

## TABLE OF CONTENTS

Letter #	Title/subject	Pages
22.	Other Defects of the Present Confederation [Continued]	1-9
23.	The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union	10-14
24.	The Powers Necessary to the Common Defense Further Considered	15-20
25.	Same Subject Continued	21-25
26.	The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered	26-31
27.	Same Subject Continued	32-35
28.	Same Subject Continued	36-40
29.	Concerning the Militia	41-46
30.	Concerning the General Power of Taxation	47-51
31.	Same Subject Continued	52-56
32.	Same Subject Continued	57-60
33.	Same Subject Continued	61-65
34.	Same Subject Continued	66-71
35.	Same Subject Continued	72-77
36.	Same Subject Continued	78-84
37.	Concerning the Difficulties of the Convention in Devising a Proper Form of Government	85-92
38.	The Same Subject Continued, and the Incoherence of the Objections to the New Plan Exposed.	93-101
39.	The Conformity of the Plan to Republican Principles	102-108
40.	The Powers of the Convention to Form a Mixed Government Examined and Sustained	109-116
41.	General View of the Powers Conferred by The Constitution	117-125
42.	The Powers Conferred by the Constitution Further Considered	126-132

1 The Federalist 22

2 The Same Subject Continued

3 (Other Defects of the Present Confederation)

4 Hamilton for the New York Packet. Friday, December 14, 1787.

5 To the People of the State of New York:

6 IN ADDITION to the defects already enumerated in the existing federal system, there are others of not  
7 less importance, which concur in rendering it altogether unfit for the administration of the affairs of the  
8 Union.

9 The want of a power to regulate commerce is by all parties allowed to be of the number. The utility of  
10 such a power has been anticipated under the first head of our inquiries; and for this reason, as well as  
11 from the universal conviction entertained upon the subject, little need be added in this place. It is  
12 indeed evident, on the most superficial view, that there is no object, either as it respects the interests  
13 of trade or finance, that more strongly demands a federal superintendence. The want of it has already  
14 operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions of  
15 dissatisfaction between the States. No nation acquainted with the nature of our political association  
16 would be unwise enough to enter into stipulations with the United States, by which they conceded  
17 privileges of any importance to them, while they were apprised that the engagements on the part of  
18 the Union might at any moment be violated by its members, and while they found from experience  
19 that they might enjoy every advantage they desired in our markets, without granting us any return  
20 but such as their momentary convenience might suggest. It is not, therefore, to be wondered at that  
21 Mr. Jenkinson, in ushering into the House of Commons a bill for regulating the temporary intercourse  
22 between the two countries, should preface its introduction by a declaration that similar provisions in  
23 former bills had been found to answer every purpose to the commerce of Great Britain, and that it  
24 would be prudent to persist in the plan until it should appear whether the American government was  
25 likely or not to acquire greater consistency.[1]

1 Several States have endeavored, by separate prohibitions, restrictions, and exclusions, to influence the  
2 conduct of that kingdom in this particular, but the want of concert, arising from the want of a general  
3 authority and from clashing and dissimilar views in the State, has hitherto frustrated every  
4 experiment of the kind, and will continue to do so as long as the same obstacles to a uniformity of  
5 measures continue to exist.

6 The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union,  
7 have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared  
8 that examples of this nature, if not restrained by a national control, would be multiplied and extended  
9 till they became not less serious sources of animosity and discord than injurious impediments to the  
10 intercourse between the different parts of the Confederacy. ``The commerce of the German  
11 empire[2] is in continual trammels from the multiplicity of the duties which the several princes and  
12 states exact upon the merchandises passing through their territories, by means of which the fine  
13 streams and navigable rivers with which Germany is so happily watered are rendered almost useless."  
14 Though the genius of the people of this country might never permit this description to be strictly  
15 applicable to us, yet we may reasonably expect, from the gradual conflicts of State regulations, that  
16 the citizens of each would at length come to be considered and treated by the others in no better light  
17 than that of foreigners and aliens.

