Commons has been long a topic of accusation against that body, in the country to which they belong as well as in this; and it cannot be doubted that the charge is, to a considerable extent, well founded. But it is as little to be doubted, that there is always a large proportion of the body, which consists of independent and public-spirited men, who have an influential weight in the councils of the nation. Hence it is (the present reign not excepted) that the sense of that body is often seen to control the inclinations of the monarch, both with regard to men and to measures. Though it might therefore be allowable to suppose that the Executive might occasionally influence some individuals in the Senate, yet the supposition, that he could in general purchase the integrity of the whole body, would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices, will see sufficient ground of confidence in the probity of the Senate, to rest satisfied, not only that it will be impracticable to the Executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation, in the business of appointments, will be a considerable and salutary restraint upon the conduct of that magistrate. Nor is the integrity of the Senate the only reliance. The Constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares that "No senator or representative shall during the time FOR WHICH HE WAS ELECTED, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office." PUBLIUS.

FEDERALIST No. 77

The Appointing Power Continued and Other Powers of the Executive Considered From the New York Packet. Friday, April 4, 1788.

HAMILTON

To the People of the State of New York: IT HAS been mentioned as one of the advantages to be expected from the co-operation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as to appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected, if he were the sole disposer of offices. Where a man in any station had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that a discountenance of the Senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body which, from the greater permanency of its own composition, will in all probability be less subject to inconstancy than any other member of the government. To this union of the Senate with the President, in the article of appointments, it has in some cases been suggested that it would serve to give the President an undue influence over the Senate, and in others that it would have an opposite tendency, a strong proof that neither suggestion is true. To state the first in its proper form, is to refute it. It amounts to this: the President would have an improper INFLUENCE OVER the Senate, because the Senate would have the power of RESTRAINING him. This is an absurdity in terms. It cannot admit of a doubt that the entire power of appointment would enable him much more effectually to establish a dangerous empire over that body, than a mere power of nomination subject to their control. Let us take a view of the converse of the proposition: "the Senate would influence the Executive." As I have had occasion to remark in several other instances, the indistinctness of the objection forbids a precise answer. In what manner is this influence to be exerted? In relation to what objects? The power of influencing a person, in the sense in which it is here used, must imply a power of conferring a benefit upon him. How could the Senate confer a benefit upon the President by the manner of employing their right of negative upon his nominations? If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The POWER which can ORIGINATE the disposition of honors and emoluments, is more likely to attract than to be attracted by the POWER which can merely obstruct their course. If by influencing the President he meant RESTRAINING him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that Magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid its evils. Upon a comparison of the plan for the appointment of the officers of the proposed government with that which is established by the constitution of this State, a decided preference must be given to the former. In that plan the power of nomination is unequivocally vested in the Executive. And as there would be a necessity for submitting each nomination to the judgment of an entire branch of the legislature, the circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety; and the public would be at no loss to determine what part had been performed by the different actors. The blame of a bad nomination would fall upon the President singly and absolutely. The censure of

rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace. The reverse of all this characterizes the manner of appointment in this State. The council of appointment consists of from three to five persons, of whom the governor is always one. This small body, shut up in a private apartment, impenetrable to the public eye, proceed to the execution of the trust committed to them. It is known that the governor claims the right of nomination, upon the strength of some ambiguous expressions in the constitution; but it is not known to what extent, or in what manner he exercises it; nor upon what occasions he is contradicted or opposed. The censure of a bad appointment, on account of the uncertainty of its author, and for want of a determinate object, has neither poignancy nor duration. And while an unbounded field for cabal and intrigue lies open, all idea of responsibility is lost. The most that the public can know, is that the governor claims the right of nomination; that TWO out of the inconsiderable number of FOUR men can too often be managed without much difficulty; that if some of the members of a particular council should happen to be of an uncomplying character, it is frequently not impossible to get rid of their opposition by regulating the times of meeting in such a manner as to render their attendance inconvenient; and that from whatever cause it may proceed, a great number of very improper appointments are from time to time made. Whether a governor of this State avails himself of the ascendancy he must necessarily have, in this delicate and important part of the administration, to prefer to offices men who are best qualified for them, or whether he prostitutes that advantage to the advancement of persons whose chief merit is their implicit devotion to his will, and to the support of a despicable and dangerous system of personal influence, are questions which, unfortunately for the community, can only be the subjects of speculation and conjecture. Every mere council of appointment, however constituted, will be a conclave, in which cabal and intrigue will have their full scope. Their number, without an unwarrantable increase of expense, cannot be large enough to preclude a facility of combination. And as each member will have his friends and connections to provide for, the desire of mutual gratification will beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied; but to satisfy the private attachments of a dozen, or of twenty men, would occasion a monopoly of all the principal employments of the government in a few families, and would lead more directly to an aristocracy or an oligarchy than any measure that could be contrived. If, to avoid an accumulation of offices, there was to be a frequent change in the persons who were to compose the council, this would involve the mischiefs of a mutable administration in their full extent. Such a council would also be more liable to executive influence than the Senate, because they would be fewer in number, and would act less immediately under the public inspection. Such a council, in fine, as a substitute for the plan of the convention, would be productive of an increase of expense, a multiplication of the evils which spring from favoritism and intrigue in the distribution of public honors, a decrease of stability in the administration of the government, and a diminution of the security against an undue influence of the Executive. And yet such a council has been warmly contended for as an essential amendment in the proposed Constitution. I could not with propriety conclude my observations on the subject of appointments without taking notice of a scheme for which there have appeared some, though but few advocates; I mean that of uniting the House of Representatives in the power of making them. I shall, however, do little more than mention it, as I cannot imagine that it is likely to gain the countenance of any considerable part of the community. A body so fluctuating and at the same time so numerous, can never be deemed proper for the exercise of that power. Its unfitness will appear manifest to all, when it is recollected that in half a century it may consist of three or four hundred persons. All the advantages of the stability, both of the Executive and of the Senate, would be defeated by this union, and infinite delays and embarrassments would be occasioned. The example of most of the States in their local constitutions encourages us to reprobate the idea. The only remaining powers of the Executive are comprehended in giving information to Congress of the state of the Union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning all the officers of the United States. Except some cavils about the power of convening EITHER house of the legislature, and that of receiving ambassadors, no objection has been made to this class of authorities; nor could they possibly admit of any. It required, indeed, an insatiable avidity for censure to invent exceptions to the parts which have been excepted to. In regard to the power of convening either house of the legislature, I shall barely remark, that in respect to the Senate at least, we can readily discover a good reason for it. AS this body has a concurrent power with the Executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene the House of Representatives. As to the reception of ambassadors, what I have said in a former paper will furnish a sufficient answer. We have now completed a survey of the structure and powers of the executive department, which, I have endeavored to show, combines, as far as republican principles will admit, all the requisites to energy. The remaining inquiry is: Does it also combine the requisites to safety, in a republican sense, a due dependence on the people, a due responsibility? The answer to this question has been anticipated in the investigation of its other characteristics, and is satisfactorily deducible from these circumstances; from the election of the President once in four years by persons immediately chosen by the people for that purpose; and from his being at all times liable to impeachment, trial, dismissal from office, incapacity to serve in any other, and to forfeiture of life and estate by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favor of the public security. In the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people? PUBLIUS.

FEDERALIST No. 78

The Judiciary Department From McLEAN'S Edition, New York.

HAMILTON

To the People of the State of New York: WE PROCEED now to an examination of the judiciary department of the proposed government. In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined. The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other. First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition. Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility. According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into

question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws. Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that there is no liberty, if the power of judging be not separated from the legislative and executive powers." 2 And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security. The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable. There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental. This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference. But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former. It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL, instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body. If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty. This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the

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minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies,³ in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community. But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress. That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws. There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject. Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established GOOD BEHAVIOR as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution. PUBLIUS. 1 The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing." "Spirit of Laws," vol. i., page 186. 2 Idem, page 181. 3 Vide "Protest of the Minority of the Convention of Pennsylvania," Martin's Speech, etc.

FEDERALIST No. 79

The Judiciary Continued From McLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: NEXT to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. The remark made in relation to the President is equally applicable here. In the general course of human nature, A POWER OVER A MAN'S SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. The enlightened friends to good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head. Some of these indeed have declared that PERMANENT salaries should be established for the judges; but the experiment has in some instances shown that such expressions are not sufficiently definite to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the convention accordingly has provided that the judges of the United States "shall at STATED TIMES receive for their services a compensation which shall not be DIMINISHED during their continuance in office." This, all circumstances considered, is the most eligible provision that could have been devised. It will readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of compensation in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation. The clause which has been quoted combines both advantages. The salaries of judicial officers may from time to time be altered, as occasion shall require, yet so as never to lessen the allowance with which any particular judge comes into office, in respect to him. It will be observed that a difference has been made by the convention between the compensation of the President and of

the judges. That of the former can neither be increased nor diminished; that of the latter can only not be diminished. This probably arose from the difference in the duration of the respective offices. As the President is to be elected for no more than four years, it can rarely happen that an adequate salary, fixed at the commencement of that period, will not continue to be such to its end. But with regard to the judges, who, if they behave properly, will be secured in their places for life, it may well happen, especially in the early stages of the government, that a stipend, which would be very sufficient at their first appointment, would become too small in the progress of their service. This provision for the support of the judges bears every mark of prudence and efficacy; and it may be safely affirmed that, together with the permanent tenure of their offices, it affords a better prospect of their independence than is discoverable in the constitutions of any of the States in regard to their own judges. The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges. There is a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification. The constitution of New York, to avoid investigations that must forever be vague and dangerous, has taken a particular age as the criterion of inability. No man can be a judge beyond sixty. I believe there are few at present who do not disapprove of this provision. There is no station, in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period in men who survive it; and when, in addition to this circumstance, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable portion of the bench, whether more or less numerous, should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them. In a republic, where fortunes are not affluent, and pensions not expedient, the dismissal of men from stations in which they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench. PUBLIUS. 1 Vide "Constitution of Massachusetts," chapter 2, section 1, article 13.

FEDERALIST No. 80 The Powers of the Judiciary From McLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: To JUDGE with accuracy of the proper extent of the federal judicature, it will be necessary to consider, in the first place, what are its proper objects. It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the articles of Union; 3d, to all those in which the United States are a party; 4th, to all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the United States and foreign nations, or to that between the States themselves; 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased. The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe, that such prohibitions would be scrupulously regarded, without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the States. As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed. Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum. The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the security of the public tranquillity. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the States. But it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the *lex loci*, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties, involve national questions, that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals. The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century; and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the German body. A method of terminating territorial disputes between the States, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have been hitherto held together. But there are many other sources, besides interfering claims of

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boundary, from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States. And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the spirit which produced them will assume new shapes, that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control. It may be esteemed the basis of the Union, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." And if it be a just principle that every government OUGHT TO POSSESS THE MEANS OF EXECUTING ITS OWN PROVISIONS BY ITS OWN AUTHORITY, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded. The fifth point will demand little animadversion. The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction. The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same State. Claims to land under grants of different States, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And even where this had not been done, it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government. Having thus laid down and discussed the principles which ought to regulate the constitution of the federal judiciary, we will proceed to test, by these principles, the particular powers of which, according to the plan of the convention, it is to be composed. It is to comprehend "all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands and grants of different States; and between a State or the citizens thereof and foreign states, citizens, and subjects." This constitutes the entire mass of the judicial authority of the Union. Let us now review it in detail. It is, then, to extend: First. To all cases in law and equity, ARISING UNDER THE CONSTITUTION AND THE LAWS OF THE UNITED STATES. This corresponds with the two first classes of causes, which have been enumerated, as proper for the jurisdiction of the United States. It has been asked, what is meant by "cases arising under the Constitution," in contradiction from those "arising under the laws of the United States"? The difference has been already explained. All the restrictions upon the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution, and will have no connection with any law of the United States. Should paper money, notwithstanding, be emitted, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole. It has also been asked, what need of the word "equity" What equitable causes can grow out of the Constitution and laws of the United States? There is hardly a subject of litigation between individuals, which may not involve those ingredients of FRAUD, ACCIDENT, TRUST, or HARDSHIP, which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains: these are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties, which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different States, may afford another example of the necessity of an equitable jurisdiction in the federal courts. This reasoning may not be so palpable in those States where the formal and technical distinction between LAW and EQUITY is not maintained, as in this State, where it is exemplified by every day's practice. The judiciary authority of the Union is to extend: Second. To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace. Third. To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the cognizance of the national courts. Fourth. To controversies to which the United States shall be a party. These constitute the third of those classes. Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last. Sixth. To cases between the citizens of the same State, CLAIMING LANDS UNDER GRANTS OF DIFFERENT STATES. These fall within the last class, and ARE THE ONLY INSTANCES IN WHICH THE PROPOSED CONSTITUTION DIRECTLY CONTEMPLATES THE COGNIZANCE OF DISPUTES BETWEEN THE CITIZENS OF THE SAME STATE. Seventh. To cases between a State and the citizens thereof, and foreign States, citizens, or subjects. These have been already explained to belong to the fourth of the enumerated classes, and have been shown to be, in a peculiar manner, the proper subjects of the national judicature. From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all conformable to the principles which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such EXCEPTIONS, and to prescribe such regulations as will be calculated to obviate or remove these inconveniences. The possibility of particular mischiefs can never be viewed, by a wellinformed mind, as a solid objection to a general principle, which is calculated to avoid general mischiefs and to obtain general advantages. PUBLIUS.

FEDERALIST. No. 81

The Judiciary Continued, and the Distribution of the Judicial Authority From McLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: LET US now return to the partition of the judiciary authority between different courts, and their relations to each other. "The judicial power of the United States is" (by the plan of the convention) "to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." "That there ought to be one court of supreme and final jurisdiction, is a proposition which is not likely to be contested. The reasons for it have been assigned in another place, and are too obvious to need repetition. The only question that seems to have been raised concerning it, is, whether it ought to be a distinct body or a branch of the legislature. The same contradiction is observable in regard to this matter which has been remarked in several other cases. The very men who object to the Senate as a court of impeachments, on the ground of an improper intermixture of powers, advocate, by implication at least, the propriety of vesting the ultimate decision of all causes, in the whole or in a part of the legislative body. The arguments, or rather suggestions, upon which this charge is founded, are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the SPIRIT of the Constitution, will enable that court to mould them into whatever shape it may think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. In Britain, the judicial power, in the last resort, resides in the House of Lords, which is a branch of the legislature; and this part of the British government has been imitated in the State constitutions in general. The Parliament of Great Britain, and the legislatures of the several States, can at any time rectify, by law, the exceptional decisions of their respective courts. But the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact. In the first place, there is not a syllable in the plan under consideration which DIRECTLY empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited Constitution; and as far as it is true, is equally applicable to most, if not to all the State governments. There can be no objection, therefore, on this account, to the federal judicature which will not lie against the local judicatories in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion. But perhaps the force of the objection may be thought to consist in the particular organization of the Supreme Court; in its being composed of a distinct body of magistrates, instead of being one of the branches of the legislature, as in the government of Great Britain and that of the State. To insist upon this point, the authors of the objection must renounce the meaning they have labored to annex to the celebrated maxim, requiring a separation of the departments of power. It shall, nevertheless, be conceded to them, agreeably to the interpretation given to that maxim in the course of these papers, that it is not violated by vesting the ultimate power of judging in a PART of the legislative body. But though this be not an absolute violation of that excellent rule, yet it verges so nearly upon it, as on this account alone to be less eligible than the mode preferred by the convention. From a body which had even a partial agency in passing bad laws, we could rarely expect a disposition to temper and moderate them in the application. The same spirit which had operated in making them, would be too apt in interpreting them; still less could it be expected that men who had infringed the Constitution in the character of legislators, would be disposed to repair the breach in the character of judges. Nor is this all. Every reason which recommends the tenure of good behavior for judicial offices, militates against placing the judiciary power, in the last resort, in a body composed of men chosen for a limited period. There is an absurdity in referring the determination of causes, in the first instance, to judges of permanent standing; in the last, to those of a temporary and mutable constitution. And there is a still greater absurdity in subjecting the decisions of men, selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges; and as, on this account, there will be great reason to apprehend all the ill consequences of defective information, so, on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshalled on opposite sides will be too apt to stifle the voice both of law and of equity. These considerations teach us to applaud the wisdom of those States who have committed the judicial power, in the last resort, not to a part of the legislature, but to distinct and independent bodies of men. Contrary to the supposition of those who have represented the plan of the convention, in this respect, as novel and unprecedented, it is but a copy of the constitutions of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia; and the preference which has been given to those models is highly to be commended. It is not true, in the second place, that the Parliament of Great Britain, or the legislatures of the particular States, can rectify the exceptional decisions of their respective courts, in any other sense than might be done by a future legislature of the United States. The theory, neither of the British, nor the State constitutions, authorizes the revival of a judicial sentence by a legislative act. Nor is there any thing in the proposed Constitution, more than in either of them, by which it is forbidden. In the former, as well as in the latter, the impropriety of the thing, on the general principles of law and reason, is the sole obstacle. A legislature, without exceeding its province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases. This is the principle, and it applies in all its consequences, exactly in the same manner and extent, to the State governments, as to the national government now under consideration. Not the least difference can be pointed out in any view of the subject. It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty, from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments. Having now examined, and I trust, removed the objections to the distinct and independent organization of the Supreme Court, I proceed to consider the propriety of the power of constituting inferior courts, and the relations which will subsist between these and the former. The power of constituting inferior courts is evidently calculated to obviate the necessity of having recourse to the Supreme Court in every case of federal cognizance. It is intended to enable the national government to institute or AUTHORIZE, in each State or district of the United States, a tribunal competent to the determination of matters of national jurisdiction within its limits. But why, it is asked, might not the same purpose have been accomplished by the instrumentality of the State courts? This admits of different answers. Though the fitness and competency of those courts should be allowed in the utmost latitude, yet the substance of the power in question may still be regarded as a necessary part of the plan, if it were only to empower the

national legislature to commit to them the cognizance of causes arising out of the national Constitution. To confer the power of determining such causes upon the existing courts of the several States, would perhaps be as much "to constitute tribunals," as to create new courts with the like power. But ought not a more direct and explicit provision to have been made in favor of the State courts? There are, in my opinion, substantial reasons against such a provision: the most discerning cannot foresee how far the prevalence of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes; whilst every man may discover, that courts constituted like those of some of the States would be improper channels of the judicial authority of the Union. State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws. And if there was a necessity for confiding the original cognizance of causes arising under those laws to them there would be a correspondent necessity for leaving the door of appeal as wide as possible. In proportion to the grounds of confidence in, or distrust of, the subordinate tribunals, ought to be the facility or difficulty of appeals. And well satisfied as I am of the propriety of the appellate jurisdiction, in the several classes of causes to which it is extended by the plan of the convention. I should consider every thing calculated to give, in practice, an UNRESTRAINED COURSE to appeals, as a source of public and private inconvenience. I am not sure, but that it will be found highly expedient and useful, to divide the United States into four or five or half a dozen districts; and to institute a federal court in each district, in lieu of one in every State. The judges of these courts, with the aid of the State judges, may hold circuits for the trial of causes in the several parts of the respective districts. Justice through them may be administered with ease and despatch; and appeals may be safely circumscribed within a narrow compass. This plan appears to me at present the most eligible of any that could be adopted; and in order to it, it is necessary that the power of constituting inferior courts should exist in the full extent in which it is to be found in the proposed Constitution. These reasons seem sufficient to satisfy a candid mind, that the want of such a power would have been a great defect in the plan. Let us now examine in what manner the judicial authority is to be distributed between the supreme and the inferior courts of the Union. The Supreme Court is to be invested with original jurisdiction, only "in cases affecting ambassadors, other public ministers, and consuls, and those in which A STATE shall be a party." Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace, that, as well for the preservation of this, as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judiciary of the nation. Though consuls have not in strictness a diplomatic character, yet as they are the public agents of the nations to which they belong, the same observation is in a great measure applicable to them. In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal. Though it may rather be a digression from the immediate subject of this paper, I shall take occasion to mention here a supposition which has excited some alarm upon very mistaken grounds. It has been suggested that an assignment of the public securities of one State to the citizens of another, would enable them to prosecute that State in the federal courts for the amount of those securities: a suggestion which the following considerations prove to be without foundation. It is inherent in the nature of sovereignty not to be amenable to the suit of an individual WITHOUT ITS CONSENT. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the article of taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us, that there is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action, independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident, it could not be done without waging war against the contracting State; and to ascribe to the federal courts, by mere implication, and in destruction of a pre-existing right of the State governments, a power which would involve such a consequence, would be altogether forced and unwarrantable. Let us resume the train of our observations. We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature rarely to occur. In all other cases of federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than an appellate jurisdiction, "with such EXCEPTIONS and under such REGULATIONS as the Congress shall make." The propriety of this appellate jurisdiction has been scarcely called in question in regard to matters of law; but the clamors have been loud against it as applied to matters of fact. Some well-intentioned men in this State, deriving their notions from the language and forms which obtain in our courts, have been induced to consider it as an implied superseder of the trial by jury, in favor of the civil-law mode of trial, which prevails in our courts of admiralty, probate, and chancery. A technical sense has been affixed to the term "appellate," which, in our law practice, is commonly used in reference to appeals in the course of the civil law. But if I am not misinformed, the same meaning would not be given to it in any part of New England. There an appeal from one jury to another, is familiar both in language and practice, and is even a matter of course, until there have been two verdicts on one side. The word "appellate," therefore, will not be understood in the same sense in New England as in New York, which shows the impropriety of a technical interpretation derived from the jurisprudence of any particular State. The expression, taken in the abstract, denotes nothing more than the power of one tribunal to review the proceedings of another, either as to the law or fact, or both. The mode of doing it may depend on ancient custom or legislative provision (in a new government it must depend on the latter), and may be with or without the aid of a jury, as may be judged advisable. If, therefore, the re-examination of a fact once determined by a jury, should in any case be admitted under the proposed Constitution, it may be so regulated as to be done by a second jury, either by remanding the cause to the court below for a second trial of the fact, or by directing an issue immediately out of the Supreme Court. But it does not follow that the re-examination of a fact once ascertained by a jury, will be permitted in the Supreme Court. Why may not it be said, with the strictest propriety, when a writ of error is brought from an inferior to a superior court of law in this State, that the latter has jurisdiction of the fact as well as the law? It is true it cannot institute a new inquiry concerning the fact, but it takes cognizance of it as it appears upon the record, and pronounces the law arising upon it. This is jurisdiction of both fact and law; nor is it even possible to separate them. Though the common-law courts of this State ascertain disputed facts by a jury, yet they unquestionably have jurisdiction of both fact and law; and accordingly when the former is agreed in the pleadings, they have no recourse to a jury, but proceed at once to judgment. I contend, therefore, on this ground, that the expressions, "appellate jurisdiction, both as to law and fact," do not necessarily imply a re-examination in the Supreme Court of facts decided by juries in the inferior courts. The following train of ideas may well be imagined to have influenced the convention, in relation to this particular provision. The appellate jurisdiction of the Supreme Court (it may have been argued) will extend to causes determinable in different modes, some in the course of the COMMON LAW, others in the course of the CIVIL LAW. In the former, the revision of the law only will be, generally speaking, the proper province of the Supreme Court; in the latter, the re-examination of the fact is agreeable to usage, and in some cases, of which prize causes are an example, might be essential to the preservation of the public peace. It is therefore necessary that the appellate jurisdiction should, in certain cases, extend in the broadest sense to matters of fact. It will not answer to make an express exception of cases which shall have been originally tried by a jury, because in the courts of some of the States ALL CAUSES are tried in this mode; and such an

exception would preclude the revision of matters of fact, as well where it might be proper, as where it might be improper. To avoid all inconveniences, it will be safest to declare generally, that the Supreme Court shall possess appellate jurisdiction both as to law and FACT, and that this jurisdiction shall be subject to such EXCEPTIONS and regulations as the national legislature may prescribe. This will enable the government to modify it in such a manner as will best answer the ends of public justice and security. This view of the matter, at any rate, puts it out of all doubt that the supposed ABOLITION of the trial by jury, by the operation of this provision, is fallacious and untrue. The legislature of the United States would certainly have full power to provide, that in appeals to the Supreme Court there should be no re-examination of facts where they had been tried in the original causes by juries. This would certainly be an authorized exception; but if, for the reason already intimated, it should be thought too extensive, it might be qualified with a limitation to such causes only as are determinable at common law in that mode of trial. The amount of the observations hitherto made on the authority of the judicial department is this: that it has been carefully restricted to those causes which are manifestly proper for the cognizance of the national judicature; that in the partition of this authority a very small portion of original jurisdiction has been preserved to the Supreme Court, and the rest consigned to the subordinate tribunals; that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all the cases referred to them, both subject to any EXCEPTIONS and REGULATIONS which may be thought advisable; that this appellate jurisdiction does, in no case, ABOLISH the trial by jury; and that an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary, without exposing us to any of the inconveniences which have been predicted from that source. PUBLIUS. 1 Article 3, sec. 1. 2 This power has been absurdly represented as intended to abolish all the county courts in the several States, which are commonly called inferior courts. But the expressions of the Constitution are, to constitute "tribunals INFERIOR TO THE SUPREME COURT"; and the evident design of the provision is to enable the institution of local courts, subordinate to the Supreme, either in States or larger districts. It is ridiculous to imagine that county courts were in contemplation. 3 This word is composed of JUS and DICTIO, juris dictio or a speaking and pronouncing of the law. 4 I hold that the States will have concurrent jurisdiction with the subordinate federal judicatories, in many cases of federal cognizance, as will be explained in my next paper.