18 The power of raising armies, by the most obvious construction of the articles of the Confederation, is  
19 merely a power of making requisitions upon the States for quotas of men. This practice in the course of  
20 the late war, was found replete with obstructions to a vigorous and to an economical system of  
21 defense. It gave birth to a competition between the States which created a kind of auction for men. In  
22 order to furnish the quotas required of them, they outbid each other till bounties grew to an enormous  
23 and insupportable size. The hope of a still further increase afforded an inducement to those who were  
24 disposed to serve to procrastinate their enlistment, and disinclined them from engaging for any  
25 considerable periods. Hence, slow and scanty levies of men, in the most critical emergencies of our

1 affairs; short enlistments at an unparalleled expense; continual fluctuations in the troops, ruinous to  
2 their discipline and subjecting the public safety frequently to the perilous crisis of a disbanded army.  
3 Hence, also, those oppressive expedients for raising men which were upon several occasions practiced,  
4 and which nothing but the enthusiasm of liberty would have induced the people to endure.  
5 This method of raising troops is not more unfriendly to economy and vigor than it is to an equal  
6 distribution of the burden. The States near the seat of war, influenced by motives of self-preservation,  
7 made efforts to furnish their quotas, which even exceeded their abilities; while those at a distance from  
8 danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate  
9 pressure of this inequality was not in this case, as in that of the contributions of money, alleviated by  
10 the hope of a final liquidation. The States which did not pay their proportions of money might at least  
11 be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies of  
12 men. We shall not, however, see much reason to regret the want of this hope, when we consider how  
13 little prospect there is, that the most delinquent States will ever be able to make compensation for  
14 their pecuniary failures. The system of quotas and requisitions, whether it be applied to men or  
15 money, is, in every view, a system of imbecility in the Union, and of inequality and injustice among the  
16 members.

17 The right of equal suffrage among the States is another exceptionable part of the Confederation. Every  
18 idea of proportion and every rule of fair representation conspire to condemn a principle, which gives  
19 to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New  
20 York; and to Delaware an equal voice in the national deliberations with Pennsylvania, or Virginia, or  
21 North Carolina. Its operation contradicts the fundamental maxim of republican government, which  
22 requires that the sense of the majority should prevail. Sophistry may reply, that sovereigns are equal,  
23 and that a majority of the votes of the States will be a majority of confederated America. But this kind  
24 of logical legerdemain will never counteract the plain suggestions of justice and common-sense. It may  
25 happen that this majority of States is a small minority of the people of America[3] and two thirds of

1 the people of America could not long be persuaded, upon the credit of artificial distinctions and  
2 syllogistic subtleties, to submit their interests to the management and disposal of one third. The larger  
3 States would after a while revolt from the idea of receiving the law from the smaller. To acquiesce in  
4 such a privation of their due importance in the political scale, would be not merely to be insensible to  
5 the love of power, but even to sacrifice the desire of equality. It is neither rational to expect the first, nor  
6 just to require the last. The smaller States, considering how peculiarly their safety and welfare depend  
7 on union, ought readily to renounce a pretension which, if not relinquished, would prove fatal to its  
8 duration.

9 It may be objected to this, that not seven but nine States, or two thirds of the whole number, must  
10 consent to the most important resolutions; and it may be thence inferred that nine States would  
11 always comprehend a majority of the Union. But this does not obviate the impropriety of an equal vote  
12 between States of the most unequal dimensions and populousness; nor is the inference accurate in  
13 point of fact; for we can enumerate nine States which contain less than a majority of the people[4] and  
14 it is constitutionally possible that these nine may give the vote. Besides, there are matters of  
15 considerable moment determinable by a bare majority; and there are others, concerning which doubts  
16 have been entertained, which, if interpreted in favor of the sufficiency of a vote of seven States, would  
17 extend its operation to interests of the first magnitude. In addition to this, it is to be observed that  
18 there is a probability of an increase in the number of States, and no provision for a proportional  
19 augmentation of the ratio of votes.