FEDERALIST No. 82

The Judiciary Continued From McLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: THE erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties. 'T is time only that can mature and perfect so compound a system, can liquidate the meaning of all the parts, and can adjust them to each other in a harmonious and consistent WHOLE. Such questions, accordingly, have arisen upon the plan proposed by the convention, and particularly concerning the judiciary department. The principal of these respect the situation of the State courts in regard to those causes which are to be submitted to federal jurisdiction. Is this to be exclusive, or are those courts to possess a concurrent jurisdiction? If the latter, in what relation will they stand to the national tribunals? These are inquiries which we meet with in the mouths of men of sense, and which are certainly entitled to attention. The principles established in a former paper teach us that the States will retain all PRE-EXISTING authorities which may not be exclusively delegated to the federal head; and that this exclusive delegation can only exist in one of three cases: where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is granted to the Union, and the exercise of a like authority is prohibited to the States; or where an authority is granted to the Union, with which a similar authority in the States would be utterly incompatible. Though these principles may not apply with the same force to the judiciary as to the legislative power, yet I am inclined to think that they are, in the main, just with respect to the former, as well as the latter. And under this impression, I shall lay it down as a rule, that the State courts will RETAIN the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes. The only thing in the proposed Constitution, which wears the appearance of confining the causes of federal cognizance to the federal courts, is contained in this passage: "The JUDICIAL POWER of the United States SHALL BE VESTED in one Supreme Court, and in SUCH inferior courts as the Congress shall from time to time ordain and establish." This might either be construed to signify, that the supreme and subordinate courts of the Union should alone have the power of deciding those causes to which their authority is to extend; or simply to denote, that the organs of the national judiciary should be one Supreme Court, and as many subordinate courts as Congress should think proper to appoint; or in other words, that the United States should exercise the judicial power with which they are to be invested, through one supreme tribunal, and a certain number of inferior ones, to be instituted by them. The first excludes, the last admits, the concurrent jurisdiction of the State tribunals; and as the first would amount to an alienation of State power by implication, the last appears to me the most natural and the most defensible construction. But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes of which the State courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be PECULIAR to, the Constitution to be established; for not to allow the State courts a right of jurisdiction in such cases, can hardly be considered as the abridgment of a pre-existing authority. I mean not therefore to contend that the United States, in the course of legislation upon the objects intrusted to their direction, may not commit the decision of causes arising upon a particular regulation to the federal courts solely, if such a measure should be deemed expedient; but I hold that the State courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion that in every case in which they were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited. Here another question occurs: What relation would subsist between the national and State courts in these instances of concurrent jurisdiction? I answer, that an appeal would certainly lie from the latter, to the Supreme Court of the United States. The Constitution in direct terms gives an appellate jurisdiction to the Supreme Court in all the enumerated cases of federal cognizance in which it is not to have an original one, without a single expression to confine its operation to the inferior federal courts. The objects of appeal, not the tribunals from which it is to be made, are alone contemplated. From this circumstance, and from the reason of the thing, it ought to be construed to extend to the State tribunals. Either this must be the case, or the local courts must be excluded from a concurrent jurisdiction in matters of national concern, else the judiciary authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor. Neither of these consequences ought, without evident necessity, to be involved; the latter would be entirely inadmissible, as it would defeat some of the most important and avowed purposes of

the proposed government, and would essentially embarrass its measures. Nor do I perceive any foundation for such a supposition. Agreeably to the remark already made, the national and State systems are to be regarded as ONE WHOLE. The courts of the latter will of course be natural auxiliaries to the execution of the laws of the Union, and an appeal from them will as naturally lie to that tribunal which is destined to unite and assimilate the principles of national justice and the rules of national decisions. The evident aim of the plan of the convention is, that all the causes of the specified classes shall, for weighty public reasons, receive their original or final determination in the courts of the Union. To confine, therefore, the general expressions giving appellate jurisdiction to the Supreme Court, to appeals from the subordinate federal courts, instead of allowing their extension to the State courts, would be to abridge the latitude of the terms, in subversion of the intent, contrary to every sound rule of interpretation. But could an appeal be made to lie from the State courts to the subordinate federal judicatories? This is another of the questions which have been raised, and of greater difficulty than the former. The following considerations countenance the affirmative. The plan of the convention, in the first place, authorizes the national legislature to constitute tribunals inferior to the Supreme Court. It declares, in the next place, that the JUDICIAL POWER of the United States SHALL BE VESTED in one Supreme Court, and in such inferior courts as Congress shall ordain and establish; and it then proceeds to enumerate the cases to which this judicial power shall extend. It afterwards divides the jurisdiction of the Supreme Court into original and appellate, but gives no definition of that of the subordinate courts. The only outlines described for them, are that they shall be inferior to the Supreme Court, and that they shall not exceed the specified limits of the federal judiciary. Whether their authority shall be original or appellate, or both, is not declared. All this seems to be left to the discretion of the legislature. And this being the case, I perceive at present no impediment to the establishment of an appeal from the State courts to the subordinate national tribunals; and many advantages attending the power of doing it may be imagined. It would diminish the motives to the multiplication of federal courts, and would admit of arrangements calculated to contract the appellate jurisdiction of the Supreme Court. The State tribunals may then be left with a more entire charge of federal causes; and appeals, in most cases in which they may be deemed proper, instead of being carried to the Supreme Court, may be made to lie from the State courts to district courts of the Union. PUBLIUS. 1 No. 31. 2 Sec. 8th art. 1st.

FEDERALIST No. 83

The Judiciary Continued in Relation to Trial by Jury From MCLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: THE objection to the plan of the convention, which has met with most success in this State, and perhaps in several of the other States, is THAT RELATIVE TO THE WANT OF A CONSTITUTIONAL PROVISION for the trial by jury in civil cases. The disingenuous form in which this objection is usually stated has been repeatedly adverted to and exposed, but continues to be pursued in all the conversations and writings of the opponents of the plan. The mere silence of the Constitution in regard to CIVIL CAUSES, is represented as an abolition of the trial by jury, and the declamations to which it has afforded a pretext are artfully calculated to induce a persuasion that this pretended abolition is complete and universal, extending not only to every species of civil, but even to CRIMINAL CAUSES. To argue with respect to the latter would, however, be as vain and fruitless as to attempt the serious proof of the EXISTENCE of MATTER, or to demonstrate any of those propositions which, by their own internal evidence, force conviction, when expressed in language adapted to convey their meaning. With regard to civil causes, subtleties almost too contemptible for refutation have been employed to countenance the surmise that a thing which is only NOT PROVIDED FOR, is entirely ABOLISHED. Every man of discernment must at once perceive the wide difference between SILENCE and ABOLITION. But as the inventors of this fallacy have attempted to support it by certain LEGAL MAXIMS of interpretation, which they have perverted from their true meaning, it may not be wholly useless to explore the ground they have taken. The maxims on which they rely are of this nature: "A specification of particulars is an exclusion of generals"; or, "The expression of one thing is the exclusion of another." Hence, say they, as the Constitution has established the trial by jury in criminal cases, and is silent in respect to civil, this silence is an implied prohibition of trial by jury in regard to the latter. The rules of legal interpretation are rules of COMMONSENSE, adopted by the courts in the construction of the laws. The true test, therefore, of a just application of them is its conformity to the source from which they are derived. This being the case, let me ask if it is consistent with common-sense to suppose that a provision obliging the legislative power to commit the trial of criminal causes to juries, is a privation of its right to authorize or permit that mode of trial in other cases? Is it natural to suppose, that a command to do one thing is a prohibition to the doing of another, which there was a previous power to do, and which is not incompatible with the thing commanded to be done? If such a supposition would be unnatural and unreasonable, it cannot be rational to maintain that an injunction of the trial by jury in certain cases is an interdiction of it in others. A power to constitute courts is a power to prescribe the mode of trial; and consequently, if nothing was said in the Constitution on the subject of juries, the legislature would be at liberty either to adopt that institution or to let it alone. This discretion, in regard to criminal causes, is abridged by the express injunction of trial by jury in all such cases; but it is, of course, left at large in relation to civil causes, there being a total silence on this head. The specification of an obligation to try all criminal causes in a particular mode, excludes indeed the obligation or necessity of employing the same mode in civil causes, but does not abridge THE POWER of the legislature to exercise that mode if it should be thought proper. The pretense, therefore, that the national legislature would not be at full liberty to submit all the civil causes of federal cognizance to the determination of juries, is a pretense destitute of all just foundation. From these observations this conclusion results: that the trial by jury in civil cases would not be abolished; and that the use attempted to be made of the maxims which have been quoted, is contrary to reason and common-sense, and therefore not admissible. Even if these maxims had a precise technical sense, corresponding with the idea of those who employ them upon the present occasion, which, however, is not the case, they would still be inapplicable to a constitution of government. In relation to such a subject, the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction. Having now seen that the maxims relied upon will not bear the use made of them, let us endeavor to ascertain their proper use and true meaning. This will be best done by examples. The plan of the convention declares that the power of Congress, or, in other words, of the NATIONAL LEGISLATURE, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended. In like manner the judicial authority of the federal judicatories is declared by the Constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits, beyond which the federal courts cannot extend their jurisdiction, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority. These examples are sufficient to elucidate the maxims which have been mentioned, and to designate the manner in which they should be used. But that there may be no misapprehensions upon this subject, I shall add one case more, to demonstrate the proper use of these maxims, and the abuse which has been made of them. Let us suppose that by the laws of this State a married woman was incapable of conveying her estate, and that the legislature, considering this as an evil, should enact that she might dispose of her property by deed executed in the presence of a magistrate. In such a case there can be no doubt but the specification would amount to an exclusion of any other mode of conveyance, because the woman having no previous power to alienate her property, the specification

determines the particular mode which she is, for that purpose, to avail herself of. But let us further suppose that in a subsequent part of the same act it should be declared that no woman should dispose of any estate of a determinate value without the consent of three of her nearest relations, signified by their signing the deed; could it be inferred from this regulation that a married woman might not procure the approbation of her relations to a deed for conveying property of inferior value? The position is too absurd to merit a refutation, and yet this is precisely the position which those most establish who contend that the trial by juries in civil cases is abolished, because it is expressly provided for in cases of a criminal nature. From these observations it must appear unquestionably true, that trial by jury is in no case abolished by the proposed Constitution, and it is equally true, that in those controversies between individuals in which the great body of the people are likely to be interested, that institution will remain precisely in the same situation in which it is placed by the State constitutions, and will be in no degree altered or influenced by the adoption of the plan under consideration. The foundation of this assertion is, that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the State courts only, and in the manner which the State constitutions and laws prescribe. All land causes, except where claims under the grants of different States come into question, and all other controversies between the citizens of the same State, unless where they depend upon positive violations of the articles of union, by acts of the State legislatures, will belong exclusively to the jurisdiction of the State tribunals. Add to this, that admiralty causes, and almost all those which are of equity jurisdiction, are determinable under our own government without the intervention of a jury, and the inference from the whole will be, that this institution, as it exists with us at present, cannot possibly be affected to any great extent by the proposed alteration in our system of government. The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation; and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a representative republic, or how much more merit it may be entitled to, as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government. Discussions of this kind would be more curious than beneficial, as all are satisfied of the utility of the institution, and of its friendly aspect to liberty. But I must acknowledge that I cannot readily discern the inseparable connection between the existence of liberty, and the trial by jury in civil cases. Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings. The trial by jury in criminal cases, aided by the habeas-corpus act, seems therefore to be alone concerned in the question. And both of these are provided for, in the most ample manner, in the plan of the convention. It has been observed, that trial by jury is a safeguard against an oppressive exercise of the power of taxation. This observation deserves to be canvassed. It is evident that it can have no influence upon the legislature, in regard to the AMOUNT of taxes to be laid, to the OBJECTS upon which they are to be imposed, or to the RULE by which they are to be apportioned. If it can have any influence, therefore, it must be upon the mode of collection, and the conduct of the officers intrusted with the execution of the revenue laws. As to the mode of collection in this State, under our own Constitution, the trial by jury is in most cases out of use. The taxes are usually levied by the more summary proceeding of distress and sale, as in cases of rent. And it is acknowledged on all hands, that this is essential to the efficacy of the revenue laws. The dilatory course of a trial at law to recover the taxes imposed on individuals, would neither suit the exigencies of the public nor promote the convenience of the citizens. It would often occasion an accumulation of costs, more burdensome than the original sum of the tax to be levied. And as to the conduct of the officers of the revenue, the provision in favor of trial by jury in criminal cases, will afford the security aimed at. Willful abuses of a public authority, to the oppression of the subject, and every species of official extortion, are offenses against the government, for which the persons who commit them may be indicted and punished according to the circumstances of the case. The excellence of the trial by jury in civil cases appears to depend on circumstances foreign to the preservation of liberty. The strongest argument in its favor is, that it is a security against corruption. As there is always more time and better opportunity to tamper with a standing body of magistrates than with a jury summoned for the occasion, there is room to suppose that a corrupt influence would more easily find its way to the former than to the latter. The force of this consideration is, however, diminished by others. The sheriff, who is the summoner of ordinary juries, and the clerks of courts, who have the nomination of special juries, are themselves standing officers, and, acting individually, may be supposed more accessible to the touch of corruption than the judges, who are a collective body. It is not difficult to see, that it would be in the power of those officers to select jurors who would serve the purpose of the party as well as a corrupted bench. In the next place, it may fairly be supposed, that there would be less difficulty in gaining some of the jurors promiscuously taken from the public mass, than in gaining men who had been chosen by the government for their probity and good character. But making every deduction for these considerations, the trial by jury must still be a valuable check upon corruption. It greatly multiplies the impediments to its success. As matters now stand, it would be necessary to corrupt both court and jury; for where the jury have gone evidently wrong, the court will generally grant a new trial, and it would be in most cases of little use to practice upon the jury, unless the court could be likewise gained. Here then is a double security; and it will readily be perceived that this complicated agency tends to preserve the purity of both institutions. By increasing the obstacles to success, it discourages attempts to seduce the integrity of either. The temptations to prostitution which the judges might have to surmount, must certainly be much fewer, while the co-operation of a jury is necessary, than they might be, if they had themselves the exclusive determination of all causes. Notwithstanding, therefore, the doubts I have expressed, as to the essentiality of trial by jury in civil cases to liberty, I admit that it is in most cases, under proper regulations, an excellent method of determining questions of property; and that on this account alone it would be entitled to a constitutional provision in its favor if it were possible to fix the limits within which it ought to be comprehended. There is, however, in all cases, great difficulty in this; and men not blinded by enthusiasm must be sensible that in a federal government, which is a composition of societies whose ideas and institutions in relation to the matter materially vary from each other, that difficulty must be not a little augmented. For my own part, at every new view I take of the subject, I become more convinced of the reality of the obstacles which, we are authoritatively informed, prevented the insertion of a provision on this head in the plan of the convention. The great difference between the limits of the jury trial in different States is not generally understood; and as it must have considerable influence on the sentence we ought to pass upon the omission complained of in regard to this point, an explanation of it is necessary. In this State, our judicial establishments resemble, more nearly than in any other, those of Great Britain. We have courts of common law, courts of probates (analogous in certain matters to the spiritual courts in England), a court of admiralty and a court of chancery. In the courts of common law only, the trial by jury prevails, and this with some exceptions. In all the others a single judge presides, and proceeds in general either according to the course of the canon or civil law, without the aid of a jury. In New Jersey, there is a court of chancery which proceeds like ours, but neither courts of admiralty nor of probates, in the sense in which these last are established with us. In that State the courts of common law have the cognizance of those causes which with us are determinable in the courts of admiralty and of probates, and of course the jury trial is more extensive in New Jersey than in New York. In Pennsylvania, this is perhaps still more the case, for there is no court of chancery in that State, and its common-law courts have equity jurisdiction. It has a court of admiralty, but none of probates, at least on the plan of ours. Delaware has in these respects imitated Pennsylvania. Maryland approaches more nearly to New York, as does also Virginia, except that the latter has a plurality of chancellors.

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North Carolina bears most affinity to Pennsylvania; South Carolina to Virginia. I believe, however, that in some of those States which have distinct courts of admiralty, the causes depending in them are triable by juries. In Georgia there are none but common-law courts, and an appeal of course lies from the verdict of one jury to another, which is called a special jury, and for which a particular mode of appointment is marked out. In Connecticut, they have no distinct courts either of chancery or of admiralty, and their courts of probates have no jurisdiction of causes. Their common-law courts have admiralty and, to a certain extent, equity jurisdiction. In cases of importance, their General Assembly is the only court of chancery. In Connecticut, therefore, the trial by jury extends in PRACTICE further than in any other State yet mentioned. Rhode Island is, I believe, in this particular, pretty much in the situation of Connecticut. Massachusetts and New Hampshire, in regard to the blending of law, equity, and admiralty jurisdictions, are in a similar predicament. In the four Eastern States, the trial by jury not only stands upon a broader foundation than in the other States, but it is attended with a peculiarity unknown, in its full extent, to any of them. There is an appeal OF COURSE from one jury to another, till there have been two verdicts out of three on one side. From this sketch it appears that there is a material diversity, as well in the modification as in the extent of the institution of trial by jury in civil cases, in the several States; and from this fact these obvious reflections flow: first, that no general rule could have been fixed upon by the convention which would have corresponded with the circumstances of all the States; and secondly, that more or at least as much might have been hazarded by taking the system of any one State for a standard, as by omitting a provision altogether and leaving the matter, as has been done, to legislative regulation. The propositions which have been made for supplying the omission have rather served to illustrate than to obviate the difficulty of the thing. The minority of Pennsylvania have proposed this mode of expression for the purpose "Trial by jury shall be as heretofore" and this I maintain would be senseless and nugatory. The United States, in their united or collective capacity, are the OBJECT to which all general provisions in the Constitution must necessarily be construed to refer. Now it is evident that though trial by jury, with various limitations, is known in each State individually, yet in the United States, AS SUCH, it is at this time altogether unknown, because the present federal government has no judiciary power whatever; and consequently there is no proper antecedent or previous establishment to which the term HERETOFORE could relate. It would therefore be destitute of a precise meaning, and inoperative from its uncertainty. As, on the one hand, the form of the provision would not fulfil the intent of its proposers, so, on the other, if I apprehend that intent rightly, it would be in itself inexpedient. I presume it to be, that causes in the federal courts should be tried by jury, if, in the State where the courts sat, that mode of trial would obtain in a similar case in the State courts; that is to say, admiralty causes should be tried in Connecticut by a jury, in New York without one. The capricious operation of so dissimilar a method of trial in the same cases, under the same government, is of itself sufficient to indispose every wellregulated judgment towards it. Whether the cause should be tried with or without a jury, would depend, in a great number of cases, on the accidental situation of the court and parties. But this is not, in my estimation, the greatest objection. I feel a deep and deliberate conviction that there are many cases in which the trial by jury is an ineligible one. I think it so particularly in cases which concern the public peace with foreign nations that is, in most cases where the question turns wholly on the laws of nations. Of this nature, among others, are all prize causes. Juries cannot be supposed competent to investigations that require a thorough knowledge of the laws and usages of nations; and they will sometimes be under the influence of impressions which will not suffer them to pay sufficient regard to those considerations of public policy which ought to guide their inquiries. There would of course be always danger that the rights of other nations might be infringed by their decisions, so as to afford occasions of reprisal and war. Though the proper province of juries be to determine matters of fact, yet in most cases legal consequences are complicated with fact in such a manner as to render a separation impracticable. It will add great weight to this remark, in relation to prize causes, to mention that the method of determining them has been thought worthy of particular regulation in various treaties between different powers of Europe, and that, pursuant to such treaties, they are determinable in Great Britain, in the last resort, before the king himself, in his privy council, where the fact, as well as the law, undergoes a re-examination. This alone demonstrates the impolicy of inserting a fundamental provision in the Constitution which would make the State systems a standard for the national government in the article under consideration, and the danger of encumbering the government with any constitutional provisions the propriety of which is not indisputable. My convictions are equally strong that great advantages result from the separation of the equity from the law jurisdiction, and that the causes which belong to the former would be improperly committed to juries. The great and primary use of a court of equity is to give relief IN EXTRAORDINARY CASES, which are EXCEPTIONS² to general rules. To unite the jurisdiction of such cases with the ordinary jurisdiction, must have a tendency to unsettle the general rules, and to subject every case that arises to a SPECIAL determination; while a separation of the one from the other has the contrary effect of rendering one a sentinel over the other, and of keeping each within the expedient limits. Besides this, the circumstances that constitute cases proper for courts of equity are in many instances so nice and intricate, that they are incompatible with the genius of trials by jury. They require often such long, deliberate, and critical investigation as would be impracticable to men called from their occupations, and obliged to decide before they were permitted to return to them. The simplicity and expedition which form the distinguishing characters of this mode of trial require that the matter to be decided should be reduced to some single and obvious point; while the litigations usual in chancery frequently comprehend a long train of minute and independent particulars. It is true that the separation of the equity from the legal jurisdiction is peculiar to the English system of jurisprudence: which is the model that has been followed in several of the States. But it is equally true that the trial by jury has been unknown in every case in which they have been united. And the separation is essential to the preservation of that institution in its pristine purity. The nature of a court of equity will readily permit the extension of its jurisdiction to matters of law; but it is not a little to be suspected, that the attempt to extend the jurisdiction of the courts of law to matters of equity will not only be unproductive of the advantages which may be derived from courts of chancery, on the plan upon which they are established in this State, but will tend gradually to change the nature of the courts of law, and to undermine the trial by jury, by introducing questions too complicated for a decision in that mode. These appeared to be conclusive reasons against incorporating the systems of all the States, in the formation of the national judiciary, according to what may be conjectured to have been the attempt of the Pennsylvania minority. Let us now examine how far the proposition of Massachusetts is calculated to remedy the supposed defect. It is in this form: "In civil actions between citizens of different States, every issue of fact, arising in ACTIONS AT COMMON LAW, may be tried by a jury if the parties, or either of them request it." This, at best, is a proposition confined to one description of causes; and the inference is fair, either that the Massachusetts convention considered that as the only class of federal causes, in which the trial by jury would be proper; or that if desirous of a more extensive provision, they found it impracticable to devise one which would properly answer the end. If the first, the omission of a regulation respecting so partial an object can never be considered as a material imperfection in the system. If the last, it affords a strong corroboration of the extreme difficulty of the thing. But this is not all: if we advert to the observations already made respecting the courts that subsist in the several States of the Union, and the different powers exercised by them, it will appear that there are no expressions more vague and indeterminate than those which have been employed to characterize THAT species of causes which it is intended shall be entitled to a trial by jury. In this State, the boundaries between actions at common law and actions of equitable jurisdiction, are ascertained in conformity to the rules which prevail in England upon that subject. In many of the other States the boundaries are less precise. In some of them every cause is to be tried in a court of common law, and upon that foundation every action may be considered as an action at common law, to be determined by a jury, if the parties, or either of them, choose it. Hence the same irregularity and confusion would be introduced by a compliance with this proposition, that I have

already noticed as resulting from the regulation proposed by the Pennsylvania minority. In one State a cause would receive its determination from a jury, if the parties, or either of them, requested it; but in another State, a cause exactly similar to the other, must be decided without the intervention of a jury, because the State judicatories varied as to common-law jurisdiction. It is obvious, therefore, that the Massachusetts proposition, upon this subject cannot operate as a general regulation, until some uniform plan, with respect to the limits of common-law and equitable jurisdictions, shall be adopted by the different States. To devise a plan of that kind is a task arduous in itself, and which it would require much time and reflection to mature. It would be extremely difficult, if not impossible, to suggest any general regulation that would be acceptable to all the States in the Union, or that would perfectly quadrate with the several State institutions. It may be asked, Why could not a reference have been made to the constitution of this State, taking that, which is allowed by me to be a good one, as a standard for the United States? I answer that it is not very probable the other States would entertain the same opinion of our institutions as we do ourselves. It is natural to suppose that they are hitherto more attached to their own, and that each would struggle for the preference. If the plan of taking one State as a model for the whole had been thought of in the convention, it is to be presumed that the adoption of it in that body would have been rendered difficult by the predilection of each representation in favor of its own government; and it must be uncertain which of the States would have been taken as the model. It has been shown that many of them would be improper ones. And I leave it to conjecture, whether, under all circumstances, it is most likely that New York, or some other State, would have been preferred. But admit that a judicious selection could have been effected in the convention, still there would have been great danger of jealousy and disgust in the other States, at the partiality which had been shown to the institutions of one. The enemies of the plan would have been furnished with a fine pretext for raising a host of local prejudices against it, which perhaps might have hazarded, in no inconsiderable degree, its final establishment. To avoid the embarrassments of a definition of the cases which the trial by jury ought to embrace, it is sometimes suggested by men of enthusiastic tempers, that a provision might have been inserted for establishing it in all cases whatsoever. For this I believe, no precedent is to be found in any member of the Union; and the considerations which have been stated in discussing the proposition of the minority of Pennsylvania, must satisfy every sober mind that the establishment of the trial by jury in ALL cases would have been an unardonable error in the plan. In short, the more it is considered the more arduous will appear the task of fashioning a provision in such a form as not to express too little to answer the purpose, or too much to be advisable; or which might not have opened other sources of opposition to the great and essential object of introducing a firm national government. I cannot but persuade myself, on the other hand, that the different lights in which the subject has been placed in the course of these observations, will go far towards removing in candid minds the apprehensions they may have entertained on the point. They have tended to show that the security of liberty is materially concerned only in the trial by jury in criminal cases, which is provided for in the most ample manner in the plan of the convention; that even in far the greatest proportion of civil cases, and those in which the great body of the community is interested, that mode of trial will remain in its full force, as established in the State constitutions, untouched and unaffected by the plan of the convention; that it is in no case abolished³ by that plan; and that there are great if not insurmountable difficulties in the way of making any precise and proper provision for it in a Constitution for the United States. The best judges of the matter will be the least anxious for a constitutional establishment of the trial by jury in civil cases, and will be the most ready to admit that the changes which are continually happening in the affairs of society may render a different mode of determining questions of property preferable in many cases in which that mode of trial now prevails. For my part, I acknowledge myself to be convinced that even in this State it might be advantageously extended to some cases to which it does not at present apply, and might as advantageously be abridged in others. It is conceded by all reasonable men that it ought not to obtain in all cases. The examples of innovations which contract its ancient limits, as well in these States as in Great Britain, afford a strong presumption that its former extent has been found inconvenient, and give room to suppose that future experience may discover the propriety and utility of other exceptions. I suspect it to be impossible in the nature of the thing to fix the salutary point at which the operation of the institution ought to stop, and this is with me a strong argument for leaving the matter to the discretion of the legislature. This is now clearly understood to be the case in Great Britain, and it is equally so in the State of Connecticut; and yet it may be safely affirmed that more numerous encroachments have been made upon the trial by jury in this State since the Revolution, though provided for by a positive article of our constitution, than has happened in the same time either in Connecticut or Great Britain. It may be added that these encroachments have generally originated with the men who endeavor to persuade the people they are the warmest defenders of popular liberty, but who have rarely suffered constitutional obstacles to arrest them in a favorite career. The truth is that the general GENIUS of a government is all that can be substantially relied upon for permanent effects. Particular provisions, though not altogether useless, have far less virtue and efficacy than are commonly ascribed to them; and the want of them will never be, with men of sound discernment, a decisive objection to any plan which exhibits the leading characters of a good government. It certainly sounds not a little harsh and extraordinary to affirm that there is no security for liberty in a Constitution which expressly establishes the trial by jury in criminal cases, because it does not do it in civil also; while it is a notorious fact that Connecticut, which has been always regarded as the most popular State in the Union, can boast of no constitutional provision for either. PUBLIUS. I It has been erroneously insinuated, with regard to the court of chancery, that this court generally tries disputed facts by a jury. The truth is, that references to a jury in that court rarely happen, and are in no case necessary but where the validity of a devise of land comes into question. 2 It is true that the principles by which that relief is governed are now reduced to a regular system; but it is not the less true that they are in the main applicable to SPECIAL circumstances, which form exceptions to general rules. 3 Vide No. 81, in which the supposition of its being abolished by the appellate jurisdiction in matters of fact being vested in the Supreme Court, is examined and refuted.

FEDERALIST No. 84

Certain General and Miscellaneous Objections to the Constitution Considered and Answered From McLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: IN THE course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There, however, remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper. The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most temperate partisans of a bill of rights. To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured. To the first I answer, that the Constitution

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proposed by the convention contains, as well as the constitution of this State, a number of such provisions. Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7 "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law." Section 9, of the same article, clause 2 "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Clause 3 "No bill of attainder or ex-post-facto law shall be passed." Clause 7 "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, except of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Article 3, section 2, clause 3 "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And clause 3, of the same section "The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained." It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of habeas corpus, the prohibition of ex-post-facto laws, and of TITLES OF NOBILITY, TO WHICH WE HAVE NO CORRESPONDING PROVISION IN OUR CONSTITUTION, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone, in reference to the latter, are well worthy of recital: "To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government." And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the habeas-corpus act, which in one place he calls "the BULWARK of the British Constitution."² Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people. To the second that is, to the pretended establishment of the common and state law by the Constitution, I answer, that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law and to remove doubts which might have been occasioned by the Revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself. It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of Rights, and which would sound much better in a treatise of ethics than in a constitution of government. But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired. I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights. On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend, that whatever has been said about it in that of any other State, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.³ And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights. There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be

said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing. Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: "It is improper Usay the objector to confer such large powers, as are proposed, upon the national government, because the seat of that government must of necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body." This argument, if it proves any thing, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all the counties at any considerable distance from the seat of government. It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rivalry of power. And we may conclude with the fullest assurance that the people, through that channel, will be better informed of the conduct of their national representatives, than they can be by any means they now possess of that of their State representatives. It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union. Among the many curious objections which have appeared against the proposed Constitution, the most extraordinary and the least colorable is derived from the want of some provision respecting the debts due TO the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; yet there is nothing clearer than that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another place, I shall only observe that it is a plain dictate of common-sense, so it is also an established doctrine of political law, that "STATES NEITHER LOSE ANY OF THEIR RIGHTS, NOR ARE DISCHARGED FROM ANY OF THEIR OBLIGATIONS, BY A CHANGE IN THE FORM OF THEIR CIVIL GOVERNMENT."⁴ The last objection of any consequence, which I at present recollect, turns upon the article of expense. If it were even true, that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan. The great bulk of the citizens of America are with reason convinced, that Union is the basis of their political happiness. Men of sense of all parties now, with few exceptions, agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government a single body being an unsafe depository of such ample authorities. In conceding all this, the question of expense must be given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons, which is the same number of which Congress, under the existing Confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the progress of the population and resources of the country. It is evident that a less number would, even in the first instance, have been unsafe, and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people. Whence is the dreaded augmentation of expense to spring? One source indicated, is the multiplication of offices under the new government. Let us examine this a little. It is evident that the principal departments of the administration under the present government, are the same which will be required under the new. There are now a Secretary of War, a Secretary of Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury, consisting of three persons, a Treasurer, assistants, clerks, etc. These officers are indispensable under any system, and will suffice under the new as well as the old. As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of State for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The States individually will stand in no need of any for this purpose. What difference can it make in point of expense to pay officers of the customs appointed by the State or by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former. Where then are we to seek for those additional articles of expense which are to swell the account to the enormous size that has been represented to us? The chief item which occurs to me respects the support of the judges of the United States. I do not add the President, because there is now a president of Congress, whose expenses may not be far, if any thing, short of those which will be incurred on account of the President of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in regard to this matter. But upon no reasonable plan can it amount to a sum which will be an object of material consequence. Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing which presents itself is that a great part of the business which now keeps Congress sitting through the year will be transacted by the President. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the Senate, and subject to their final concurrence. Hence it is evident that a portion of the year will suffice for the session of both the Senate and the House of Representatives; we may suppose about a fourth for the latter and a third, or perhaps half, for the former. The extra business of treaties and appointments may give this extra occupation to the Senate. From this circumstance we may infer that, until the House of Representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress. But there is another circumstance of great importance in the view of economy. The business of the United States has hitherto occupied the State legislatures, as well as Congress. The latter has made requisitions which

the former have had to provide for. Hence it has happened that the sessions of the State legislatures have been protracted greatly beyond what was necessary for the execution of the mere local business of the States. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several States amount to two thousand and upwards, which number has hitherto performed what under the new system will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or fifth of that number. The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures, who thenceforth will have only to attend to the affairs of their particular States, and will not have to sit in any proportion as long as they have heretofore done. This difference in the time of the sessions of the State legislatures will be clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system. The result from these observations is that the sources of additional expense from the establishment of the proposed Constitution are much fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; and that while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union. PUBLIUS. 1. Vide Blackstone's "Commentaries," vol. 1., p. 136. 2. Vide Blackstone's "Commentaries," vol. iv., p. 438. 3. To show that there is a power in the Constitution by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said that duties may be laid upon the publications so high as to amount to a prohibition. I know not by what logic it could be maintained, that the declarations in the State constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the State legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, respecting the liberty of the press, will give it no greater security than it will have without them. The same invasions of it may be effected under the State constitutions which contain those declarations through the means of taxation, as under the proposed Constitution, which has nothing of the kind. It would be quite as significant to declare that government ought to be free, that taxes ought not to be excessive, etc., as that the liberty of the press ought not to be restrained.

FEDERALIST No. 85

Concluding Remarks From MCLEAN's Edition, New York.

HAMILTON

To the People of the State of New York: ACCORDING to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the analogy of the proposed government to your own State constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid. It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the re-eligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable. The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals. Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much. Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'Tis one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject. I shall not dissemble that I feel an entire confidence in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the

revolution has produced. Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an one as promises every species of security which a reasonable people can desire. I answer in the next place, that I should esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials? The reasons assigned in an excellent little pamphlet lately published in this city, are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect. It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine in favor of subsequent amendment, rather than of the original adoption of an entire system. This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties. But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point not giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution. In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States Uwhich at present amount to nine, to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority. If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object. The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society Usays hee, whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; experience must guide their labor; time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they INEVITABLY fall into in their first trials and experiments."3 These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from time and experience. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A nation, without a national government, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that powerful individuals, in this and in other States, are enemies to a general national government in every possible shape. PUBLIUS. 1 Entitled "An Address to the People of the State of New York." 2 It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify. 3 Hume's "Essays," vol. i., page 128: "The Rise of Arts and Sciences."

First Continental Congress Resolves

DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS:

OCTOBER 14, 1777

Whereas, since the close of the last war, the British parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county: And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependant on the crown alone for their salaries, and standing armies kept in times of peace: And whereas it has lately been resolved in parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned: And whereas, in the last session of parliament, three statutes were made; one entitled, "An act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading, or shipping of goods, wares and merchandise, at the town, and within the harbour of Boston, in the province of Massachusetts-Bay in New England;" another entitled, "An act for the better regulating the government of the province of Massachusetts-Bay in New England;" and another entitled, "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts-Bay in New England;" and another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights: And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt, by his Majesty's ministers of state: The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North-Carolina and South-Carolina, justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed deputies to meet, and sit in general Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE, That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:

Resolved, N.C.D. 1. That they are entitled to life, liberty and property; and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

Resolved, N.C.D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England.

Resolved, N.C.D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed: But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bonfide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.

Resolved, N.C.D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, N.C.D. 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, N.C.D. 7. That these, his Majesty's colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws.

Resolved, N.C.D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Resolved, N.C.D. 9. That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

Resolved, N.C.D. 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous and destructive to the freedom of American legislation. All and each of which the aforesaid deputies, in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties, which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by

their representatives in their several provincial legislature. In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America.

Resolved, N.C.D. That the following acts of parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great Britain and the American colonies, viz. The several acts of Geo. III. ch. 15, and ch. 34.-5 Geo. III. ch. 25.-6 Geo. ch. 52.-7 Geo. III. ch. 41 and ch. 46.-8 Geo. III. ch. 22, which impose duties for the purpose of raising a revenue in America, extend the power of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judges certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights. Also 12 Geo. III. ch. 24, intituled, "An act for the better securing his majesty's dockyards, magazines, ships, ammunition, and stores," which declares a new offence in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person, charged with the committing any offence described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm. Also the three acts passed in the last session of parliament, for stopping the port and blocking up the harbour of Boston, for altering the charter and government of Massachusetts-Bay, and that which is entitled, "An act for the better administration of justice, etc." Also the act passed in the same session for establishing the Roman Catholic religion, in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger (from so total a dissimilarity of religion, law and government) of the neighboring British colonies, by the assistance of whose blood and treasure the said country was conquered from France. Also the act passed in the same session, for the better providing suitable quarters for officers and soldiers in his majesty's service, in North-America. Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony, in which such army is kept, is against law. To these grievous acts and measures, Americans cannot submit, but in hopes their fellow subjects in Great Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity, we have for the present, only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association. 2. To prepare an address to the people of Great-Britain, and a memorial to the inhabitants of British America: and 3. To prepare a loyal address to his majesty, agreeable to resolutions already entered into.

Taken from: Journals of Congress (ed. 1800), I. pp. 26-30.

Four Freedoms

Delivered by Franklin Delano Roosevelt, on January 6, 1941

Mr. Speaker, members of the 77th Congress :

I address you, the members of this new Congress, at a moment unprecedented in the history of the union. I use the word "unprecedented" because at no previous time has American security been as seriously threatened from without as it is today.

Since the permanent formation of our government under the Constitution in 1789, most of the periods of crisis in our history have related to our domestic affairs. And, fortunately, only one of these --the four-year war between the States --ever threatened our national unity. Today, thank God, 130,000,000 Americans in forty-eight States have forgotten points of the compass in our national unity.

It is true that prior to 1914 the United States often has been disturbed by events in other continents. We have even engaged in two wars with European nations and in a number of undeclared wars in the West Indies, in the Mediterranean and in the Pacific, for the maintenance of American rights and for the Principles of peaceful commerce. But in no case has a serious threat been raised against our national safety or our continued independence.

What I seek to convey is the historic truth that the United States as a nation has at all times maintained opposition --clear, definite opposition-- to any attempt to lock us in behind an ancient Chinese wall while the procession of civilization went past. Today, thinking of our children and of their children, we oppose enforced isolation for ourselves or for any other part of the Americas.

That determination of ours, extending over all these years, was proved, for example, in the early days during the quarter century of wars following the French Revolution. While the Napoleonic struggle did threaten interests of the United States because of the French foothold in the West Indies and in Louisiana, and while we engaged in the War of 1812 to vindicate our right to peaceful trade, it is nevertheless clear that neither France nor Great Britain nor any other nation was aiming at domination of the whole world.

And in like fashion, from 1815 to 1914 --ninety-nine years --no single war in Europe or in Asia constituted a real threat against our future or against the future of any other American nation.

Except in the Maximilian interlude in Mexico, no foreign power sought to establish itself in this hemisphere. And the strength of the British fleet in the Atlantic has been a friendly strength; it is still a friendly strength. Even when the World War broke out in 1914 it seemed to contain only small threat of danger to our own American future. But as time went on, as we remember, the American people began to visualize what the downfall of democratic nations might mean to our own democracy.

We need not overemphasize imperfections in the peace of Versailles. We need not harp on failure of the democracies to deal with problems of world reconstruction. We should remember that the peace of 1919 was far less unjust than the kind of pacification which began even before Munich, and which is being carried on under the new order of tyranny that seeks to spread over every continent today. The American people have unalterably set their faces against that tyranny.

I suppose that every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world --assailed either by arms or by secret spreading of poisonous propaganda by those who seek to destroy unity and promote discord in nations that are still at peace.

During sixteen long months this assault has blotted out the whole pattern of democratic life in an appalling number of independent nations, great and small. And the assailants are still on the march, threatening other nations, great and small.

Therefore, as your President, performing my constitutional duty to "give to the Congress information of the state of the union," I find it unhappily necessary to report that the future and the safety of our

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country and of our democracy are overwhelmingly involved in events far beyond our borders.

Armed defense of democratic existence is now being gallantly waged in four continents. If that defense fails, all the population and all the resources of Europe and Asia, Africa and Australia will be dominated by conquerors. And let us remember that the total of those populations in those four continents, the total of those populations and their resources greatly exceeds the sum total of the population and the resources of the whole of the Western Hemisphere --yes, many times over.

In times like these it is immature-- and, incidentally, untrue-- for anybody to brag that an unprepared America, single-handed and with one hand tied behind its back, can hold off the whole world.

No realistic American can expect from a dictator's peace international generosity, or return of true independence, or world disarmament, or freedom of expression, or freedom of religion-- or even good business. Such a peace would bring no security for us or for our neighbors. Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.

As a nation we may take pride in the fact that we are soft-hearted: but we cannot afford to be soft-headed. We must always be wary of those who with sounding brass and a tinkling cymbal preach the ism of appeasement. We must especially beware of that small group of selfish men who would clip the wings of the American eagle in order to feather their own nests. I have recently pointed out how quickly the tempo of modern warfare could bring into our very midst the physical attack which we must eventually expect if the dictator nation win this war.

There is much loose talk of our immunity from immediate and direct invasion from across the seas. Obviously, as long as the British Navy retains its power, no such danger exists. Even if there were no British Navy, it is not probable that any enemy would be stupid enough to attack us by landing troops in the United States from across thousands of miles of ocean, until it had acquired strategic bases from which to operate.

But we learn much from the lessons of the past years in Europe-- particularly the lesson of Norway, whose essential seaports were captured by treachery and surprise built up over a series of years.

The first phase of the invasion of this hemisphere would not be the landing of regular troops. The necessary strategic points would be occupied by secret agents and by their dupes-- and great numbers of them are already here and in Latin America.

As long as the aggressor nations maintain the offensive they, not we, will choose the time and the place and the method of their attack.

And that is why the future of all the American Republics is today in serious danger. That is why this annual message to the Congress is unique in our history. That is why every member of the executive branch of the government and every member of the Congress face great responsibility-- great accountability.

The need of the moment is that our actions and our policy should be devoted primarily-- almost exclusively-- to meeting this foreign peril. For all our domestic problems are now a part of the great emergency. Just as our national policy in internal affairs has been based upon a decent respect for the rights and the dignity of all of our fellow men within our gates, so our national policy in foreign affairs has been based on a decent respect for the rights and the dignity of all nations, large and small. And the justice of morality must and will win in the end.

Our national policy is this :

First, by an impressive expression of the public will and without regard to partisanship, we are committed to all-inclusive national defense.

Second, by an impressive expression of the public will and without regard to partisanship, we are committed to full support of all those resolute people everywhere who are resisting aggression and are thereby keeping war away from our hemisphere. By this support we express our determination that the democratic cause shall prevail, and we strengthen the defense and the security of our own nation.

Third, by an impressive expression of the public will and without regard to partisanship, we are committed to the proposition that principle of morality and considerations for our own security will never permit us to acquiesce in a peace dictated by aggressors and sponsored by appeasers. We know that enduring peace cannot be bought at the cost of other people's freedom.

In the recent national election there was no substantial difference between the two great parties in respect to that national policy. No issue was fought out on the line before the American electorate. And today it is abundantly evident that American citizens everywhere are demanding and supporting speedy and complete action in recognition of obvious danger.

Therefore, the immediate need is a swift and driving increase in our armament production. Leaders of industry and labor have responded to our summons. Goals of speed have been set. In some cases these goals are being reached ahead of time. In some cases we are on schedule; in other cases there are slight but not serious delays. And in some cases-- and, I am sorry to say, very important cases-- we are all concerned by the slowness of the accomplishment of our plans.

The Army and Navy, however, have made substantial progress during the past year. Actual experience is improving and speeding up our methods of production with every passing day. And today's best is not good enough for tomorrow.

I am not satisfied with the progress thus far made. The men in charge of the program represent the best in training, in ability and in patriotism. They are not satisfied with the progress thus far made. None of us will be satisfied until the job is done.

No matter whether the original goal was set too high or too low, our objective is quicker and better results. To give you two illustrations : We are behind schedule in turning out finished airplanes. We are working day and night to solve the innumerable problems and to catch up.

We are ahead of schedule in building warships, but we are working to get even further ahead of that schedule. To change a whole nation from a basis of peacetime production of implements of peace to a basis of wartime production of implements of war is no small task. The greatest difficulty comes at the beginning of the program, when new tools, new plant facilities, new assembly lines, new shipways must first be constructed before the actual material begins to flow steadily and speedily from them.

The Congress of course, must rightly keep itself informed at all times of the progress of the program. However, there is certain information, as the Congress itself will readily recognize, which, in the interests of our own security and those of the nations that we are supporting, must of needs be kept in confidence. New circumstances are constantly begetting new needs for our safety. I shall ask this

Congress for greatly increased new appropriations and authorizations to carry on what we have begun.

I also ask this Congress for authority and for funds sufficient to manufacture additional munitions and war supplies of many kinds, to be turned over to those nations which are now in actual war with aggressor nations. Our most useful and immediate role is to act as an arsenal for them as well as for ourselves. They do not need manpower, but they do need billions of dollars' worth of the weapons of defense.

The time is near when they will not be able to pay for them all in ready cash. We cannot, and we will not, tell them that they must surrender merely because of present inability to pay for the weapons which we know they must have.

I do not recommend that we make them a loan of dollars with which to pay for these weapons-- a loan to be repaid in dollars. I recommend that we make it possible for those nations to continue to obtain war materials in the United States, fitting their orders into our own program. And nearly all of their material would, if the time ever came, be useful in our own defense.

Taking counsel of expert military and naval authorities, considering what is best for our own security, we are free to decide how much should be kept here and how much should be sent abroad to our friends who, by their determined and heroic resistance, are giving us time in which to make ready our own defense.

For what we send abroad we shall be repaid, repaid within a reasonable time following the close of hostilities, repaid in similar materials, or at our option in other goods of many kinds which they can produce and which we need. Let us say to the democracies : "We Americans are vitally concerned in your defense of freedom. We are putting forth our energies, our resources and our organizing powers to give you the strength to regain and maintain a free world. We shall send you in ever-increasing numbers, ships, planes, tanks, guns. That is our purpose and our pledge."

In fulfillment of this purpose we will not be intimidated by the threats of dictators that they will regard as a breach of international law or as an act of war our aid to the democracies which dare to resist their aggression. Such aid is not an act of war, even if a dictator should unilaterally proclaim it so to be.