20 But this is not all: what at first sight may seem a remedy, is, in reality, a poison. To give a minority a  
21 negative upon the majority (which is always the case where more than a majority is requisite to a  
22 decision), is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress,  
23 from the nonattendance of a few States, have been frequently in the situation of a Polish diet, where a  
24 single vote has been sufficient to put a stop to all their movements. A sixtieth part of the Union, which  
25 is about the proportion of Delaware and Rhode Island, has several times been able to oppose an entire

1 bar to its operations. This is one of those refinements which, in practice, has an effect the reverse of  
2 what is expected from it in theory. The necessity of unanimity in public bodies, or of something  
3 approaching towards it, has been founded upon a supposition that it would contribute to security. But  
4 its real operation is to embarrass the administration, to destroy the energy of the government, and to  
5 substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the  
6 regular deliberations and decisions of a respectable majority. In those emergencies of a nation, in which  
7 the goodness or badness, the weakness or strength of its government, is of the greatest importance,  
8 there is commonly a necessity for action. The public business must, in some way or other, go forward. If  
9 a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it,  
10 the majority, in order that something may be done, must conform to the views of the minority; and  
11 thus the sense of the smaller number will overrule that of the greater, and give a tone to the national  
12 proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of  
13 the public good. And yet, in such a system, it is even happy when such compromises can take place: for  
14 upon some occasions things will not admit of accommodation; and then the measures of government  
15 must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the  
16 concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always  
17 savor of weakness, sometimes border upon anarchy.

18 It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption, as  
19 well as to domestic faction, than that which permits the sense of the majority to decide; though the  
20 contrary of this has been presumed. The mistake has proceeded from not attending with due care to  
21 the mischiefs that may be occasioned by obstructing the progress of government at certain critical  
22 seasons. When the concurrence of a large number is required by the Constitution to the doing of any  
23 national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely to be  
24 done, but we forget how much good may be prevented, and how much ill may be produced, by the  
25 power of hindering the doing what may be necessary, and of keeping affairs in the same unfavorable

1 posture in which they may happen to stand at particular periods.  
2 Suppose, for instance, we were engaged in a war, in conjunction with one foreign nation, against  
3 another. Suppose the necessity of our situation demanded peace, and the interest or ambition of our  
4 ally led him to seek the prosecution of the war, with views that might justify us in making separate  
5 terms. In such a state of things, this ally of ours would evidently find it much easier, by his bribes and  
6 intrigues, to tie up the hands of government from making peace, where two thirds of all the votes were  
7 requisite to that object, than where a simple majority would suffice. In the first case, he would have to  
8 corrupt a smaller number; in the last, a greater number. Upon the same principle, it would be much  
9 easier for a foreign power with which we were at war to perplex our councils and embarrass our  
10 exertions. And, in a commercial view, we may be subjected to similar inconveniences. A nation, with  
11 which we might have a treaty of commerce, could with much greater facility prevent our forming a  
12 connection with her competitor in trade, though such a connection should be ever so beneficial to  
13 ourselves.

14 Evils of this description ought not to be regarded as imaginary. One of the weak sides of republics,  
15 among their numerous advantages, is that they afford too easy an inlet to foreign corruption. An  
16 hereditary monarch, though often disposed to sacrifice his subjects to his ambition, has so great a  
17 personal interest in the government and in the external glory of the nation, that it is not easy for a  
18 foreign power to give him an equivalent for what he would sacrifice by treachery to the state. The  
19 world has accordingly been witness to few examples of this species of royal prostitution, though there  
20 have been abundant specimens of every other kind.

21 In republics, persons elevated from the mass of the community, by the suffrages of their fellow-  
22 citizens, to stations of great pre-eminence and power, may find compensations for betraying their  
23 trust, which, to any but minds animated and guided by superior virtue, may appear to exceed the  
24 proportion of interest they have in the common stock, and to overbalance the obligations of duty.  
25 Hence it is that history furnishes us with so many mortifying examples of the prevalency of foreign