And when the dictators --if the dictators-- are ready to make war upon us, they will not wait for an act of war on our part.

They did not wait for Norway or Belgium or the Netherlands to commit an act of war. Their only interest is in a new one-way international law which lacks mutuality in its observance and therefore becomes an instrument of oppression. The happiness of future generations of Americans may well depend on how effective and how immediate we can make our aid felt. No one can tell the exact character of the emergency situations that we may be called upon to meet. The nation's hands must not be tied when the nation's life is in danger.

Yes, and we must prepare, all of us prepare, to make the sacrifices that the emergency --almost as serious as war itself-- demands. Whatever stands in the way of speed and efficiency in defense, in defense preparations at any time, must give way to the national need.

A free nation has the right to expect full cooperation from all groups. A free nation has the right to look to the leaders of business, of labor and of agriculture to take the lead in stimulating effort, not among other groups but within their own groups.

The best way of dealing with the few slackers or trouble-makers in our midst is, first, to shame them by patriotic example, and if that fails, to use the sovereignty of government to save government.

As men do not live by bread alone, they do not fight by armaments alone. Those who man our defenses and those behind them who build our defenses must have the stamina and the courage which come from unshakable belief in the manner of life which they are defending. The mighty action that we are calling for cannot be based on a disregard of all the things worth fighting for.

The nation takes great satisfaction and much strength from the things which have been done to make its people conscious of their individual stake in the preservation of democratic life in America. Those things have toughened the fiber of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect. Certainly this is no time for any of us to stop thinking about the social and economic problems which are the root cause of the social revolution which is today a supreme factor in the world. For there is nothing mysterious about the foundations of a healthy and strong democracy.

The basic things expected by our people of their political and economic systems are simple. They are :

Equality of opportunity for youth and for others.

Jobs for those who can work.

Security for those who need it.

The ending of special privilege for the few.

The preservation of civil liberties for all.

The enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living.

These are the simple, the basic things that must never be lost sight of in the turmoil and unbelievable complexity of our modern world. The inner and abiding straight of our economic and political systems is dependent upon the degree to which they fulfill these expectations. Many subjects connected with our social economy call for immediate improvement. As examples :

We should bring more citizens under the coverage of old-age pensions and unemployment insurance.

We should widen the opportunities for adequate medical care.

We should plan a better system by which persons deserving or needing gainful employment may obtain it.

I have called for personal sacrifice, and I am assured of the willingness of almost all Americans to respond to that call. A part of the sacrifice means the payment of more money in taxes. In my budget message I will recommend that a greater portion of this great defense program be paid for from taxation than we are paying for today. No person should try, or be allowed to get rich out of the program, and the principle of tax payments in accordance with ability to pay should be constantly before our eyes to guide our legislation.

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If the congress maintains these principles the voters, putting patriotism ahead pocketbooks, will give you their applause.

In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression --everywhere in the world.

The second is freedom of every person to worship God in his own way-- everywhere in the world.

The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants --everywhere in the world.

The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor --anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called "new order" of tyranny which the dictators seek to create with the crash of a bomb.

To that new order we oppose the greater conception --the moral order. A good society is able to face schemes of world domination and foreign revolutions alike without fear. Since the beginning of our American history we have been engaged in change, in a perpetual, peaceful revolution, a revolution which goes on steadily, quietly, adjusting itself to changing conditions without the concentration camp or the quicklime in the ditch. The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.

This nation has placed its destiny in the hands, heads and hearts of its millions of free men and women, and its faith in freedom under the guidance of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose.

To that high concept there can be no end save victory.

— Franklin Delano Roosevelt, on January 6, 1941

George Washington's Resignation Speech 1783

To grasp the true power of George Washington's resignation as the commander-in-chief of the American military (known then as Continental Army) on December 23, 1783, you have to go beyond the words themselves and appreciate the context. General Washington was in no way obliged to resign his commission, but did so willingly and even gladly, just as he would later refuse a third term as president of the nation, establishing a precedent honored into the 1940s and thereafter enshrined in law. Despite being the most powerful man in the fledgling American military and then becoming the most powerful man in America, the staid and humble Washington was never hungry for power for himself; he just happened to be the best man for the job(s). Even in his last address as leader of the nation's armed forces, Washington made it all about America, and not about himself:

"Happy in the confirmation of our Independence and Sovereignty, and pleased with the opportunity afforded the United States of becoming a respectable Nation, I resign with satisfaction the Appointment I accepted with diffidence. A diffidence in my abilities to accomplish so arduous a task, which however was superseded by a confidence in the rectitude of our Cause, the support of the Supreme Power of the Union, and the patronage of Heaven."

German Surrender Documents - WWII

Instrument of Surrender of

All German armed forces in HOLLAND, in northwest Germany including all islands, and in DENMARK.

1. The German Command agrees to the surrender of all armed forces in HOLLAND, in northwest GERMANY including the FRISLIAN ISLANDS and HELIGOLAND and all islands, in SCHLESWIG-HOLSTEIN, and in DENMARK, to the C.-in-C. 21 Army Group.

=This to include all naval ships in these areas=
These forces to lay down their arms and to surrender unconditionally.

2. All hostilities on land, on sea, or in the air by German forces in the above areas to cease at 0800 hrs. British Double Summer Time on Saturday 5 May 1945.

3. The German command to carry out at once, and without argument or comment, all further orders that will be issued by the Allied Powers on any subject.

4. Disobedience of orders, or failure to comply with them, will be regarded as a breach of these surrender terms and will be dealt with by the Allied Powers in accordance with the laws and usages of war.

5. This instrument of surrender is independent of, without prejudice to, and will be superseded by any general instrument

of surrender imposed by or on behalf of the Allied Powers and applicable to Germany and the German armed forces as a whole.

6. This instrument of surrender is written in English and in German. The English version is the authentic text.

7. The decision of the Allied Powers will be final if any doubt or dispute arise as to the meaning or interpretation of the surrender terms.

ACT OF MILITARY SURRENDER

1. We the undersigned, acting by authority of the German High Command, hereby surrender

unconditionally to the Supreme Commander, Allied Expeditionary Forces and simultaneously to the Soviet High Command all forces on land, sea and in the air who are at this date under German control.
2. The German High Command will at once issue orders to all German military, naval and air authorities and to all forces under German control to cease active operations at =2301= hours Central European time on = 8 May = and to

remain in the positions occupied at that time. No ship, vessel, or aircraft is to be scuttled, or any damage done to their hull, machinery or equipment.

3. The German High Command will at once issue to the appropriate commander, and ensure the carrying out of any further orders issued by the Supreme Commander, Allied Expeditionary Force and by the Soviet High Command.

4. This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to GERMANY and the German armed forces as a whole.

5. In the event of the German High Command or any of the forces under their control failing to act in accordance with this Act of Surrender, the Supreme Commander, Allied Expeditionary Force and the Soviet High Command will take such punitive or other action as they deem appropriate.

Signed at =RHEIMS at 0241= on the =7th= day of May, 1945.

=France=
On behalf of the German High Command.

=JODL=
IN THE PRESENCE OF

On behalf of the Supreme Commander,

On behalf of the Soviet

Allied Expeditionary Force.

High Command

=W. B. SMITH= =SOUSLOPAROV=

=F SEVEZ= Major General, French Army

(Witness) -----

SUPREME HEADQUARTERS

ALLIED EXPEDITIONARY FORCE

SERIAL 1

ORDERS BY THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCE RELATING TO ARMY AND AIR FORCES UNDER GERMAN CONTROL

1. Local commanders of the Army and Air Force under German control on the Western Front, in NORWAY and in the CHANNEL ISLANDS will hold themselves in readiness to receive detailed orders for the surrender of their forces from the Supreme Commander's subordinate commanders opposite their front.

2. In the case of NORWAY the Supreme Commander's representatives will be the General Officer Commanding-in-Chief, Scottish Command and Air Officer Commanding 13 Group RAF.

3. In the case of the CHANNEL ISLANDS the Supreme Commander's representatives will be the General Officer Commanding-in-Chief, Southern Command and Air Officer Commanding 10 Group RAF.

=WALTER B SMITH=
Signed.....

For the Supreme Commander, RAF

Dated =0241 7th= May, 1945

=Rheims France=

SPECIAL ORDERS BY THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCE TO THE GERMAN HIGH COMMAND RELATING TO NAVAL FORCES

For the purpose of these orders the term "Allied Representatives" shall be deemed to include the Supreme Commander, Allied Expeditionary Force, and any subordinate commander, staff officer or agent acting pursuant to his orders.

SPECIAL ORDERS BY THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCE TO THE GERMAN HIGH COMMAND RELATING TO NAVAL FORCES

PART I GENERAL

Definition of Naval Forces

1. For the purpose of these orders all formations, units, and personnel of the German Navy together with the Marine Kusten Polizie shall be referred to as the German Naval Forces.

2. Members of the Marine Kusten Polizie will immediately be placed under the command of the appropriate German Naval Commanders who will be responsible for their maintenance and supply where applicable, to the same extent and degree as for units of the German Navy. German Naval Representatives and information required immediately

3. The German High Command will dispatch within 48 hours after the surrender becomes effective, a responsible Flag Officer to the Allied Naval Commander, Expeditionary Force at his headquarters. This Flag Officer will furnish the Allied Naval Commander,

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Expeditionary Force, with:-

- a. Corrected copies of charts showing all minefields in Western Europe waters, including the BALTIC as far as LUBECK (inclusive) which have been laid by German and German-controlled vessels or aircraft, positions of all wrecks, booms and other underwater obstructions in this area, details of the German convoy routes and searched channels and of all bouys, lights and other navigational aids in this area. The appropriate navigational publications are also required.
 - b. Details of the exact location of all departments and branches of the German Admiralty (OKM).
 - c. All available information concerning the numbers and types of German minesweepers and sperrbrechers in German controlled Dutch ports and German NORTH SEA ports that can be obtained without delaying his departure. This German Flag Officer is to be accompanied by a Communications Officer who is familiar with the German Naval W/T organization and who is to bring with him the current naval communications Orders, including allocation of frequencies, list of W/T and R/T call signs in force, and a list of all codes and cyphers in use, and intended to be brought into use.
 - d. Location of all surface warships down to and including "Elbing" class Torpedo Boats, and of all submarines and "E" Boats.
4. The German High Command will also dispatch within 48 hours after the surrender becomes effective a responsible officer, not below the rank of Captain, by coastal craft to report to the Admiral Commanding at DOVER for onward routing to Commander-in-Chief, THE NORE, with:-
- a. Corrected copies of charts showing all minefields in the NORTH SEA SOUTH of 54 30' NORTH and EAST of 1 30' EAST laid by German and German-controlled vessels or aircraft, positions of all wrecks, booms and all other underwater obstructions; details of all German Convoy routes and searched channels in this area, and of all bouys, lights and other navigational aids which are under German control. Appropriate navigational publications are also required.
 - b. All available information concerning the numbers and types of German minesweepers and sperrbrechers in German controlled Dutch ports and German NORTH SEA ports that can be obtained without delaying his departure.
5. Another responsible German Naval Officer, with similar information is to be dispatched by unescorted aircraft painted white to MANSTON Aereodrome position 51 20' NORTH, 1 20' EAST for onward routing to Commander-in-Chief, THE NORE.
6. The German High Command will issue instructions to certain German naval commands as indicated below:-
- a. The Naval Commander-in-Chief, NORTH SEA will dispatch by coastal craft within 48 hours after the surrender becomes effective a responsible officer, not below the rank of Captain, to the Admiral Commanding at DOVER for onward routing to Commander-in-Chief, THE NORE, with:-
 - (1) details of minesweeping operations carried out in the German convoy route between the HOOK OF HOLLAND and HAMBURG and in approaches to harbours between these two ports during the previous 60 days;
 - (2) numbers and positions of all British mines swept during these operations;
 - (3) details of all controlled minefields in this area and information whether they have been rendered ineffective;
 - (4) details of all other mining and types of mines employed in the harbours and harbour approaches of CUXHAVEN, EMDEN, TERSCHELLING, TEXEL, IJMUIDEN, AMSTERDAM, SCHEVENINGEN, HOOK OF HOLLAND and ROTTERDAM;
 - (5) berthing facilities in the harbours enumerated in paragraph (6a). (4) above and the numbers of auxiliary minesweepers which can be accommodated;
 - (6) a list of all W/T and R/T call signs in use by the German Navy.
- Any of the above information which cannot be obtained without delaying the departure of this officer will be forwarded subsequently as soon as it is available.
- b. The Naval Commander-in-Chief, NORTH SEA, will also dispatch as soon as possible by coastal craft to DOVER thirteen German Naval Officers who must be familiar with the German swept channels between the HOOK OF HOLLAND and CUXHAVEN. These officers will bring with them all the charts and books required for navigation in this area and will be accompanied by pilots (and interpreters if necessary).
 - c. The Naval Commander-in-Chief, NORWAY, will dispatch by sea within 48 hours after the surrender becomes effective, a responsible officer, not below the rank of Captain to the Commander-in-Chief, ROSYTH, with corrected copies

of charts showing all German minefields in the NORTH SEA, NORTH of 56 NORTH, all wrecks, booms and other underwater obstructions, details of German convoy routes and searched channels in this area, of the approach channels to the principal Norwegian ports and of all bouys, lights and other navigational aids in this area. This officer will also bring with him the disposition of all "U" Boats and details of all orders affecting their future movements. He will be accompanied by six German Naval Officers with pilots (and interpreters if necessary) who are familiar with the coastal swept channels between OSLO and TROMSO. These officers will bring with them all the charts and books required for navigation in Norwegian waters, and a list of all W/T and R/T call signs in use by the German Navy.

- d. The Naval Commander-in-Chief, NORWAY, will dispatch a duplicate party to the above with similar information by an unescorted aircraft painted white to DREM Airfield 56 02' NORTH 02 48' WEST.

e. The Naval Commander-in-Chief, NORWAY, will report by W/T to the Commander-in-Chief, ROSYTH, within 48 hours after the surrender becomes effective, the following information:-

- (1) Berthing facilities at OSLO, CHRISTIANSAND, STAVANGER, BERGEN, TRONDHEIM, NARVIK, and TROMSO.
- (2) The appropriate quantities of furnace oil fuel, diesel oil fuel, and coal at all the principal Norwegian ports between OSLO and TROMSO.

7. The German Admiral SKGGERAK will dispatch by sea within 48 hours after the surrender becomes effective, a responsible officer not below the rank of Captain, to the Commander-in-Chief, ROSYTH, with corrected copies of charts showing all German minefields, wrecks, booms, and other underwater obstructions, details of German convoy routes and searched channels, bouys, lights and other navigational aids in the SKAGGERAK, KATTEGAT, THE BEITS AND SOUND, KIEL BAY and BALTIC WATERS WEST of 14 EAST. This officer will also bring with him the disposition of all "U" boats in the above area and details of all orders affecting their future movements. He will be accompanied by three German Naval officers with pilots (and interpreters if necessary) who are familiar with the coastal swept channels, and channels in the Swedish territorial waters, in the waters referred to above. These officers will bring with them all the charts and books required for navigation in these waters, and a list of all W/T and R/T call signs in use by the German Navy.

The German Admiral SKAGGERAK will dispatch a duplicate party to that specified above, with similar information, by air in unescorted aircraft painted white to DREM Airfield 56 02' NORTH 02 48' WEST.

8. The German Naval Officers who will be dispatched to DOVER and ROSYTH by sea will proceed to positions in latitude 51 19' NORTH longitude 1 43' EAST and latitude 56 47' NORTH longitude 1 13' WEST respectively, where they will be met by British warships and escorted to their destination. The ships or craft in which they travel are to fly a large white flag at the masthead by day and are to illuminate these white flags by night. These ships are to broadcast their positions hourly by W/T on 500 ks. (600 meters) whilst on passage.

Information required within fourteen days

9. The German High Command will furnish the following information to the Allied Naval Commander, Expeditionary Force, at

by within fourteen days of cessation of hostilities.

- a. Locations of all warships, auxiliaries and armed coastal craft operating under the orders of the German Naval Command stating particulars of the operational unit to which they are attached, giving approximate totals of all naval personnel embarked in each vessel, (including naval flak and merchant ship flak).
- b. A statement of the organizations of all naval shore Commands, giving location of all naval establishments, including establishments for experiment and research, names of all Commanding Officers and Principal Staff Officers of the rank of Commander in each establishment.
- c. A statement of the strength and location of all naval land forces including naval infantry, naval flak, merchant ship flak and naval personnel manning naval coast artillery and full particulars of all Coastal and port defenses giving nature and locations.
- d. Lists of stocks of furnace oil fuels, diesel oil fuel, petrol, and coal of 500 tons or more at, or in the vicinity of, all ports between IJMUIDEN and HAMBURG inclusive.
- e. A statement of location of the principal naval armament depots with approximate overall stocks of each major item held.
- f. The following communications information:-

- (1) location and details concerning all V/S, W/T (including D/F) and radar stations in use by, and under construction for the German Navy, these details to include types and capabilities of all equipment fitted.
- (2) details of the current naval W/T organization, lists of W/T and R/T call signs in force, and allocation of all

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frequencies for communication and radar purposes.

(3) location and details of all naval communications (including Infra-Red) and naval radar training and research establishments.

g. Full details of all German minefields in the NORTH SEA, SKAGGERAK, KATTEGAT, BEITS, and SOUND.

h. Full details of the German naval minesweeping organization including the communications organization.

j. Full details of the communications (including Infra-Red) and radar equipment fitted in all German minesweepers and sperrbrechers.

k. Technical details of all types of minesweeping gear used by the German Navy.

l. Details of all mining and types of mines employed and of berthing facilities available for ships of 150 feet in length and 16 feet draught at:-

BREMERHAVEN

WILHELMSHAVEN

SCHIERMONNIKOOG

DELFLIJL

10. The German High Command will also furnish the Allied Naval Commander, Expeditionary Force, with two copies of all coding and cyphering systems which have been, are being, or were to be used by the German Navy with the necessary instructions for their use and the dates between which they have been, or were to have been used.

PART II - CONTROL AND DISARMAMENT Orders to warships, auxiliaries, merchant ships and other craft

11. The German High Command will forthwith direct all German and German-controlled warships, auxiliaries, merchant ships and other craft to comply with the following instructions:-

a. All warships, auxiliaries, merchant ships and other craft in harbours are to remain in harbour pending further directions from the Allied Representatives.

b. All warships, auxiliaries, merchant ships and other craft at sea are to report their positions in plain language immediately to the nearest British, US or Soviet Coast Wireless Telegraphy station on 500 kc/s (600 metres), and are to proceed to the nearest German or Allied port or such ports as the Allied Representatives may direct, and remain there pending further directions from the Allied Representatives. At night they are to show lights and to display searchlights with beams held vertically.

c. All warships and merchant ships whether in port or at sea will immediately train all weapons fore and aft. All torpedo tubes will be unloaded and breech blocks will be removed from all guns.

d. All warships and merchant ships in German or German-controlled harbours will immediately land and store in safety all ammunition, warheads and other explosives. They will land all portable weapons but, pending further instructions, warships will retain onboard the fixed armament. Fire control and all other equipment will be maintained on board intact and fully efficient.

e. All minesweeping vessels are to carry out the means of disarmament prescribed in c. and d. above, (except that they will however, retain on board such portable weapons and explosives as are required for minesweeping purposes) and are to be prepared immediately for minesweeping service under the direction of the Allied Representatives. They will complete with fuel where necessary.

f. All German salvage vessels are to carry out the measures of disarmament prescribed in c. and d. above (except that they will retain on board such explosives as are required for salvage purposes.) These vessels, together with all salvage equipment and personnel, are to be prepared for immediate salvage operations under the direction of the Allied Representatives, completing with fuel where necessary for this purpose.

g. The movement of transport on the inland waterways of GERMANY may continue, subject to orders from the Allied Representatives. No vessels moving on inland waterways will proceed to neutral waters. Submarines

12. The German High Command will transmit by W/T on appropriate frequencies the two messages in Annexures 'A' and 'B' which contain instructions to submarines at sea. Naval Aircraft

13. The German High Command will forthwith direct that:-
a. German naval aircraft are not to leave the ground or water or ship pending directions from the Allied Representatives;

b. naval aircraft in the air are to return immediately to their bases. Neutral shipping

14. The German High Command will forthwith direct that all neutral merchant ships in German and German-controlled ports are to be detained pending further directions from the Allied Representatives. Orders relating to sabotage, scuttling, safety measures, pilotage and personnel

15. The German High Command will forthwith issue categorical directions that:-

a. No ship, vessel or aircraft of any description is to be scuttled, or any damage done to their hull, machinery or equipment.

b. all harbour works and port facilities of whatever nature, including telecommunications and radar stations, are to be preserved and kept free from destruction or damage pending further directions from the

Allied Representatives, and all necessary steps taken and all necessary orders issued to prohibit any act of scuttling, sabotage, or other willful damage.

c. all boom defenses at all ports and harbours are to be opened and kept open at all times; where possible, they are to be removed.

d. all controlled minefields at all ports and harbours are to be disconnected and rendered ineffective.

e. all demolition charges in all ports and harbour works are to be removed or rendered ineffective and their presence indicated.

f. the existing wartime system of navigational lighting is to be maintained, except that all dimmed lights are to be shown at full brilliancy, and lights only shown by special arrangement are to be exhibited continuously.

In particular:-

(1) HELIGOLAND Light is to be burnt at full brilliancy.

(2) The bouyage of the coastal convoy route from the HOOK OF HOLLAND to HAMBURG is to be commenced, mid-channel light bouys being laid six miles apart.

(3) Two ships are to be anchored as mark vessels in the following positions:-
54 20' N, 5 00' E.

54 20' N, 6 30' E.

These ships are to fly a large black flag at the mast-head by day and by night are to flash a searchlight vertically every 30 seconds.

g. All pilotage services are to continue to operate and all pilots are to be held at their normal stations ready for service and equipped with their charts.

h. German Naval and other personnel concerned in the operation of ports and administrative services in ports are to remain at their stations and to continue to carry out their normal duties. Personnel

16. The German High Command will forthwith direct that except as may be required for the purpose of giving effect to the above special orders:-

a. all personnel in German warships, auxiliaries, merchant ships and other craft, are to remain on board their ships pending further directions from the Allied Representatives.

b. all Naval personnel ashore are to remain in their establishments.

17. The German High Command will be responsible for the immediate and total disarmament of all naval personnel on shore. The orders issued to the German High Command in respect of the disarmament and war material of land forces will apply also to naval personnel on shore.

=H. M. BURROUGH=

Signed.....

For the Supreme Commander, AEF.

=Dated 0241 7th May 1945=

=Rheims, France=

ANNEXURE 'A'

SURRENDER OF GERMAN "U" BOAT FLEET

To all "U" Boats at sea:

Carry out the following instructions forthwith which have been given by the Allied Representatives

(A) Surface immediately and remain surfaced.

(B) Report immediately in P/L your position in latitude and longitude and number of your "U" Boat to nearest British, US, Canadian or Soviet coast W/T station on 500 kc/s (600 metres) and to call sign GZZ 10 on one of the following high frequencies: 16845 - 12685 or 5970 kc/s.

(C) Fly a large black or blue flag by day.

(D) Burn navigation lights by night.

(E) Jettison all ammunition, remove breachblocks from guns and render torpedos safe by removing pistols. All mines are to be rendered safe.

(F) Make all signals in P/L.

(G) Follow strictly the instructions for proceeding to Allied ports from your present area given in immediately following message.

(H) Observe strictly the orders of Allied Representatives to refrain from scuttling or in any way damaging your "U" Boat.

2. These instructions will be repeated at two-hour intervals until further notice.

ANNEXURE 'B'

To all "U" Boats at sea. Observe strictly the instructions already given to remain fully surfaced.

Report your position course and speed every 8 hours. Obey any instructions that may be given to you by any Allied authority.

The following are the areas and routes for "U" Boats surrendering-

(1) Area 'A'.

a. Bound on West by meridian 026 degs West and South by parallel 043 degs North in Barents Sea by meridian 020 degs East in Baltic Approaches by line joining the Naze and Hantsholm but excludes Irish Sea between 051 degs thirty mins and 055 degs 00 mins North and English Channel between line of Lands End Scilly Islands Ushant and line of Dover-Calais.

b. Join one of following routes at nearest point and proceed along it to Loch Eriboll (058 degs 33 minutes North

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004 degs 37 mins West)
Blue route: All positions North and West unless otherwise indicated
049 degs 00 mins
009 degs 00 mins
053 degs 00 mins
012 degs 00 mins
058 degs 00 mins
011 degs 00 mins
059 degs 00 mins
005 degs 30 mins thence to Loch Eriboll.
Red route: 053 degs 45 mins North
003 degs 00 mins East
059 degs 45 mins
001 degs 00 mins
059 degs 45 mins
003 degs 00 mins thence to Loch Eriboll.
c. Arrive at Loch Eriboll between sunrise and 3 hours before sunset.
(2) Area 'B'
a. The Irish Sea between parallel of 051 degs 30 mins and 055 degs 00 mins North.
b. Proceed Beaumaris Bay (053 degs 19 mins North 003 degs 58 mins West) to arrive between sunrise and 3 hours before sunset.
(3) Area 'C'
a. The English Channel between line of Lands End - Scilly Isles - Ushant and line of Dover - Calais.
b. 'U' Boats in area 'C' are to join one of following routes at nearest point: Green route: position 'A' 049 degs 10 mins North 005 degs 40 mins West position 'B' 050 degs 00 mins North 003 degs 00 mins West thence escorted to Weymouth. Orange route: position 'X' 050 degs 30 mins North 000 degs 50 mins East position 'Y' 050 degs 10 mins North 001 degs 50 mins West thence escorted to Weymouth.
c. Arrive at either 'B' or 'Y' between sunrise and 3 hours before sunset.
(4) Area 'D'
a. Bound on West by lines joining The Naze and Hantsholm and on East by lines joining Lubeck and Trelleborg.
b. Proceed to Kiel.
(5) Area 'E'
a. Mediterranean Approaches bound on North by 043 degs North on South by 026 degs North and on West by 026 degs West.
b. Proceed to a rendezvous in position 'A' 036 degs 00 mins North 011 degs 00 mins West and await escort reporting expected time of arrival in plain language to Admiral Gibraltar on 500 kc/s.
c. Arrive in position 'A' between sunrise and noon G.M.T.
(6) Area 'F'
a. The North and South Atlantic West of 026 degs West.
b. Proceed to nearest of one of following points arriving between sunrise and 3 hours before sunset: W 043 degs 30 mins North 070 degs 00 mins West approach from a point 15 miles due East X 038 degs 20 mins North 074 degs 25 mins West approach from a point 047 degs 18 mins North 051 30 mins West on a course 270 degs Z 043 31 mins North 065 degs 05 mins West approach from point 042 degs 59 mins North 054 degs 28 mins West on a course 320 degs. -----
UNDERTAKING
GIVEN BY CERTAIN GERMAN EMISSARIES
TO THE ALLIED HIGH COMMANDS
It is agreed by the German emissaries
undersigned that the following German officers will
arrive at a place and time designated by the Supreme
Commander, Allied Expeditionary Force, and the Soviet
High Command prepared, with planary powers, to execute
a formal ratification on behalf of the German High
Command of this act of Unconditional Surrender of the
German armed forces.
Chief of the High Command
Commander-in-Chief of the Army
Commander-in-Chief of the Navy
Commander-in-Chief of the Air Forces.
SIGNED
=JODL=
Representing the German High Command.
DATED =0241 7th May 1945=
=Rheims, France=----- {Reichspresident Donitz's authorization to
German representatives to execute ratification}
A b s c h r i f t.
Der Oberste Befehlshaber
Hauptquartier, den 7.5.45.
der Wehrmact
/Bitte in der Antwort vorstehendes Geschäftszeichen, das Datum und kurzen Inhalt anzugehen./
ICH BEVOLLMAECHTIGTE
GENERALFELDMARSCHALL K E I T E L
ALS CHEF DES OBERKOMMANDOS DER
WEHRMACHT UND ZUGLEICH ALS OBER-
BEFEHLSHABER DES HEERES,
GENERALADMIRAL VON FRIEDBERG
ALS OBERBEFEHLSHABER DER KRIEGSMARINE,
GENERALOBERST S T U M P F
ALS VERTRETER DES OBERBEFEHLSHABERS
DER LUFTWAFFE
ZUR RATIFIZIERUNG DER BEDINGUNGSLOSSEN
KAPITULATION DER DEUTSCHEN STREITKRAFTE GEGEN-
UBER DEM OBERBEFEHLSHABER DER ALLIIERTEN
EXPEDITIONSSSTREITKRAFTE UND DEM SOWJET- OBER-

KOMMANDO.
DONITZ
GROBADMIRAL Siegel -----
ACT OF MILITARY SURRENDER
1. We the undersigned, acting by authority
of the German High Command, hereby surrender
unconditionally to the Supreme Commander, Allied
Expeditionary Force and simultaneously to the
Supreme High Command of the Red Army all forces
on land, at sea, and in the air who are at this
date under German control.
2. The German High Command will at once
issue order to all German military, naval and
air authorities and to all forces under German
control to cease active operations at 2301 hours
Central European time on 8th May 1945, to remain
in all positions occupied at that time and to
disarm completely, handing over their weapons and
equipment to the local allied commanders or officers
designated by Representatives of the Allied Supreme
Commands. No ship, vessel, or aircraft is to be
scuttled, or any damage done to their hull,
machinery or equipment, and also to machines of all
kinds, armament, apparatus, and all the technical
means of prosecution of war in general.
3. The German High Command will at once
issue to the appropriate commanders, and ensure
the carrying out of any further orders issued by
the Supreme Commander, Allied Expeditionary Force
and by the Supreme Command of the Red Army.
4. This act of military surrender is without
prejudice to, and will be superseded by any general
instrument of surrender imposed by, or on behalf of
the United Nations and applicable to GERMANY and
the German armed forces as a whole.
5. In the event of the German High Command
or any of the forces under their control failing
to act in accordance with this Act of Surrender,
the Supreme Commander, Allied Expeditionary Force
and the Supreme High Command of the Red Army will
take such punitive or other action as they deem
appropriate.
6. This Act is drawn up in the English,
Russian and German languages. The English and
Russian are the only authentic texts.
Signed at =Berlin= on the =8. = day of May, 1945
=Von Friedeburg=
=Keitel=
=Stumpff=
On behalf of the German High Command
IN THE PRESENCE OF:
=A.W.Tedder= On behalf of the
On behalf of the
Supreme Commander
Supreme High Command of the
Allied Expeditionary Force
Red Army
=Georgi Zhukov=
At the signing also were present as witnesses:
=F. de Lattre-Tassigny=
=Carl Spaatz= General Commanding in Chief
General, Commanding
First French Army
United States Strategic Air Force

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION
The Allied armies, through sacrifice and devotion and with God's help, have wrung from Germany a
final and unconditional surrender. The western world has been freed of the evil forces which for five
years and longer have imprisoned the bodies and broken the lives of millions upon millions of free-
born men. They have violated their churches, destroyed their homes, cor- rupted their children, and
murdered their loved ones. Our Armies of Liberation have restored freedom to these suffering
peoples, whose spirit and will the oppressors could never enslave.
Much remains to be done. The victory won in the West must now be won in the East. The whole
world must be cleansed of the evil from which half the world has been freed. United, the peace-
loving nations have demonstrated in the West that their arms are stronger by far than the might of
dictators or the tyranny of military cliques that once called us soft and weak. The power of our
peoples to defend themselves against all enemies will be proved in the Pacific was as it has been
proved in Europe.
For the triumph of spirit and of arms which we have won, and of its promise to peoples everywhere
who join us in the love of freedom, it is fitting that we, as a nation, give thanks to Almighty God, who
has strengthened us and given us the victory.
NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby
appoint Sunday, May 13, 1945 to be a day of prayer.
I call upon the people of the United States, whatever their faith, to unite in offering joyful thanks to
God for the victory we have won and to pray that He will support us to the end of our present
struggle and guide us into the way of peace.
I also call upon my countrymen to dedicate this day of prayer to the memory of those who have
given their lives to make possible our victory.
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of
America to be affixed.
Done at the City of Washington this eighth day of May in the year of our Lord nineteen hundred nd
forty-five
By the President:
=Harry S. Truman=

Gettysburg Address

Abraham Lincoln 1863 Gettysburg Address

There's a reason many people consider the Gettysburg Address to be the best speech in American history: It probably is. In just 275 words on November 19, 1863, near Gettysburg, Pennsylvania, President Abraham Lincoln managed to express the following sentiments: 1. America is both a place and a concept, for which both are worth fighting. 2. Fighting is horrible, but losing is worse. 3. We have no intention of losing. Ironically, one line in Lincoln's speech proved to be laughably inaccurate. Midway through the speech, he humbly said: "The world will little note, nor long remember what we say here." In fact, the world will never forget his brief, shining address.

"In a larger sense, we cannot dedicate, we cannot consecrate - we cannot hallow - this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract ... "It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us; that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the Earth."

I Have a Dream

Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity. . . .

I say to you today, my friends, so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident, that all men are created equal."

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today.

I have a dream that one day down in Alabama, with its vicious racists, . . . one day right there in Alabama little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers. I have a dream today.

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight, and the glory of the Lord shall be revealed, and all flesh shall see it together.

This is our hope. . . With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day. . .

And when this happens, and when we allow freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual: "Free at last! Free at last! Thank God Almighty, we are free at last!"

Give Me Liberty or Give Me Death!

Patrick Henry, March 23, 1775.

No man thinks more highly than I do of the patriotism, as well as abilities, of the very worthy gentlemen who have just addressed the House. But different men often see the same subject in different lights; and, therefore, I hope it will not be thought disrespectful to those gentlemen if, entertaining as I do opinions of a character very opposite to theirs, I shall speak forth my sentiments freely and without reserve. This is no time for ceremony. The questing before the House is one of awful moment to this country. For my own part, I consider it as nothing less than a question of freedom or slavery; and in proportion to the magnitude of the subject ought to be the freedom of the debate. It is only in this way that we can hope to arrive at truth, and fulfill the great responsibility which we hold to God and our country. Should I keep back my opinions at such a time, through fear of giving offense, I should consider myself as guilty of treason towards my country, and of an act of disloyalty toward the Majesty of Heaven, which I revere above all earthly kings.

Mr. President, it is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and, having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst, and to provide for it.

I have but one lamp by which my feet are guided, and that is the lamp of experience. I know of no way of judging of the future but by the past. And judging by the past, I wish to know what there has been in the conduct of the British ministry for the last ten years to justify those hopes with which gentlemen have been pleased to solace themselves and the House. Is it that insidious smile with which our petition has been lately received? Trust it not, sir; it will prove a snare to your feet. Suffer not yourselves to be betrayed with a kiss. Ask yourselves how this gracious reception of our petition comports with those warlike preparations which cover our waters and darken our land. Are fleets and armies necessary to a work of love and reconciliation? Have we shown ourselves so unwilling to be reconciled that force must be called in to win back our love? Let us not deceive ourselves, sir. These are the implements of war and subjugation; the last arguments to which kings resort. I ask gentlemen, sir, what means this martial array, if its purpose be not to force us to submission? Can gentlemen assign any other possible motive for it? Has Great Britain any enemy, in this quarter of the world, to call for all this accumulation of navies and armies? No, sir, she has none. They are meant for us: they can be meant for no other. They are sent over to bind and rivet upon us those chains which the British ministry have been so long forging. And what have we to oppose to them? Shall we try argument? Sir, we have been trying that for the last ten years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable; but it has been all in vain. Shall we resort to entreaty and humble supplication? What terms shall we find which have not been already exhausted? Let us not, I beseech you, sir, deceive ourselves. Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne! In vain, after these things, may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope. If we wish to be free--if we mean to preserve inviolate those inestimable privileges for which we have been so long contending--if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained--we must fight! I repeat it, sir, we must fight! An appeal to arms and to the God of hosts is all that is left us!

They tell us, sir, that we are weak; unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house? Shall we gather strength but irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? Sir, we are not weak if we make a proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us. Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave. Besides, sir, we have no election. If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery! Our chains are forged! Their clanking may be heard on the plains of Boston! The war is inevitable--and let it come! I repeat it, sir, let it come.

Japanese Surrender Documents - WWII

THE JAPANESE SURRENDER DOCUMENTS - WWII:

TRANSLATION of Foreign Minister Shigemitsu's credentials

TRANSLATION

HIROHITO,

By the Grace of Heaven, Emperor of Japan, seated on the Throne occupied by the same Dynasty changeless through ages eternal,

To all who these Presents shall come, Greeting!
We do hereby authorise Mamoru Shigemitsu, Zyosanmi, First Class of the Imperial Order of the Rising Sun to attach his signature by command and in behalf of Ourselves and Our Government unto the Instrument of Surrender which is required by the Supreme Commander for the Allied Powers to be signed.

In witness whereof, We have hereunto set Our signature and caused the Great Seal of the Empire to be affixed.

Given at Our Palace in Tokyo, this first day of the ninth month of the twentieth year of Syowa, being the two thousand six hundred and fifth year from the Accession of the Emperor Zinmu.

Seal of |
| the | Signed: HIROHITO
| Empire |
!!

Countersigned: Naruhiko-o
Prime Minister

TRANSLATION of General Umezu's credentials

TRANSLATION

HIROHITO,

By the Grace of Heaven, Emperor of Japan, seated on the Throne occupied by the same Dynasty changeless through ages eternal,

To all who these Presents shall come, Greeting!

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We do hereby authorise Yoshijiro Umezu, Zyoanmi, First Class of the Imperial Order of the Rising Sun to attach his signature by command and in behalf of Ourselves and Our Government unto the Instrument of Surrender which is required by the Supreme Commander for the Allied Powers to be signed.

In witness whereof, We have hereunto set Our signature and caused the Great Seal of the Empire to be affixed.

Given at Our Palace in Tokyo, this first day of the ninth month of the twentieth year of Syowa, being the two thousand six hundred and fifth year from the Accession of the Emperor Zinmu.

..
| Seal of |
| the | Signed: HIROHITO
| Empire |
!!

Countersigned: Yoshijiro Umezu
Chief of the General
Staff of the Imperial
Japanese Army
Soemu Toyoda
Chief of the General
Staff of the Imperial
Japanese Army

INSTRUMENT OF SURRENDER

We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government and the Japanese Imperial General Headquarters, hereby accept the provisions set forth in the declaration issued by the heads of the Governments of the United States, China, and Great Britain on 26 July 1945 at Potsdam, and subsequently adhered to by the Union of Soviet Socialist Republics, which four powers are hereafter referred to as the Allied Powers.

We hereby proclaim the unconditional surrender to the Allied Powers of the Japanese Imperial General Headquarters and of all Japanese armed forces and all armed forces under the Japanese control wherever situated.

We hereby command all Japanese forces wherever situated and the Japanese people to cease hostilities forthwith, to preserve and save from damage all ships, aircraft, and military and civil property and to comply with all requirements which may be imposed by the Supreme Commander for the Allied Powers or by agencies of the Japanese Government at his direction.

We hereby command the Japanese Imperial Headquarters to issue at once orders to the Commanders of all Japanese forces and all forces under Japanese control wherever situated to surrender unconditionally themselves and all forces under their control.

We hereby command all civil, military and naval officials to obey and enforce all proclamations, and orders and directives deemed by the Supreme Commander for the Allied Powers to be proper to effectuate this surrender and issued by him or under his authority and we direct all such officials to remain at their posts and to continue to perform their non-combatant duties unless specifically relieved by him or under his authority.

We hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever actions may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration.

We hereby command the Japanese Imperial Government and the Japanese Imperial General Headquarters at once to liberate all allied prisoners of war and civilian internees now under Japanese control and to provide for their protection, care, maintenance and immediate transportation to places as directed.

The authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender.

Signed at TOKYO BAY, JAPAN at 0904 I
on the SECOND day of SEPTEMBER, 1945

MAMORU SHIGEMITSU
By Command and in behalf of the Emperor
of Japan and the Japanese Government
YOSHJIRO UMEZU
By Command and in behalf of the Japanese
Imperial General Headquarters

Accepted at TOKYO BAY, JAPAN at 0903 I
on the SECOND day of SEPTEMBER, 1945,
for the United States, Republic of China, United Kingdom and the
Union of Soviet Socialist Republics, and in the interests of the
other United Nations at war with Japan.

DOUGLAS MAC ARTHUR
Supreme Commander for the Allied Powers

C.W. NIMITZ
United States Representative

HSU YUNG-CH'ANG
Republic of China Representative

BRUCE FRASER
United Kingdom Representative

KUZMA DEREVYANKO
Union of Soviet Socialist
Republics Representative

THOMAS BLAMEY
Commonwealth of Australia
Representative

L. MOORE COSGRAVE
Dominion of Canada Representative

JACQUES LE CLERC
Provisional Government of the French
Republic Representative

C.E.L. HELFRICH
Kingdom of the Netherlands
Representative

LEONARD M. ISITT
Dominion of New Zealand Representative

Translation of Emperor Hirohito's Receipt of the Surrender
documents

PROCLAMATION

Accepting the terms set forth in the Declaration issued by the heads of the Governments of the United States, Great Britain, and China on July 26th, 1945 at Potsdam and subsequently adhered to by the Union of Soviet Socialist Republics, We have commanded the Japanese Imperial Government and the Japanese Imperial General Headquarters to sign on Our behalf the Instrument of Surrender presented by the Supreme Commander for the Allied Powers and to issue General Orders to the Military and Naval Forces in accordance with the direction of the Supreme Commander for the Allied Powers. We command all Our people forthwith to cease hostilities, to lay down their arms and faithfully to carry out all the provisions of Instrument of Surrender and the General Orders issued by the Japanese Imperial General Headquarters hereunder.

This second day of the ninth month of the twentieth
year of Syowa

..
| Seal of |
| the | Signed: HIROHITO
| Emperor |
!!

Countersigned: Naruhiko-o
Prime Minister
Mamoru Shigemitsu
Minister of Foreign Affairs
Iwao Yamazaki
Minister of Home Affairs
Juichi Tsushima
Minister of Finance
Sadamu Shimomura
Minister of War
Mitsumasa Yonai
Minister of Navy
Chuzo Iwata
Minister of Justice
Tamon Maeda
Minister of Education
Kenzo Matsumura
Minister of Welfare
Kotaro Sengoku
Minister of Agriculture
and Forestry
Chikuhei Nakajima
Minister of Commerce
and Industry
Naoto Kobiyama
Minister of Transportation
Fumimaro Konoe
Minister without Portfolio
Taketora Ogata
Minister without Portfolio
Binshiro Obata
Minister without Portfolio

INSTRUMENT OF SURRENDER of the

Japanese and Japanese-Controlled Armed Forces
in the Philippine Islands
to the
Commanding General
United States Army Forces, Western Pacific
Camp John Hay
Baguio, Mountain Province,
Luzon, Philippine, Islands
3 September, 1945

Pursuant to and in accordance with the proclamation of the Emperor of Japan accepting the terms set forth in the declaration issued by the heads of the Governments of the United States, Great Britain, and China on 26 July 1945; at Potsdam and subsequently adhered to by the Union of Soviet Socialist Republics; and to the formal instrument of surrender of the Japanese Imperial Government and the Japanese Imperial General Headquarters signed at Toyko Bay at 0908 on 2 September 1945:

1. Acting by command of and in behalf of the Emperor of Japan, the Japanese Imperial Government and the Japanese Imperial

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General Headquarters, We hereby surrender unconditionally to the Commanding General, United States Army Forces, Western Pacific, all Japanese and Japanese-controlled armed forces, air, sea, ground and auxiliary, in the Philippine Islands.

2. We hereby command all Japanese forces wherever situated in the Philippine Islands to cease hostilities forthwith, to preserve and save from damage all ships, aircraft, and military and civil property, and to comply with all requirements which may be imposed by the Commanding General, United States Army Forces, Western Pacific, or his authorized representatives.

3. We hereby direct the commanders of all Japanese forces in the Philippine Islands to issue at once to all forces under their command to surrender unconditionally themselves and all forces under their control, as prisoners of war, to the nearest United States Force Commander.

4. We hereby direct the commanders of all Japanese forces in the Philippine Islands to surrender intact and in good order to the nearest United States Army Force Commander, at times and at places directed by him, all equipment and supplies of whatever nature under their control.

5. We hereby direct the commanders of all Japanese forces in the Philippine Islands at once to liberate all Allied prisoners of war and civilian internees under their control, and to provide for their protection, care, maintenance and immediate transportation to places as directed by the nearest United States Army Force Commander.

6. We hereby undertake to transmit the directives given in Paragraphs 1 through 5, above, to all Japanese forces in the Philippine Islands immediately by all means within our power, and further to furnish to the Commanding General, United States Army Forces, Western Pacific, all necessary Japanese emissaries fully empowered to bring about the surrender of Japanese forces in the Philippine Islands with whom we are not in contact.

7. We hereby undertake to furnish immediately to the Commanding General, United States Army Forces, Western Pacific, a statement of the designation, numbers, locations, and commanders of all Japanese armed forces, ground, sea, or air, in the Philippine Islands.

8. We hereby undertake faithfully to obey all further proclamation, orders and directives deemed by the Commanding General, United States Army Forces, Western Pacific, to be proper to effectuate this surrender.

Signed at Camp John Hay, Baguio, Mountain Province, Luzon, Philippine Islands, at 1210 hours 3 September 1945:

TOMOYUKI YAMASHITA, DENHICI OKOCHI,
General, Imperial Japanese Vice Admiral, Imperial Japanese
Army Highest Commander, Navy, Highest Commander,
Imperial Japanese Army in Imperial Japanese Navy in the
the Philippines. Philippines.

By command and in behalf
of the Japanese Imperial
General Headquarters

Accepted at Camp John Hay, Baguio, Mountain Province Luzon
Philippine Islands, at 1210 hours 3 September 1945:

For the Commander-in-Chief, United States Army Forces, Pacific:
EDMOND H. LEAVY,
Major General, USA
Deputy Commander, United States Army Forces,
Western Pacific.

UNITED STATES ARMY FORCES IN KOREA
HEADQUARTERS XXIV CORPS
OFFICE OF THE COMMANDING GENERAL
APO 235 c/o POSTMASTER
SAN FRANCISCO, CALIFORNIA

FORMAL SURRENDER BY THE SENIOR JAPANESE GROUND,
SEA, AIR AND AUXILIARY FORCES COMMANDS WITHIN
KOREA SOUTH OF 38 NORTH LATITUDE TO THE COM-
MANDING GENERAL, UNITED STATES ARMY FORCES IN
KOREA, FOR AND IN BEHALF OF THE COMMANDER-IN-
CHIEF UNITED STATES ARMY FORCES, PACIFIC

WHEREAS an Instrument of Surrender was on the 2d day of
September 1945 by command of and behalf of the Emperor of
Japan, the Japanese Government and the Japanese Imperial Head-
quarters signed by Foreign Minister Mamouru Shigemitsu by com-
mand and in behalf of the Emperor of Japan, the Japanese
Government and by Yoshijiro Umezumi by command of and in behalf
of the Japanese Imperial Headquarters and

WHEREAS the terms of the Instrument of Surrender were
subsequently as follows:

"1. We, acting by command of an in behalf of the Emperor of
Japan, the Japanese Government and the Japanese Imperial General
Headquarters, hereby accept the provisions set forth in the
declaration issued by the heads of the Governments of the United
States, China, and Great Britain on 26 July 1945 at Potsdam, and
subsequently adhered to by the Union of Soviet Socialist Repub-
lics, which four powers are hereafter referred to as the Allied
Powers.

"2. We hereby proclaim the unconditional surrender to the
Allied Powers of the Japanese Imperial General Headquarters and
of all Japanese armed forces and all armed forces under the
Japanese control wherever situated.

"3. We hereby command all Japanese forces wherever situated
and the Japanese people to cease hostilities forthwith, to preserve
and save from damage all ships, aircraft, and military and civil
property and to comply with all requirements which may be imposed
by the Supreme Commander for the Allied Powers or by agencies of
the Japanese Government at his direction.

"4. We hereby command the Japanese Imperial Headquarters to
issue at once orders to the Commanders of all Japanese forces and

all forces under Japanese control wherever situated to surrender
unconditionally themselves and all forces under their control.

"5. We hereby command all civil, military and naval officials to
obey and enforce all proclamations, and orders and directives deemed
by the Supreme Commander for the Allied Powers to be proper to ef-
fectuate this surrender and issued by him or under his authority
and we direct all such officials to remain at their posts and to
continue to perform their non-combatant duties unless specifically
relieved by him or under his authority.

"6. We hereby undertake for the Emperor, the Japanese Government
and their successors to carry out the provisions of the Potsdam
Declaration in good faith, and to issue whatever orders and take
whatever actions may be required by the Supreme Commander for the
Allied Powers or by any other designated representative of the
Allied Powers for the purpose of giving effect to that Declaration.

"7. We hereby command the Japanese Imperial Government and the
Japanese Imperial General Headquarters at once to liberate all
allied prisoners of war and civilian internees now under Japanese
control and to provide for their protection, care, maintenance and
immediate transportation to places as directed.

"8. The authority of the Emperor and the Japanese Government to
rule the state shall be subject to the Supreme Commander for the
Allied Powers who will take such steps as he deems proper to ef-
fectuate these terms of surrender.

WHEREAS the terms of surrender were, on the 2d day of September
1945 as given by the United States, the Republic of China, the
United Kingdom, the Soviet Union of Socialist Republics and other
allied powers, accepted by the Imperial Japanese Government, and

WHEREAS on the 2d day of September 1945 the Imperial General
Headquarters by direction of the Emperor has ordered all its
commanders in Japan and abroad to cause the Japanese Armed Forces
and Japanese controlled forces under their command to cease
hostilities at once, to lay down their arms and remain in their
present locations and to surrender unconditionally to commanders
acting in behalf of the United States, the Republic of China, the
United Kingdom, the British Empire and the Union of Socialist Rep-
ublics, and

WHEREAS the Imperial General Headquarters, its senior commanders
and all ground, sea, air and auxiliary forces in the main islands
of Japan, minor islands adjacent thereto, Korea south of 38 north
latitude and the Philippines were directed to surrender to the
Commander-in-Chief of the United States Army Forces, Pacific and

WHEREAS the Commander-in-Chief of the United States Army
Forces, Pacific has appointed the Commanding General, XXIV
Corps as the Command General, United States Army Forces in
Korea, and has directed him as such to act for the Commander-
in-Chief United States Army Forces, Pacific in the reception of
the surrender of the senior Japanese commanders of all Japanese
ground, sea, air and auxiliary forces in Korea south of 38
north latitude and all islands adjacent thereto. Now therefore

We, the undersigned, senior Japanese commanders of all
Japanese ground, sea, air and auxiliary forces in Korea south
of 38 north latitude, do hereby acknowledge:

a. That we have been duly advised and fully informed of
the contents of the Proclamation by the Emperor of Japan, the
Instrument of Surrender and the orders herein above referred to.

b. That we accept our duties and obligations under said
instruments and orders and recognize the necessity for our strict
compliance therewith and adherence thereto.

c. That the Commanding General, United States Army Forces
in Korea, is the duly authorized representative of the Com-
mander-in-Chief United States Army Forces, Pacific and that
we will completely and immediately carry out and put into ef-
fect his instructions.

Finally, we do hereby formally and unconditionally sur-
render to the Commanding General, United States Army Forces
in Korea, all persons in Korea south of 38 degrees North
Latitude who are in the Armed Forces of Japan, and all military
installations, ordnance, ships, aircraft, and other military
equipment or property of every kind or description in Korea,
including all islands adjacent thereto, south of 38 degrees
North Latitude over which we exercise jurisdiction or control.

In case of conflict or ambiguity between the English text
of this document and any translation thereof, the English shall
prevail.

Signed at SEOUL, KOREA at 1630 hours on the 9th day of
September 1945.

YOSHIO SOZUKI
Senior Japanese commander of all
Japanese ground and air forces
in Korea south of 38 north
latitude.

GISABURO YAMAGUCHI
Senior Japanese commander of all
Japanese naval forces in Korea
south of 38 north latitude.

I, Nobuyuki Abe, the duly appointed, qualified and acting
Governor General of KOREA do hereby certify that I have read
and fully understand the contents of the foregoing Instrument
of Surrender, and of all documents referred to therein.

I hereby acknowledge the duties and obligations imposed
upon me by said documents, insofar as they apply to all matters
within my jurisdiction or control as Governor General of Korea,
and recognize the necessity of my strict compliance therewith
and adherence thereto.

In particular do I recognize that the Commanding General,
UNITED STATES ARMY FORCES IN KOREA, is the duly authorized
representative of the Commander-in-Chief, UNITED STATES ARMY
FORCES, PACIFIC, and that I am completely and immediately to

carry out and put into effect his instructions.
Signed at SEOUL, KOREA, at 1630 hours on the 9th day of
September 1945.

NOBUYUKI ABE
(Governor General of KOREA)

Accepted at SEOUL, KOREA, at 1630 hours on the 9th day of
September 1945 for and in behalf of the Commander-in-Chief
of the United States Army Forces, Pacific.

JOHN R. HODGE
JOHN R. HODGE
Lieutenant General U.S. Army
Commanding General

United States Army Forces in Korea
THOMAS C. KINCAID
T. C. KINCAID

Admiral, U. S. Navy
Representative of the United States Navy

SUPREME ALLIED COMMANDER
SOUTH EAST ASIA

INSTRUMENT OF SURRENDER OF JAPANESE FORCES UNDER
THE COMMAND OR CONTROL OF THE SUPREME COMMANDER,
JAPANESE EXPEDITIONARY FORCES, SOUTHERN REGIONS,
WITHIN THE OPERATIONAL THEATRE OF THE SUPREME
ALLIED COMMANDER, SOUTH EAST ASIA

1. In pursuance of and in compliance with:
 - (a) the Instrument of Surrender signed by the Japanese plenipotentiaries by command and on behalf of the Emperor of Japan, the Japanese Government and the Japanese Imperial General Headquarters at Toyko on 2 September, 1945;
 - (b) General Order No. 1, promulgated at the same place and on the same date;
 - (c) the Local Agreement made by the Supreme Commander, Japanese Expeditionary Forces, Southern Regions, with the Supreme Allied Commander, South East Asia at Rangoon on 27 August, 1945;

to all of which Instrument of Surrender, General Order and Local Agreement this present Instrument is complementary and which it in no way supersedes, the Supreme Commander, Japanese Expeditionary Forces, Southern Regions (Field Marshall Count Terauchi) does hereby surrender unconditionally to the Supreme Allied Commander, South East Asia (Admiral The Lord Louis Mountbatten) himself and all Japanese sea, ground, air and auxiliary forces under his command or control and within the operational theatre of the Supreme Allied Commander, South East Asia.

2. The Supreme Commander, Japanese Expeditionary Forces, Southern Regions, undertakes to ensure that all orders and instructions that may be issued from time to time by the Supreme Allied Commander, South East Asia, or by any of his subordinate Naval, Military, or Air-Force Commanders of whatever rank acting in his name, are scrupulously and promptly obeyed by all Japanese sea, ground, air and auxiliary forces under the command or control of the Supreme Commander, Japanese Expeditionary Forces, Southern Regions, and within the operational theatre of the Supreme Allied Commander, South East Asia.

3. Any disobedience of, or delay or failure to comply with, orders or instructions issued by the Supreme Allied Commander, South East Asia, or issued on his behalf by any of his subordinate Naval, Military, or Air Force Commanders of whatever rank, and any action which the Supreme Allied Commander, South East Asia, or his subordinate Commanders action on his behalf, may determine to be detrimental to the Allied Powers, will be dealt with as the Supreme Allied Commander, South East Asia may decide.

4. This Instrument takes effect from the time and date of signing.

5. This Instrument is drawn up in the English Language, which is the only authentic version. In any case of doubt to intention or meaning, the decision of the Supreme Allied Commander, South East Asia is final. It is the responsibility of the Supreme Commander, Japanese Expeditionary Forces, Southern Regions, to make such translations into Japanese as he may require.

Signed at Singapore at 0341 hours (G.M.T.) on 12 September, 1945.

SEISHIRO ITAGAKI LOUIS MOUNTBATTAN
(for) SUPREME COMMANDER SUPREME ALLIED COMMANDER
JAPANESE EXPEDITIONARY FORCES, SOUTH EAST ASIA
SOUTHERN REGIONS

John F Kennedy's Inaugural Address

1961

Much of President Kennedy's pithy 1,366-word inaugural address, delivered on January 20, 1961, was well-written and meaningful, but as often happens, his speech has stood the test of time thanks to one perfect phrase. Amidst an address filled with both hope and dire warnings ("Man holds in his hands the power to abolish all forms of human poverty and all forms of human life," the latter being a clear reference to atomic weapons), he issued a direct appeal to Americans everywhere to stand up for their country. You know the line: "And so, my fellow Americans: Ask not what your country can do for you — ask what you can do for your country. My fellow citizens of the world: Ask not what America will do for you, but what together we can do for the freedom of man."

Monroe Doctrine

The Monroe Doctrine was expressed during President Monroe's seventh annual message to Congress, December 2, 1823:

... At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . .

It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the results have been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintain it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgement of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

The late events in Spain and Portugal shew that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none of them more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government de facto as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But in regard to those continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new Governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in hope that other powers will pursue the same course. . . .

My Escape from Slavery

Fredric Douglas

In the first narrative of my experience in slavery, written nearly forty years ago, and in various writings since, I have given the public what I considered very good reasons for withholding the manner of my escape. In substance these reasons were, first, that such publication at any time during the existence of slavery might be used by the master against the slave, and prevent the future escape of any who might adopt the same means that I did. The second reason was, if possible, still more binding to silence: the publication of details would certainly have put in peril the persons and property of those who assisted. Murder itself was not more sternly and certainly punished in the State of Maryland than that of aiding and abetting the escape of a slave.

Many colored men, for no other crime than that of giving aid to a fugitive slave, have, like Charles T. Torrey, perished in prison. The abolition of slavery in my native State and throughout the country, and the lapse of time, render the caution hitherto observed no longer necessary. But even since the abolition of slavery, I have sometimes thought it well enough to baffle curiosity by saying that while slavery existed there were good reasons for not telling the manner of my escape, and since slavery had ceased to exist, there was no reason for telling it. I shall now, however, cease to avail myself of this formula, and, as far as I can, endeavor to satisfy this very natural curiosity. I should, perhaps, have yielded to that feeling sooner, had there been anything very heroic or thrilling in the incidents connected with my escape, for I am sorry to say I have nothing of that sort to tell; and yet the courage that could risk betrayal and the bravery which was ready to encounter death, if need be, in pursuit of freedom, were essential features in the undertaking.

My success was due to address rather than courage, to good luck rather than bravery. My means of escape were provided for me by the very men who were making laws to hold and bind me more securely in slavery. It was the custom in the State of Maryland to require the free colored people to have what were called free

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papers. These instruments they were required to renew very often, and by charging a fee for this writing, considerable sums from time to time were collected by the State.

In these papers the name, age, color, height, and form of the freeman were described, together with any scars or other marks upon his person which could assist in his identification. This device in some measure defeated itself--since more than one man could be found to answer the same general description.

Hence many slaves could escape by personating the owner of one set of papers; and this was often done as follows:

A slave, nearly or sufficiently answering the description set forth in the papers, would borrow or hire them till by means of them he could escape to a free State, and then, by mail or otherwise, would return them to the owner.

The operation was a hazardous one for the lender as well as for the borrower. A failure on the part of the fugitive to send back the papers would imperil his benefactor, and the discovery of the papers in possession of the wrong man would imperil both the fugitive and his friend.

It was, therefore, an act of supreme trust on the part of a freeman of color thus to put in jeopardy his own liberty that another might be free. It was, however, not unfrequently bravely done, and was seldom discovered.

I was not so fortunate as to resemble any of my free acquaintances sufficiently to answer the description of their papers. But I had a friend--a sailor--who owned a sailor's protection, which answered somewhat the purpose of free papers--describing his person, and certifying to the fact that he was a free American sailor.

The instrument had at its head the American eagle, which gave it the appearance at once of an authorized document. This protection, when in my hands, did not describe its bearer very accurately. Indeed, it called for a man much darker than myself, and close examination of it would have caused my arrest at the roll.

In order to avoid this fatal scrutiny on the part of railroad officials, I arranged with Isaac Roll, a Baltimore hackman, to bring my baggage to the Philadelphia train just on the moment of starting, and jumped upon the car myself when the train was in motion. Had I gone into the station and offered to purchase a ticket, I should have been instantly and carefully examined, and undoubtedly arrested.

In choosing this plan I considered the jostle of the train, and the natural haste of the conductor, in a train crowded with passengers, and relied upon my skill and address in playing the sailor, as described in my protection, to do the rest.

One element in my favor was the kind feeling which prevailed in Baltimore and other sea-ports at the time, toward "those who go down to the sea in ships." "Free trade and sailors' rights" just then expressed the sentiment of the country. In my clothing I was rigged out in sailor style.

I had on a red shirt and a tarpaulin hat, and a black cravat tied in sailor fashion carelessly and loosely about my neck. My knowledge of ships and sailor's talk came much to my assistance, for I knew a ship from stem to stern, and from keelson to cross-trees, and could talk sailor like an "old salt."

I was well on the way to Havre de Grace before the conductor came into the negro car to collect tickets and examine the papers of his black passengers. This was a critical moment in the drama. My whole future depended upon the decision of this conductor.

Agitated though I was while this ceremony was proceeding, still, externally, at least, I was apparently calm and self-possessed.

He went on with his duty--examining several colored passengers before reaching me. He was somewhat harsh in tone and peremptory in manner until he reached me, when, strange enough, and to my surprise and relief, his whole manner changed. Seeing that I did not readily produce my free papers, as the other colored persons in the car had done, he said to me, in friendly contrast with his bearing toward the others:

"I suppose you have your free papers?"

To which I answered:

"No sir; I never carry my free papers to sea with me."

"But you have something to show that you are a freeman, haven't you?"

"Yes, sir," I answered; "I have a paper with the American Eagle on it, and that will carry me around the world."

With this I drew from my deep sailor's pocket my seaman's protection, as before described. The merest glance at the paper satisfied him, and he took my fare and went on about his business. This moment of time was one of the most anxious I ever experienced.

Had the conductor looked closely at the paper, he could not have failed to discover that it called for a very different-looking person from myself, and in that case it would have been his duty to arrest me on the instant, and send me back to Baltimore from the first station.

When he left me with the assurance that I was all right, though much relieved, I realized that I was still in great danger: I was still in Maryland, and subject to arrest at any moment. I saw on the train several persons who would have known me in any other clothes, and I feared they might recognize me, even in my sailor "rig," and report me to the conductor, who would then subject me to a closer examination, which I knew well would be fatal to me.

Though I was not a murderer fleeing from justice, I felt perhaps quite as miserable as such a criminal. The train was moving at a very high rate of speed for that epoch of railroad travel, but to my anxious mind it was moving far too slowly. Minutes were hours, and hours were days during this part of my flight.

After Maryland, I was to pass through Delaware--another slave State, where slave-catchers generally awaited their prey, for it was not in the interior of the State, but on its borders, that these human hounds were most vigilant and active.

The border lines between slavery and freedom were the dangerous ones for the fugitives. The heart of no fox or deer, with hungry hounds on his trail in full chase, could have beaten more anxiously or noisily than did mine from the time I left Baltimore till I reached Philadelphia.

The passage of the Susquehanna River at Havre de Grace was at that time made by ferry-boat, on board of which I met a young colored man by the name of Nichols, who came very near betraying me. He was a "hand" on the boat, but, instead of minding his business, he insisted upon knowing me, and asking me dangerous questions as to where I was going, when I was coming back, etc.

I got away from my old and inconvenient acquaintance as soon as I could decently do so, and went to another part of the boat. Once across the river, I encountered a new danger.

Only a few days before, I had been at work on a revenue cutter, in Mr. Price's ship-yard in Baltimore, under the care of Captain McGowan. On the meeting at this point of the two trains, the one going south stopped on the track just opposite to the one going north, and it so happened that this Captain McGowan sat at a window where he could see me very distinctly, and would certainly have recognized me had he looked at me but for a second.

Fortunately, in the hurry of the moment, he did not see me; and the trains soon passed each other on their respective ways. But this was not my only hair-breadth escape. A German blacksmith whom I knew well was on the train with me, and looked at me very intently, as if he thought he had seen me somewhere before in his travels. I really believe he knew me, but had no heart to betray me. At any rate, he saw me escaping and held his peace.

The last point of imminent danger, and the one I dreaded most, was Wilmington. Here we left the train and took the steam-boat for Philadelphia. In making the change here I again apprehended arrest, but no one disturbed me, and I was soon on the broad and beautiful Delaware, speeding away to the Quaker City.

On reaching Philadelphia in the afternoon, I inquired of a colored man how I could get on to New York. He directed me to the William-street depot, and thither I went, taking the train that night.

I reached New York Tuesday morning, having completed the journey in less than twenty-four hours. My free life began on the third of September, 1838. On the morning of the fourth of that month, after an anxious and most perilous but safe journey, I found myself in the big city of New York, a FREE MAN--one more added to the mighty throng which, like the confused waves of the troubled sea, surged to and fro between the lofty walls of Broadway.

Though dazzled with the wonders which met me on every hand, my thoughts could not be much withdrawn from my strange situation. For the moment, the dreams of my youth and the hopes of my manhood were completely fulfilled.

The bonds that had held me to "old master" were broken. No man now had a right to call me his slave or assert mastery over me. I was in the rough and tumble of an outdoor world, to take my chance with the rest of its busy number.

I have often been asked how I felt when first I found myself on free soil.

There is scarcely anything in my experience about which I could not give a more satisfactory answer. A new world had opened upon me. If life is more than breath and the "quick round of blood," I lived more in that one day than in a year of my slave life.

It was a time of joyous excitement which words can but tamely describe. In a letter written to a friend soon after reaching New York, I said: "I felt as one might feel upon escape from a den of hungry lions." Anxious and grief, like darkness and rain, may be depicted; but gladness and joy, like the rainbow, defy the skill of pen or pencil.

During ten or fifteen years I had been, as it were, dragging a heavy chain which no strength of mine could break; I was not only a slave, but a slave for life. I might become a husband, a father, an aged man, but through all, from birth to death, from the cradle to the grave, I had felt myself doomed.

All efforts I had previously made to secure my freedom had not only failed, but had seemed only to rivet my fetters the more firmly, and to render my escape more difficult.

Baffled, entangled, and discouraged, I had at times asked myself the question, May not my condition after all be God's work, and ordered for a wise purpose, and if so, is not submission my duty?

A contest had in fact been going on in my mind for a long time, between the clear consciousness of right and the plausible make-shifts of theology and superstition. The one held me an abject slave--a prisoner for life, punished for some transgression in which I had no lot nor part; and the other counseled me to manly endeavor to secure my freedom. This contest was now ended; my chains were broken, and the victory brought me unspeakable joy.

But my gladness was short-lived, for I was not yet out of the reach and power of the slave-holders. I soon found that New York was not quite so free or so safe a refuge as I had supposed, and a sense of loneliness and insecurity again oppressed me most sadly.

I chanced to meet on the street, a few hours after my landing, a fugitive slave whom I had once known well in slavery. The information received from him alarmed me.

The fugitive in question was known in Baltimore as "Allender's Jake," but in New York he wore the more respectable name of "William Dixon." Jake, in law, was the property of Doctor Allender, and Tolly Allender, the son of the doctor, had once made an effort to recapture MR. DIXON, but had failed for want of evidence to support his claim.

Jake told me the circumstances of this attempt, and how narrowly he escaped being sent back to slavery and torture. He told me that New York was then full of Southerners returning from the Northern watering-places; that the colored people of New York were not to be trusted; that there were hired men of my own color who would betray me for a few dollars; that there were hired men ever on the lookout for fugitives; that I must trust no man with my secret; that I must not think of going either upon the wharves or into any colored boarding-house, for all such places were closely watched; that he was himself unable to help me; and, in fact, he seemed while speaking to me to fear lest I myself might be a spy and a betrayer. Under this apprehension, as I suppose, he showed signs of wishing to be rid of me, and with whitewash brush in hand, in search of work, he soon disappeared.

This picture, given by poor "Jake," of New York, was a damper to my enthusiasm. My little store of money would soon be exhausted, and since it would be unsafe for me to go on the wharves for work, and I had no introductions elsewhere, the prospect for me was far from cheerful. I saw the wisdom of keeping away from the ship-yards, for, if pursued, as I felt certain I should be, Mr. Auld, my "master," would naturally seek me there among the calkers.

Every door seemed closed against me. I was in the midst of an ocean of my fellow-men, and yet a perfect stranger to every one. I was without home, without acquaintance, without money, without credit, without work, and without any definite knowledge as to what course to take, or where to look for succor.

In such an extremity, a man had something besides his new-born freedom to think of. While wandering about the streets of New York, and lodging at least one night among the barrels on one of the wharves, I was indeed free--from slavery, but free from food and shelter as well.

I kept my secret to myself as long as I could, but I was compelled at last to seek some one who would befriend me without taking advantage of my destitution to betray me.

Such a person I found in a sailor named Stuart, a warm-hearted and generous fellow, who, from his humble home on Centre street, saw me standing on the opposite sidewalk, near the Tombs prison. As he approached me, I ventured a remark to him which at once enlisted his interest in me. He took me to his home to spend the night, and in the morning went with me to Mr. David Ruggles, the secretary of the New York Vigilance Committee, a co-worker with Isaac T. Hopper, Lewis and Arthur Tappan, Theodore S. Wright, Samuel Cornish, Thomas Downing, Philip A. Bell, and other true men of their time.

All these (save Mr. Bell, who still lives, and is editor and publisher of a paper called the "Elevator," in San Francisco) have finished their work on earth. Once in the hands of these brave and wise men, I felt comparatively safe. With Mr. Ruggles, on the corner of Lispenard and Church streets, I was hidden several days, during which time my intended wife came on from Baltimore at my call, to share the burdens of life with me.

She was a free woman, and came at once on getting the good news of my safety. We were married by Rev. J. W. C. Pennington, then a well-known and respected Presbyterian minister. I had no money with which to pay the marriage fee, but he seemed well pleased with our thanks.

Mr. Ruggles was the first officer on the "Underground Railroad" whom I met after coming North, and was, indeed, the only one with whom I had anything to do till I became such an officer myself.

Learning that my trade was that of a calker, he promptly decided that the best place for me was in New Bedford, Mass. He told me that many ships for whaling voyages were fitted out there, and that I might there find work at my trade and make a good living. So, on the day of the marriage ceremony, we took our little luggage to the steamer John W. Richmond, which, at that time, was one of the line running between New York and Newport, R. I. Forty-three years ago colored travelers were not permitted in the cabin, nor allowed abaft the paddle-wheels of a steam vessel.

They were compelled, whatever the weather might be,--whether cold or hot, wet or dry,-- to spend the night on deck. Unjust as this regulation was, it did not trouble us much; we had fared much harder before. We arrived at Newport the next morning, and soon after an old fashioned stage-coach, with "New Bedford" in large yellow letters on its sides, came down to the wharf.

I had not money enough to pay our fare, and stood hesitating what to do. Fortunately for us, there were two Quaker gentlemen who were about to take passage on the stage,-- Friends William C. Taber and Joseph Ricketson,--who at once discerned our true situation, and, in a peculiarly quiet way, addressing me, Mr. Taber said: "Thee get in." I never obeyed an order with more alacrity, and we were soon on our way to our new home.

When we reached "Stone Bridge" the passengers alighted for breakfast, and paid their fares to the driver. We took no breakfast, and, when asked for our fares, I told the driver I would make it right with him when we reached New Bedford.

I expected some objection to this on his part, but he made none. When, however, we reached New Bedford, he took our baggage, including three music-books,--two of them collections by Dyer, and one by Shaw,--and held them until I was able to redeem them by paying to him the amount due for our rides. This was soon done, for Mr. Nathan Johnson not only received me kindly and hospitably, but, on being informed about our baggage, at once loaned me the two dollars with which to square accounts with the stage-driver.

Mr. and Mrs. Nathan Johnson reached a good old age, and now rest from their labors. I am under many grateful obligations to them. They not only "took me in when a stranger" and "fed me when hungry," but taught me how to make an honest living. Thus, in a fortnight after my flight from Maryland, I was safe in New Bedford, a citizen of the grand old commonwealth of Massachusetts.

Once initiated into my new life of freedom and assured by Mr. Johnson that I need not fear recapture in that city, a comparatively unimportant question arose as to the name by which I should be known thereafter in my new relation as a free man. The name given me by my dear mother was no less pretentious and long than Frederick Augustus Washington Bailey. I had, however, while living in Maryland, dispensed with the Augustus Washington, and retained only Frederick Bailey.

Between Baltimore and New Bedford, the better to conceal myself from the slave-hunters, I had parted with Bailey and called myself Johnson; but in New Bedford I found that the Johnson family was already so numerous as to cause some confusion in distinguishing them, hence a change in this name seemed desirable.

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Nathan Johnson, mine host, placed great emphasis upon this necessity, and wished me to allow him to select a name for me. I consented, and he called me by my present name--the one by which I have been known for three and forty years--Frederick Douglass. Mr. Johnson had just been reading the "Lady of the Lake," and so pleased was he with its great character that he wished me to bear his name. Since reading that charming poem myself, I have often thought that, considering the noble hospitality and manly character of Nathan Johnson--black man though he was--he, far more than I, illustrated the virtues of the Douglas of Scotland.

Sure am I that, if any slave-catcher had entered his domicile with a view to my recapture, Johnson would have shown himself like him of the "stalwart hand." The reader may be surprised at the impressions I had in some way conceived of the social and material condition of the people at the North. I had no proper idea of the wealth, refinement, enterprise, and high civilization of this section of the country.

My "Columbian Orator," almost my only book, had done nothing to enlighten me concerning Northern society. I had been taught that slavery was the bottom fact of all wealth. With this foundation idea, I came naturally to the conclusion that poverty must be the general condition of the people of the free States.

In the country from which I came, a white man holding no slaves was usually an ignorant and poverty-stricken man, and men of this class were contemptuously called "poor white trash." Hence I supposed that, since the non-slave-holders at the South were ignorant, poor, and degraded as a class, the non-slave-holders at the North must be in a similar condition.

I could have landed in no part of the United States where I should have found a more striking and gratifying contrast, not only to life generally in the South, but in the condition of the colored people there, than in New Bedford.

I was amazed when Mr. Johnson told me that there was nothing in the laws or constitution of Massachusetts that would prevent a colored man from being governor of the State, if the people should see fit to elect him. There, too, the black man's children attended the public schools with the white man's children, and apparently without objection from any quarter.

To impress me with my security from recapture and return to slavery, Mr. Johnson assured me that no slave-holder could take a slave out of New Bedford; that there were men there who would lay down their lives to save me from such a fate.

The fifth day after my arrival, I put on the clothes of a common laborer, and went upon the wharves in search of work. On my way down Union street I saw a large pile of coal in front of the house of Rev. Ephraim Peabody, the Unitarian minister. I went to the kitchen door and asked the privilege of bringing in and putting away this coal. "What will you charge?" said the lady. "I will leave that to you, madam." "You may put it away," she said.

I was not long in accomplishing the job, when the dear lady put into my hand TWO SILVER HALF-DOLLARS. To understand the emotion which swelled my heart as I clasped this money, realizing that I had no master who could take it from me,--THAT IT WAS MINE--THAT MY HANDS WERE MY OWN, and could earn more of the precious coin,--one must have been in some sense himself a slave.

My next job was stowing a sloop at Uncle Gid. Howland's wharf with a cargo of oil for New York. I was not only a freeman, but a free working-man, and no "master" stood ready at the end of the week to seize my hard earnings.

The season was growing late and work was plenty. Ships were being fitted out for whaling, and much wood was used in storing them. The sawing this wood was considered a good job. With the help of old Friend Johnson (blessings on his memory) I got a saw and "buck," and went at it.

When I went into a store to buy a cord with which to brace up my saw in the frame, I asked for a "fip's" worth of cord. The man behind the counter looked rather sharply at me, and said with equal sharpness, "You don't bring about here." I was alarmed, and thought I had betrayed myself. A fip in Maryland was six and a quarter cents, called fourpence in Massachusetts.

But no harm came from the "fipenny-bit" blunder, and I confidently and cheerfully went to work with my saw and buck. It was new business to me, but I never did better work, or more of it, in the same space of time on the plantation for Covey, the negro-breaker, than I did for myself in these earliest years of my freedom. Notwithstanding the just and humane sentiment of New Bedford three and forty years ago, the place was not entirely free from race and color prejudice. The good influence of the Roaches, Rodmans, Arnolds, Grinnells, and Robesons did not pervade all classes of its people. The test of the real civilization of the community came when I applied for work at my trade, and then my repulse was emphatic and decisive.

It so happened that Mr. Rodney French, a wealthy and enterprising citizen, distinguished as an anti-slavery man, was fitting out a vessel for a whaling voyage, upon which there was a heavy job of calking and coppering to be done. I had some skill in both branches, and applied to Mr. French for work. He, generous man that he was, told me he would employ me, and I might go at once to the vessel.

I obeyed him, but upon reaching the float-stage, where others [sic] calkers were at work, I was told that every white man would leave the ship, in her unfinished condition, if I struck a blow at my trade upon her. This uncivil, inhuman, and selfish treatment was not so shocking and scandalous in my eyes at the time as it now appears to me. Slavery had inured me to hardships that made ordinary trouble sit lightly upon me. Could I have worked at my trade I could have earned two dollars a day, but as a common laborer I received but one dollar. The difference was of great importance to me, but if I could not get two dollars, I was glad to get one; and so I went to work for Mr. French as a common laborer. The consciousness that I was free--no longer a slave--kept me cheerful under this, and many similar proscriptions, which I was destined to meet in New Bedford and elsewhere on the free soil of Massachusetts.

For instance, though colored children attended the schools, and were treated kindly by their teachers, the New Bedford Lyceum refused, till several years after my residence in that city, to allow any colored person to attend the lectures delivered in its hall. Not until such men as Charles Sumner, Theodore Parker, Ralph Waldo Emerson, and Horace Mann refused to lecture in their course while there was such a restriction, was it abandoned.

Becoming satisfied that I could not rely on my trade in New Bedford to give me a living, I prepared myself to do any kind of work that came to hand. I sawed wood, shoveled coal, dug cullars, moved rubbish from back yards, worked on the wharves, loaded and unloaded vessels, and scoured their cabins.

I afterward got steady work at the brass-foundry owned by Mr. Richmond. My duty here was to blow the bellows, swing the crane, and empty the flasks in which castings were made; and at times this was hot and heavy work. The articles produced here were mostly for ship work, and in the busy season the foundry was in operation night and day. I have often worked two nights and every working day of the week.

My foreman, Mr. Cobb, was a good man, and more than once protected me from abuse that one or more of the hands was disposed to throw upon me. While in this situation I had little time for mental improvement. Hard work, night and day, over a furnace hot enough to keep the metal running like water, was more favorable to action than thought; yet here I often nailed a newspaper to the post near my bellows, and read while I was performing the up and down motion of the heavy beam by which the bellows was inflated and discharged. It was the pursuit of knowledge under difficulties, and I look back to it now, after so many years, with some complacency and a little wonder that I could have been so earnest and persevering in any pursuit other than for my little bread. I certainly saw nothing in the conduct of those around to inspire me with such interest: they were all devoted exclusively to what their hands found to do. I am glad to be able to say that, during my engagement in this foundry, no complaint was ever made against me that I did not do my work, and do it well. The bellows which I worked by main strength was, after I left, moved by a steam-engine.

Douglass, Frederick. "Reconstruction." *Atlantic Monthly* 18 (1866): 761-765.

RECONSTRUCTION

The assembling of the Second Session of the Thirty-ninth Congress may very properly be made the occasion of a few earnest words on the already much-worn topic of reconstruction.

Seldom has any legislative body been the subject of a solicitude more intense, or of aspirations more sincere and ardent. There are the best of reasons for this profound interest. Questions of vast moment, left undecided by the last session of Congress, must be manfully grappled with by this. No political skirmishing will avail. The occa-

sion demands statesmanship.

Whether the tremendous war so heroically fought and so victoriously ended shall pass into history a miserable failure, barren of permanent results,--a scandalous and shocking waste of blood and treasure,--a strife for empire, as Earl Russell characterized it, of no value to liberty or civilization,--an attempt to re-establish a Union by force, which must be the merest mockery of a Union,--an effort to bring under Federal authority States into which no loyal man from the North may safely enter, and to bring men into the national councils who deliberate with daggers and vote with revolvers, and who do not even conceal their deadly hate of the country that conquered them; or whether, on the other hand, we shall, as the rightful reward of victory over treason, have a solid nation, entirely delivered from all contradictions and social antagonisms, based upon loyalty, liberty, and equality, must be determined one way or the other by the present session of Congress.

The last session really did nothing which can be considered final as to these questions. The Civil Rights Bill and the Freedmen's Bureau Bill and the proposed constitutional amendments, with the amendment already adopted and recognized as the law of the land, do not reach the difficulty, and cannot, unless the whole structure of the government is changed from a government by States to something like a despotic central government, with power to control even the municipal regulations of States, and to make them conform to its own despotic will. While there remains such an idea as the right of each State to control its own local affairs,--an idea, by the way, more deeply rooted in the minds of men of all sections of the country than perhaps any one other political idea,--no general assertion of human rights can be of any practical value.

To change the character of the government at this point is neither possible nor desirable. All that is necessary to be done is to make the government consistent with itself, and render the rights of the States compatible with the sacred rights of human nature.

The arm of the Federal government is long, but it is far too short to protect the rights of individuals in the interior of distant States. They must have the power to protect themselves, or they will go unprotected, spite of all the laws the Federal government can put upon the national statute-book.

Slavery, like all other great systems of wrong, founded in the depths of human selfishness, and existing for ages, has not neglected its own conservation. It has steadily exerted an influence upon all around it favorable to its own continuance. And to-day it is so strong that it could exist, not only without law, but even against law.

Custom, manners, morals, religion, are all on its side everywhere in the South; and when you add the ignorance and servility of the ex-slave to the intelligence and accustomed authority of the master, you have the conditions, not out of which slavery will again grow, but under which it is impossible for the Federal government to wholly destroy it, unless the Federal government be armed with despotic power, to blot out State authority, and to station a Federal officer at every cross-road.

This, of course, cannot be done, and ought not even if it could. The true way and the easiest way is to make our government entirely consistent with itself, and give to every loyal citizen the elective franchise,--a right and power which will be ever present, and will form a wall of fire for his protection.

One of the invaluable compensations of the late Rebellion is the highly instructive disclosure it made of the true source of danger to republican government. Whatever may be tolerated in monarchical and despotic governments, no republic is safe that tolerates a privileged class, or denies to any of its citizens equal rights and equal means to maintain them. What was theory before the war has been made fact by the war.

There is cause to be thankful even for rebellion. It is an impressive teacher, though a stern and terrible one. In both characters it has come to us, and it was perhaps needed in both. It is an instructor never a day before its time, for it comes only when all other means of progress and enlightenment have failed.

Whether the oppressed and despairing bondman, no longer able to repress his deep yearnings for manhood, or the tyrant, in his pride and impatience, takes the initiative, and strikes the blow for a firmer hold and a longer lease of oppression, the result is the same,--society is instructed, or may be.

Such are the limitations of the common mind, and so thoroughly engrossing are the cares of common life, that only the few among men can discern through the glitter and dazzle of present prosperity the dark outlines of approaching disasters, even though they may have come up to our very gates, and are already within striking distance.

The yawning seam and corroded bolt conceal their defects from the mariner until the storm calls all hands to the pumps. Prophets, indeed, were abundant before the war; but who cares for prophets while their predictions remain unfulfilled, and the calamities of which they tell are masked behind a blinding blaze of national prosperity?

It is asked, said Henry Clay, on a memorable occasion, Will slavery never come to an end? That question, said he, was asked fifty years ago, and it has been answered by fifty years of unprecedented prosperity. Spite of the eloquence of the earnest Abolitionists,--poured out against slavery during thirty years,--even they must confess, that, in all the probabilities of the case, that system of barbarism would have continued its horrors far beyond the limits of the nineteenth century but for the Rebellion, and perhaps only have disappeared at last in a fiery conflict, even more fierce and bloody than that which has now been suppressed.

It is no disparagement to truth, that it can only prevail where reason prevails. War begins where reason ends. The thing worse than rebellion is the thing that causes rebellion. What that thing is, we have been taught to our cost. It remains now to be seen whether we have the needed courage to have that cause entirely removed from the Republic.

At any rate, to this grand work of national regeneration and entire purification Congress must now address itself, with full purpose that the work shall this time be thoroughly done.

The deadly upas, root and branch, leaf and fibre, body and sap, must be utterly destroyed. The country is evidently not in a condition to listen patiently to pleas for postponement, however plausible, nor will it permit the responsibility to be shifted to other shoulders. Authority and power are here commensurate with the duty imposed. There are no cloud-flung shadows to obscure the way.

Truth shines with brighter light and intenser heat at every moment, and a country torn and rent and bleeding implores relief from its distress and agony.

If time was at first needed, Congress has now had time. All the requisite materials from which to form an intelligent judgment are now before it. Whether its members look at the origin, the progress, the termination of the war, or at the mockery of a peace now existing, they will find only one unbroken chain of argument in favor of a radical policy of reconstruction.

For the omissions of the last session, some excuses may be allowed. A treacherous President stood in the way; and it can be easily seen how reluctant good men might be to admit an apostasy which involved so much of baseness and ingratitude.

It was natural that they should seek to save him by bending to him even when he leaned to the side of error. But all is changed now.

Congress knows now that it must go on without his aid, and even against his machinations.

The advantage of the present session over the last is immense. Where that investigated, this has the facts. Where that walked by faith, this may walk by sight. Where that halted, this must go forward, and where that failed, this must succeed, giving the country whole measures where that gave us half-measures, merely as a means of saving the elections in a few doubtful districts.

That Congress saw what was right, but distrusted the enlightenment of the loyal masses; but what was forborne in distrust of the people must now be done with a full knowledge that the people expect and require it.

The members go to Washington fresh from the inspiring presence of the people. In every considerable public meeting, and in almost every conceivable way, whether at court-house, school-house, or cross-roads, in doors and out, the subject has been discussed, and the people have emphatically pronounced in favor of a radical policy.

Listening to the doctrines of expediency and compromise with pity, impatience, and disgust, they have everywhere broken into demonstrations of the wildest enthusiasm when a brave word has been spoken in favor of equal rights and impartial suffrage. Radicalism, so far from being odious, is not the popular passport to power. The men most bitterly charged with it go to Congress with the largest majorities, while the timid and doubtful are sent by lean majorities, or else left at home. The strange controversy between the President and the Congress, at one time so threatening, is disposed of by the people.

The high reconstructive powers which he so confidently, ostentatiously, and haughtily claimed, have been disallowed, denounced, and utterly repudiated; while those claimed by Congress have been confirmed.

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Of the spirit and magnitude of the canvass nothing need be said. The appeal was to the people, and the verdict was worthy of the tribunal. Upon an occasion of his own selection, with the advice and approval of his astute Secretary, soon after the members of the Congress had returned to their constituents, the President quitted the executive mansion, sandwiched himself between two recognized heroes,—men whom the whole country delighted to honor,—and, with all the advantage which such company could give him, stumped the country from the Atlantic to the Mississippi, advocating everywhere his policy as against that of Congress.

It was a strange sight, and perhaps the most disgraceful exhibition ever made by any President; but, as no evil is entirely unmixed, good has come of this, as from many others. Ambitious, unscrupulous, energetic, indefatigable, voluble, and plausible,—a political gladiator, ready for a "set-to" in any crowd,—he is beaten in his own chosen field, and stands to-day before the country as a convicted usurper, a political criminal, guilty of a bold and persistent attempt to possess himself of the legislative powers solemnly secured to Congress by the Constitution.

No vindication could be more complete, no condemnation could be more absolute and humiliating. Unless reopened by the sword, as recklessly threatened in some circles, this question is now closed for all time. Without attempting to settle here the metaphysical and somewhat theological question (about which so much has already been said and written), whether once in the Union means always in the Union,—agreeably to the formula. Once in grace always in grace,—it is obvious to common sense that the rebellious States stand to-day, in point of law, precisely where they stood when, exhausted, beaten, conquered, they fell powerless at the feet of Federal authority. Their State governments were overthrown, and the lives and property of the leaders of the Rebellion were forfeited. In reconstructing the institutions of these shattered and overthrown States, Congress should begin with a clean slate, and make clean work of it.

Let there be no hesitation. It would be a cowardly deference to a defeated and treacherous President, if any account were made of the illegitimate, one-sided, sham governments hurried into existence for a malign purpose in the absence of Congress. These pretended governments, which were never submitted to the people, and from participation in which four millions of the loyal people were excluded by Presidential order, should now be treated according to their true character, as shams and impositions, and supplanted by true and legitimate governments, in the formation of which loyal men, black and white, shall participate.

It is not, however, within the scope of this paper to point out the precise steps to be taken, and the means to be employed. The people are less concerned about these than the grand end to be attained.

They demand such a reconstruction as shall put an end to the present anarchical state of things in the late rebellious States,—where frightful murders and wholesale massacres are perpetrated in the very presence of Federal soldiers.

This horrible business they require shall cease. They want a reconstruction such as will protect loyal men, black and white, in their persons and property; such a one as will cause Northern industry, Northern capital, and Northern civilization to flow into the South, and make a man from New England as much at home in Carolina as elsewhere in the Republic. No Chinese wall can now be tolerated. The South must be opened to the light of law and liberty, and this session of Congress is relied upon to accomplish this important work.

The plain, common-sense way of doing this work, as intimated at the beginning, is simply to establish in the South one law, one government, one administration of justice, one condition to the exercise of the elective franchise, for men of all races and colors alike. This great measure is sought as earnestly by loyal white men as by loyal blacks, and is needed alike by both. Let sound political prescience but take the place of an unreasoning prejudice, and this will be done.

Men denounce the negro for his prominence in this discussion; but it is no fault of his that in peace as in war, that in conquering Rebel armies as in reconstructing the rebellious States, the right of the negro is the true solution of our national troubles. The stern logic of events, which goes directly to the point, disdaining all concern for the color or features of men, has determined the interests of the country as identical with and inseparable from those of the negro.

The policy that emancipated and armed the negro—now seen to have been wise and proper by the dullest—was not certainly more sternly demanded than is now the policy of enfranchisement. If with the negro was success in war, and without him failure, so in peace it will be found that the nation must fall or flourish with the negro. Fortunately, the Constitution of the United States knows no distinction between citizens on account of color. Neither does it know any difference between a citizen of a State and a citizen of the United States. Citizenship evidently includes all the rights of citizens, whether State or national. If the Constitution knows none, it is clearly no part of the duty of a Republican Congress now to institute one.

The mistake of the last session was the attempt to do this very thing, by a renunciation of its power to secure political rights to any class of citizens, with the obvious purpose to allow the rebellious States to disfranchise, if they should see fit, their colored citizens. This unfortunate blunder must now be retrieved, and the emasculated citizenship given to the negro supplanted by that contemplated in the Constitution of the United States, which declares that the citizens of each State shall enjoy all the rights and immunities of citizens of the several States,—so that a legal voter in any State shall be a legal voter in all the States.

Douglass, Frederick. "My Escape from Slavery." *The Century Illustrated Magazine* 23, n.s. 1 (Nov. 1881): 125-131.

Paris Peace Treaty

The Peace Treaty of 1783, also known as The Paris Peace Treaty, ended the United States War for Independence. Representing England was Richard Oswald, chief negotiator under the Earl of Shelburne, the Secretary of State; signing for Britain was David Hartley. Representing the United States of America were John Adams, Benjamin Franklin, and John Jay, all of whom signed the treaty. This treaty gave formal recognition to the United States of America, established her boundaries, (at the time), secured certain fishing rights, addressed problems between creditors, provided fair treatment for those who decided to remain loyal to Great Britain, and opened up the Mississippi River to navigation by citizens of both signatory nations.

THE PARIS PEACE TREATY (PEACE TREATY of 1783)

In the name of the most holy and undivided Trinity. It having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince George the Third, by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, duke of Brunswick and Lunebourg, archtreasurer and prince elector of the Holy Roman Empire etc., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore, and to establish such a beneficial and satisfactory intercourse, between the two countries upon the ground of reciprocal advantages and mutual convenience as may promote and secure to both perpetual peace and harmony; and having for this desirable end already laid the foundation of peace and reconciliation by the Provisional

Articles signed at Paris on the 30th of November 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in and constitute the Treaty of Peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France and his Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, his Britannic Majesty and the United States of America, in order to carry into full effect the Provisional Articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say his Britannic Majesty on his part, David

Hartley, Esqr., member of the Parliament of Great Britain, and the said United States on their part, John Adams, Esqr., late a commissioner of the United States of America at the court of Versailles, late delegate in Congress from the state of Massachusetts, and chief justice of the said state, and minister plenipotentiary of the said United States to their high mightinesses the States General of the United Netherlands; Benjamin Franklin, Esqr., late delegate in Congress from the state of Pennsylvania, president of the convention of the said state, and minister plenipotentiary from the United States of America at the court of Versailles; John Jay, Esqr., late president of Congress and chief justice of the state of New York, and minister plenipotentiary from the said United States at the court of Madrid; to be plenipotentiaries for the concluding and signing the present definitive treaty; who after having reciprocally communicated their respective full powers have agreed upon and confirmed the following articles.

Article 1: His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free sovereign and independent states, that he treats with them as such, and for himself, his heirs, and successors, relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof.

Article 2: And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz.; from the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of St. Croix River to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy; thence along the middle of said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwesternmost point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned in the latitude of thirty-one degrees of the equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River, thence straight to the head of Saint Mary's River; and thence down along the middle of Saint Mary's River to the Atlantic Ocean; east, by a line to be drawn along the middle of the river Saint Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river Saint Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part and East Florida on the other shall, respectively, touch the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are or heretofore have been within the limits of the said province of Nova Scotia.

Article 3: It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland, also in the Gulf of Saint Lawrence and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled, but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

Article 4: It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted.

Article 5: It is agreed that Congress shall earnestly recommend it to the legislatures of the respective states to provide for the restitution of all estates, rights, and properties, which have been confiscated belonging to real British subjects; and also of the estates, rights, and properties of persons resident in districts in the possession on his Majesty's arms and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States and therein to remain twelve months unmolested in their endeavors to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several states a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity but with that spirit of conciliation which on the return of the blessings of peace should universally prevail. And that Congress shall also earnestly recommend to the several states that the estates, rights, and properties, of such last mentioned persons shall be restored to them, they refunding to any persons who may be now in possession the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties since the confiscation. And it is agreed that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

Article 6: That there shall be no future confiscations made nor any prosecutions commenced against any person or persons for, or by reason of, the part which he or they may have taken in the present war, and that no person shall on that account suffer any future loss or damage, either in his person, liberty, or property; and that those who may be in confinement on such charges at the time of the ratification of the treaty in America shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

Article 7: There shall be a firm and perpetual peace between his Britannic Majesty and the said states, and between the subjects of the one and the citizens of the other, wherefore all hostilities both by sea and land shall from henceforth cease. All prisoners on both sides shall be set at liberty, and his Britannic Majesty shall with all convenient speed, and without causing any destruction, or carrying away any Negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States, and from every post, place, and harbor within the same; leaving in all fortifications, the American artillery that may be therein; and shall also order and cause all archives, records, deeds, and papers belonging to any of the said states, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper states and persons to whom they belong.

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Article 8: The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States.

Article 9: In case it should so happen that any place or territory belonging to Great Britain or to the United States should have been conquered by the arms of either from the other before the arrival of the said Provisional Articles in America, it is agreed that the same shall be restored without difficulty and without requiring any compensation.

Article 10: The solemn ratifications of the present treaty expedited in good and due form shall be exchanged between the contracting parties in the space of six months or sooner, if possible, to be computed from the day of the signatures of the present treaty. In witness whereof we the undersigned, their ministers plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty and caused the seals of our arms to be affixed thereto. Done at Paris, this third day of September in the year of our Lord, one thousand seven hundred and eighty-three.

D. HARTLEY (SEAL)
JOHN ADAMS (SEAL)
B. FRANKLIN (SEAL)
JOHN JAY (SEAL)

Source: United States, Department of State,
"Treaties and Other International Agreements of the United States of America, 1776-1949",
vol 12, pp8-12

Proclamation of Neutrality

France declared war against Great Britain and Holland early in April, 1793. President Washington called a special cabinet meeting, which resulted in this declaration of neutrality.

BY THE PRESIDENT OF THE UNITED STATES: A PROCLAMATION

Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers; I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectfully; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whatsoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twenty-second day of April, one thousand seven hundred and ninety-three, and of the Independence of the United States of America the seventeenth.

GEORGE WASHINGTON
April 22, 1793

Rights of Man and the Citizen

DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN

Approved by the National Assembly of France, August 26, 1789

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Articles:

1 Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

2 The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or

punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

7. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.

9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.

10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

12. The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.

13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.

14. All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.

15. Society has the right to require of every public agent an account of his administration.

16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

The above document was written by The Marquis de Lafayette, with help from his friend and neighbor, American envoy to France, Thomas Jefferson. Lafayette had come to the Colonies at age 19, been commissioned a Major General, and was instrumental in the defeat of the British during the American Revolutionary War. He considered one special man his 'father': George Washington.

French King Louis XVI signed this document, under duress, but never intended to support it. Indeed, the Revolution in France soon followed, leading to the tyrannical rule of Napoleon Bonaparte.

The Magna Carta

THE MAGNA CARTA (The Great Charter):

Preamble:

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of his holy Church and for the rectifying of our realm, we have granted as underwritten by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of Master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerold, Peter Fitz Herbert, Hubert De Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; which is apparent from this that the freedom of elections, which is reckoned most important and very essential to the English Church, we, of our pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III, before the quarrel arose between us and our barons: and this we will observe, and our will is that it be observed in good faith by our heirs forever. We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.

2. If any of our earls or barons, or others holding of us in chief by military service shall have died, and at the time of his death his heir shall be full of age and owe "relief", he shall have his inheritance by the old relief, to wit, the heir or heirs of an earl, for the whole barony of an earl by L100; the heir or heirs of a baron, L100 for a whole barony; the heir or heirs of a knight, 100s, at most, and whoever owes less let him give less, according to the ancient custom of fees.

3. If, however, the heir of any one of the aforesaid has been under age and in wardship, let him have

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his inheritance without relief and without fine when he comes of age.

4. The guardian of the land of an heir who is thus under age, shall take from the land of the heir nothing but reasonable produce, reasonable customs, and reasonable services, and that without destruction or waste of men or goods; and if we have committed the wardship of the lands of any such minor to the sheriff, or to any other who is responsible to us for its issues, and he has made destruction or waste of what he holds in wardship, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall be responsible for the issues to us or to him to whom we shall assign them; and if we have given or sold the wardship of any such land to anyone and he has therein made destruction or waste, he shall lose that wardship, and it shall be transferred to two lawful and discreet men of that fief, who shall be responsible to us in like manner as aforesaid.

5. The guardian, moreover, so long as he has the wardship of the land, shall keep up the houses, parks, fishponds, stanks, mills, and other things pertaining to the land, out of the issues of the same land; and he shall restore to the heir, when he has come to full age, all his land, stocked with ploughs and wainage, according as the season of husbandry shall require, and the issues of the land can reasonable bear.

6. Heirs shall be married without disparagement, yet so that before the marriage takes place the nearest in blood to that heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage portion and inheritance; nor shall she give anything for her dower, or for her marriage portion, or for the inheritance which her husband and she held on the day of the death of that husband; and she may remain in the house of her husband for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she prefers to live without a husband; provided always that she gives security not to marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, as long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is able to satisfy the debt; and if the principal debtor shall fail to pay the debt, having nothing wherewith to pay it, then the sureties shall answer for the debt; and let them have the lands and rents of the debtor, if they desire them, until they are indemnified for the debt which they have paid for him, unless the principal debtor can show proof that he is discharged thereof as against the said sureties.

10. If one who has borrowed from the Jews any sum, great or small, die before that loan be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.

11. And if anyone die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if any children of the deceased are left under age, necessities shall be provided for them in keeping with the holding of the deceased; and out of the residue the debt shall be paid, reserving, however, service due to feudal lords; in like manner let it be done touching debts due to others than Jews.

12. No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

13. And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

14. And for obtaining the common counsel of the kingdom anent the assessing of an aid (except in the three cases aforesaid) or of a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, severally by our letters; and we will moreover cause to be summoned generally, through our sheriffs and bailiffs, and others who hold of us in chief, for a fixed date, namely, after the expiry of at least forty days, and at a fixed place; and in all letters of such summons we will specify the reason of the summons. And when the summons has thus been made, the business shall proceed on the day appointed, according to the counsel of such as are present, although not all who were summoned have come.

15. We will not for the future grant to anyone license to take an aid from his own free tenants, except to ransom his person, to make his eldest son a knight, and once to marry his eldest daughter; and on each of these occasions there shall be levied only a reasonable aid.

16. No one shall be distrained for performance of greater service for a knight's fee, or for any other free tenement, than is due therefrom.

17. Common pleas shall not follow our court, but shall be held in some fixed place.

18. Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held elsewhere than in their own county courts, and that in manner following; We, or, if we should be out of the realm, our chief justiciar, will send two justiciaries through every county four times a year, who shall alone with four knights of the county chosen by the county, hold the said assizes in the county court, on the day and in the place of meeting of that court.

19. And if any of the said assizes cannot be taken on the day of the county court, let there remain of the knights and freeholders, who were present at the county court on that day, as many as may be required for the efficient making of judgments, according as the business be more or less.

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contentment"; and a merchant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage" if they have fallen into our mercy; and none of the aforesaid ameracements shall be imposed except by the oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

22. A clerk shall not be amerced in respect of his lay holding except after the manner of the others aforesaid; further, he shall not be amerced in accordance with the extent of his ecclesiastical benefice.

23. No village or individual shall be compelled to make bridges at river banks, except those who from of old were legally bound to do so.

24. No sheriff, constable, coroners, or others of our bailiffs, shall hold pleas of our Crown.

25. All counties, hundred, wapentakes, and tithings (except our demesne manors) shall remain at the old rents, and without any additional payment.

26. If anyone holding of us a lay fief shall die, and our sheriff or bailiff shall exhibit our letters patent of summons for a debt which the deceased owed us, it shall be lawful for our sheriff or bailiff to attach and enroll the chattels of the deceased, found upon the lay fief, to the value of that debt, at the sight of law worthy men, provided always that nothing whatever be thence removed until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfill the will of the deceased; and if there be nothing due from him to us, all the chattels shall go to the deceased, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the Church, saving to every one the debts which the deceased owed to him.

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

29. No constable shall compel any knight to give money in lieu of castle-guard, when he is willing to perform it in his own person, or (if he himself cannot do it from any reasonable cause) then by another responsible man. Further, if we have led or sent him upon military service, he shall be relieved from guard in proportion to the time during which he has been on service because of us.

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

32. We will not retain beyond one year and one day, the lands those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

33. All kydeills for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.

34. The writ which is called praecipe shall not for the future be issued to anyone, regarding any tenement whereby a freeman may lose his court.

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "halberget"), to wit, two ells within the selvedges; of weights also let it be as of measures.

36. Nothing in future shall be given or taken for a writ of inquisition of life or limbs, but freely it shall be granted, and never denied.

37. If anyone holds of us by fee-farm, either by socage or by burage, or of any other land by knight's service, we will not (by reason of that fee-farm, socage, or burage), have the wardship of the heir, or of such land of his as if of the fief of that other; nor shall we have wardship of that fee-farm, socage, or burage, unless such fee-farm owes knight's service. We will not by reason of any small serjeancy which anyone may hold of us by the service of rendering to us knives, arrows, or the like, have wardship of his heir or of the land which he holds of another lord by knight's service.

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purposes.

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

41. All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us, or by our chief justiciar, how the merchants of our land found in the land at war with us are treated; and if our men are safe there, the others shall be safe in our land.

42. It shall be lawful in future for anyone (excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as if above provided) to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, on grounds of public policy- reserving always the allegiance due to us.

43. If anyone holding of some escheat (such as the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our hands and are baronies) shall die, his heir shall give no other relief, and perform no other service to us than he would have done to the baron if that barony had been in the baron's hand; and we shall hold it in the same manner in which the baron held it.

44. Men who dwell without the forest need not henceforth come before our justiciaries of the forest upon a general summons, unless they are in plea, or sureties of one or more, who are attached for the forest.

45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

46. All barons who have founded abbeys, concerning which they hold charters from the kings of England, or of which they have long continued possession, shall have the wardship of them, when vacant, as they ought to have.

47. All forests that have been made such in our time shall forthwith be disafforsted; and a similar course shall be followed with regard to river banks that have been placed "in defense" by us in our time.

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48. All evil customs connected with forests and warrens, foresters and warreners, sheriffs and their officers, river banks and their wardens, shall immediately by inquired into in each county by twelve sworn knights of the same county chosen by the honest men of the same county, and shall, within forty days of the said inquest, be utterly abolished, so as never to be restored, provided always that we previously have intimation thereof, or our justiciar, if we should not be in England.

49. We will immediately restore all hostages and charters delivered to us by Englishmen, as sureties of the peace of faithful service.

50. We will entirely remove from their bailiwicks, the relations of Gerard of Athee (so that in future they shall have no bailiwick in England); namely, Engelard of Cigogne, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogne, Geoffrey of Martigny with his brothers, Philip Mark with his brothers and his nephew Geoffrey, and the whole brood of the same.

51. As soon as peace is restored, we will banish from the kingdom all foreign born knights, crossbowmen, sergeants, and mercenary soldiers who have come with horses and arms to the kingdom's hurt.

52. If anyone has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five and twenty barons of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which anyone has, without the lawful judgment of his peers, been disseised or removed, by our father, King Henry, or by our brother, King Richard, and which we retain in our hand (or which as possessed by others, to whom we are bound to warrant them) we shall have respite until the usual term of crusaders; excepting those things about which a plea has been raised, or an inquest made by our order, before our taking of the cross; but as soon as we return from the expedition, we will immediately grant full justice therein.

53. We shall have, moreover, the same respite and in the same manner in rendering justice concerning the disafforestation or retention of those forests which Henry our father and Richard our brother afforested, and concerning the wardship of lands which are of the fief of another (namely, such wardships as we have hitherto had by reason of a fief which anyone held of us by knight's service), and concerning abbeys founded on other fiefs than our own, in which the lord of the fee claims to have right; and when we have returned, or if we desist from our expedition, we will immediately grant full justice to all who complain of such things.

54. No one shall be arrested or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All fines made with us unjustly and against the law of the land, and all amerccements, imposed unjustly and against the law of the land, shall be entirely remitted, or else it shall be done concerning them according to the decision of the five and twenty barons whom mention is made below in the clause for securing the peace, or according to the judgment of the majority of the same, along with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and such others as he may wish to bring with him for this purpose, and if he cannot be present the business shall nevertheless proceed without him, provided always that if any one or more of the aforesaid five and twenty barons are in a similar suit, they shall be removed as far as concerns this particular judgment, others being substituted in their places after having been selected by the rest of the same five and twenty for this purpose only, and after having been sworn.

56. If we have disseised or removed Welshmen from lands or liberties, or other things, without the legal judgment of their peers in England or in Wales, they shall be immediately restored to them; and if a dispute arise over this, then let it be decided in the marches by the judgment of their peers; for the tenements in England according to the law of England, for tenements in Wales according to the law of Wales, and for tenements in the marches according to the law of the marches. Welshmen shall do the same to us and ours.

57. Further, for all those possessions from which any Welshman has, without the lawful judgment of his peers, been disseised or removed by King Henry our father, or King Richard our brother, and which we retain in our hand (or which are possessed by others, and which we ought to warrant), we will have respite until the usual term of crusaders; excepting those things about which a plea has been raised or an inquest made by our order before we took the cross; but as soon as we return (or if perchance we desist from our expedition), we will immediately grant full justice in accordance with the laws of the Welsh and in relation to the foresaid regions.

58. We will immediately give up the son of Llywelyn and all the hostages of Wales, and the charters delivered to us as security for the peace.

59. We will do towards Alexander, king of Scots, concerning the return of his sisters and his hostages, and concerning his franchises, and his right, in the same manner as we shall do towards our ower barons of England, unless it ought to be otherwise according to the charters which we hold from William his father, formerly king of Scots; and this shall be according to the judgment of his peers in our court.

60. Moreover, all these aforesaid customs and liberties, the observances of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed b all of our kingdom, as well clergy as laymen, as far as pertains to them towards their men.

61. Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations towards us. And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and

we shall never forbid anyone to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid. And if any one of the five and twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is entrusted, to these twenty five barons, if perchance these twenty five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty five had concurred in this; and the said twenty five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from anyone, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such things has been procured, let it be void and null, and we shall never use it personally or by another.

62. And all the will, hatreds, and bitterness that have arisen between us and our men, clergy and lay, from the date of the quarrel, we have completely remitted and pardoned to everyone. Moreover, all trespasses occasioned by the said quarrel, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, both clergy and laymen, and completely forgiven, as far as pertains to us. And on this head, we have caused to be made for them letters testimonial patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf as touching this security and the concessions aforesaid.

63. Wherefore we will and firmly order that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand - the above named and many others being witnesses - in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

The Mayflower Compact

"In the name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord, King James, by the Grace of God, of England, France and Ireland, King, Defender of the Faith, e&.

Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a voyage to plant the first colony in the northern parts of Virginia; do by these presents, solemnly and mutually in the Presence of God and one of another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid; And by Virtue hereof to enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the General good of the Colony; unto which we promise all due submission and obedience.

In Witness whereof we have hereunto subscribed our names at Cape Cod the eleventh of November, in the Reign of our Sovereign Lord, King James of England, France and Ireland, the eighteenth, and of Scotland the fifty-fourth. Anno Domini, 1620."

There followed the signatures of 41 of the 102 passengers, 37 of whom were members of the "Separatists" who were fleeing religious persecution in Europe. This compact established the first basis in the new world for written laws. Half the colony failed to survive the first winter, but the remainder lived on and prospered.

Jefferson's 1st Inaugural Address

Called upon to undertake the duties of the first executive office of our country, I avail myself of the presence of that portion of my fellow citizens which is here assembled to express my grateful thanks for the favor with which they have been pleased to look toward me, to declare a sincere consciousness that the task is above my talents, and that I approach it with those anxious and awful presentiments which the greatness of the charge and the weakness of my powers so justly inspire. A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye, when I contemplate these transcendent objects, and see the honor, the happiness, and the hopes of this beloved country committed to the issue, and the auspices of this day, I shrink from the contemplation, and humble myself before the magnitude of the undertaking. Utterly, indeed, should I despair did not the presence of many whom I see here remind me that in the other high authorities provided by our Constitution I shall find resources of wisdom, of virtue, and of zeal on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associate with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the Constitution, all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possesses their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long lost liberty, it was not wonderful that the agitation of the billows should

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reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others, and should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all republicans, we are all federalists. If there be any among us who would wish to dissolve the Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know, indeed, that some honest men fear that a republican government can not be strong, that this Government is not strong enough; but would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it the only one where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question.

Let us, then, with courage and confidence pursue our own Federal and Republican principles, our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter, with all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow citizens, a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.

About to enter, fellow citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people, a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well disciplined militia, our best reliance in peace and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burdened; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person under the protection of the habeas corpus, and trial by juries impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

I repair, then, fellow citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this the greatest of all, I have learnt to expect that it will rarely fall to the lot of imperfect man to retire from this station with the reputation and the favor which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose preeminent services had entitled him to the first place in his country's love and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask your indulgence for my own errors, which will never be intentional, and your support against the errors of others, who may condemn what they would not if seen in all its parts. The approbation implied by your suffrage is a great consolation to me for the past, and my future solicitude will be to retain the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying, then, on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choice it is in your power to make. And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity. -

War is Inevitable Speech

(Patrick Henry, 1775)

They tell us, Sir, that we are weak -- unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house? Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs, and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? Sir, we are not weak, if we make a proper use of those means which the God of nature hath placed in our power.

Three millions of People, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us. Beside, Sir, we shall not fight our battles alone. There is a just God who presides over the destinies of Nations, and who will raise up friends to fight our battles for us. The battle, Sir, is not to the strong alone. It is to the vigilant, the

active, the brave. Besides, Sir, we have no election. If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery! Our chains are forged! Their clanking may be heard on the plains of Boston! The war is inevitable, and let it come! I repeat, Sir, let it come!

It is in vain, Sir, to extenuate the matter. Gentlemen may cry, Peace, Peace! -- but there is no peace. The war is actually begun! The next gale that sweeps from the North will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that Gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery! Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

--Patrick Henry, March 1775

Bill Clinton's Inaugural Speech

William (Bill) Jefferson Clinton's Inaugural Speech
Given on January 20, 1993

My fellow citizens, today we celebrate the mystery of American renewal.

This ceremony is held in the depth of winter. But, by the words we speak and the faces we show the world, we force the spring. A spring reborn in the world's oldest democracy, that brings forth the vision and courage to reinvent America.

When our founders boldly declared America's independence to the world and our purposes to the Almighty, they knew that America, to endure, would have to change.

Not change for change's sake, but change to preserve American's ideals--life, liberty, the pursuit of happiness. Though we march to the music of our time, our mission is timeless. Each generation of Americans must define what it means to be an American.

On behalf of our nation, I salute my predecessor, President Bush, for his half-century of service to America.

And I thank the millions of men and women whose steadfastness and sacrifice triumphed over depression, fascism and communism.

Today, a generation raised in the shadows of the Cold War assumes new responsibilities in a world warmed by the sunshine of freedom but threatened by still ancient hatreds and new plagues.

Today, a generation raised in the shadows of the Cold War assumes new responsibilities in a world warmed by the sunshine of freedom but threatened by still ancient hatreds and new plagues.

Raised in unrivaled prosperity, we inherit an economy that is still the world's strongest, but is weakened by business failures, stagnant wages, increasing inequality, and deep divisions.

When George Washington first took the oath I have just sworn to uphold, news traveled slowly. Now, the sights and sounds of this ceremony are broadcast instantaneously to billions around the world.

Communications and commerce are global; technology is almost magical; and ambition for a better life is almost universal. We earn our livelihood in peaceful competition with people all across the Earth.

Profound and powerful forces are shaking and remaking our world, and the urgent question of our time is whether we can make change our friend and not our enemy.

This new world has enriched the lives of millions of Americans who are able to compete and win in it. But when people are working harder for less; when others cannot work at all; when the cost of health care devastates families and threatens to bankrupt enterprises, great and small; when fear of crime robs law-abiding citizens of their freedom; and when millions of poor children cannot even imagine the lives we are calling them to lead--we have not made change our friend.

We know we have to face hard truths and take strong steps. But we have not done so. Instead, we have drifted, and that drifting has eroded our resources, fractured our economy, and shaken our confidence.

Though our challenges are fearsome, so are our strengths. And Americans have ever been a restless, questioning, hopeful people. We must bring to our task today the vision and the will of those who came before us.

From our Revolution, Civil War, to the Great Depression, to the Civil Rights Movement, our people have mustered the determination to construct from crises the pillars of our history.

Our democracy must not only be the envy of the world but the engine of our own renewal. There is nothing wrong with America that cannot be fixed by what is right with America.

Thomas Jefferson believed that to preserve the very foundations of our nation, we would need dramatic change from time to time. Well, my fellow citizens, this is our time. Let us embrace it.

Our democracy must not only be the envy of the world but the engine of our own renewal. There is nothing wrong with America that cannot be fixed by what is right with America.

And so today, we pledge an end to the era of deadlock and drift--a new season of American renewal has begun.

To renew America, we must be bold.

We must do what no generation has had to do before. We must invest more in our own people, in their jobs, in their future, and at the same time cut our massive debt. We must do so in a world in which we must compete for every opportunity.

It will not be easy; it will require sacrifice. But it can be done, and done fairly, not choosing the sacrifice for its own sake, but for our own sake, but for our own sake. We must provide for our nation the way a family provides for its children.

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Our founders saw themselves in the light of posterity. We can do no less. Anyone who has ever watched a child's eyes wander into sleep knows what posterity is. Posterity is the world to come—the world for whom we hold our ideals, from whom we have borrowed our planet, and to whom we bear sacred responsibility.

We must do what America does best; offer more opportunity to all and demand more responsibility of all.

It is time to break the bad habit of expecting something for nothing, from our government or from each other. Let us all take more responsibility, not only for ourselves and for our families but for our communities and for our country.

To renew America, we must revitalize our democracy.

This beautiful capital, like every capital since the dawn of civilization, is often a place of intrigue and calculation. Powerful people maneuver for position and worry endlessly about who is in and who is out, who is up and who is down, forgetting those whose toil and sweat sends us here and pays our way.

Americans deserve better, and in this city today, there are people who want to do better. Let us resolve to reform our politics, so that power and privilege no longer shout down the voice of the people. Let us put aside personal advantage so that we can feel the pain and see the promise of America.

Let us resolve to make our government a place for what Franklin Roosevelt called "bold, persistent experimentation", a government of our tomorrows, not our yesterdays. Let us give this capital back to the people to whom it belongs.

Let us resolve to make our government a place for what Franklin Roosevelt called "bold, persistent experimentation", a government of our tomorrows, not our yesterdays. Let us give this capital back to the people to whom it belongs.

To renew America, we must meet challenges abroad as well as at home. There is no longer division between what is foreign and domestic. The world economy, environment, the world AIDS crisis, the world arms race—they affect us all.

Today, as an old order passes, the new world is more free but less stable. Communism's collapse has called forth old animosities and new dangers. Clearly, America must continue to lead the world we did so much to make.

While America rebuilds at home, we will not shrink from the challenges, nor fail to seize the opportunities, of this new world. Together with our friends and allies, we will work to shape change, lest it engulf us.

When our vital interests are challenged, or the will and conscience of the international community defied, we will act—with peaceful diplomacy whenever possible, with force when necessary. The brave Americans serving our nation today in the Persian Gulf, in Somalia, and wherever else they stand are testament to our resolve.

But our greatest strength is the power of our ideas, which are still new in many lands. Across the world, we see them embraced—and we rejoice. Our hopes, our hearts, our hands, are with those on every continent who are building democracy and freedom. Their cause is America's cause.

The American people have summoned the change we celebrate today. You have raised your voices in an unmistakable chorus. You have cast your votes in historic numbers. You have changed the face of Congress, the Presidency, the political process itself. Yes, you, my fellow Americans, have forced the spring. Now, we must do the work that the season demands.

To that work I now turn, with the authority of my office. I ask the Congress to join with me. But no President, no Congress, no government, can undertake this mission alone. My fellow Americans, you, too, must play your part. I challenge a new generation of young Americans to a season of service—to act on your idealism by helping troubled children, keeping company with those in need, and reconnecting our torn communities. There is so much to be done, enough for millions of others who are young in spirit to give of themselves in service, too.

Woodrow Wilson's 14 Points

January 8, 1918

It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The programme of the world's peace, therefore, is our programme; and that programme, the only possible programme, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end.

For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this programme does remove. We have no jealousy of German greatness, and there is nothing in this programme that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world -- the new world in which we now live -- instead of a place of mastery.

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