1 corruption in republican governments. How much this contributed to the ruin of the ancient  
2 commonwealths has been already delineated. It is well known that the deputies of the United Provinces  
3 have, in various instances, been purchased by the emissaries of the neighboring kingdoms. The Earl of  
4 Chesterfield (if my memory serves me right), in a letter to his court, intimates that his success in an  
5 important negotiation must depend on his obtaining a major's commission for one of those deputies.  
6 And in Sweden the parties were alternately bought by France and England in so barefaced and  
7 notorious a manner that it excited universal disgust in the nation, and was a principal cause that the  
8 most limited monarch in Europe, in a single day, without tumult, violence, or opposition, became one of  
9 the most absolute and uncontrolled.  
10 A circumstance which crowns the defects of the Confederation remains yet to be mentioned, the want  
11 of a judiciary power. Laws are a dead letter without courts to expound and define their true meaning  
12 and operation. The treaties of the United States, to have any force at all, must be considered as part of  
13 the law of the land. Their true import, as far as respects individuals, must, like all other laws, be  
14 ascertained by judicial determinations. To produce uniformity in these determinations, they ought to  
15 be submitted, in the last resort, to one supreme tribunal. And this tribunal ought to be instituted  
16 under the same authority which forms the treaties themselves. These ingredients are both  
17 indispensable. If there is in each State a court of final jurisdiction, there may be as many different final  
18 determinations on the same point as there are courts. There are endless diversities in the opinions of  
19 men. We often see not only different courts but the judges of the same court differing from each other.  
20 To avoid the confusion which would unavoidably result from the contradictory decisions of a number  
21 of independent judicatories, all nations have found it necessary to establish one court paramount to  
22 the rest, possessing a general superintendence, and authorized to settle and declare in the last resort  
23 a uniform rule of civil justice.  
24 This is the more necessary where the frame of the government is so compounded that the laws of the  
25 whole are in danger of being contravened by the laws of the parts. In this case, if the particular

1 tribunals are invested with a right of ultimate jurisdiction, besides the contradictions to be expected  
2 from difference of opinion, there will be much to fear from the bias of local views and prejudices, and  
3 from the interference of local regulations. As often as such an interference was to happen, there would  
4 be reason to apprehend that the provisions of the particular laws might be preferred to those of the  
5 general laws; for nothing is more natural to men in office than to look with peculiar deference towards  
6 that authority to which they owe their official existence. The treaties of the United States, under the  
7 present Constitution, are liable to the infractions of thirteen different legislatures, and as many  
8 different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the  
9 reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the  
10 passions, and the interests of every member of which it is composed. Is it possible that foreign nations  
11 can either respect or confide in such a government? Is it possible that the people of America will  
12 longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?  
13 In this review of the Confederation, I have confined myself to the exhibition of its most material  
14 defects; passing over those imperfections in its details by which even a great part of the power  
15 intended to be conferred upon it has been in a great measure rendered abortive. It must be by this  
16 time evident to all men of reflection, who can divest themselves of the prepossessions of preconceived  
17 opinions, that it is a system so radically vicious and unsound, as to admit not of amendment but by an  
18 entire change in its leading features and characters.

19 The organization of Congress is itself utterly improper for the exercise of those powers which are  
20 necessary to be deposited in the Union. A single assembly may be a proper receptacle of those slender,  
21 or rather fettered, authorities, which have been heretofore delegated to the federal head; but it would  
22 be inconsistent with all the principles of good government, to intrust it with those additional powers  
23 which, even the moderate and more rational adversaries of the proposed Constitution admit, ought to  
24 reside in the United States. If that plan should not be adopted, and if the necessity of the Union should  
25 be able to withstand the ambitious aims of those men who may indulge magnificent schemes of

1 personal aggrandizement from its dissolution, the probability would be, that we should run into the  
2 project of conferring supplementary powers upon Congress, as they are now constituted; and either the  
3 machine, from the intrinsic feebleness of its structure, will moulder into pieces, in spite of our ill-judged  
4 efforts to prop it; or, by successive augmentations of its force an energy, as necessity might prompt, we  
5 shall finally accumulate, in a single body, all the most important prerogatives of sovereignty, and thus  
6 entail upon our posterity one of the most execrable forms of government that human infatuation ever  
7 contrived. Thus, we should create in reality that very tyranny which the adversaries of the new  
8 Constitution either are, or affect to be, solicitous to avert.

9 It has not a little contributed to the infirmities of the existing federal system, that it never had a  
10 ratification by the people. Resting on no better foundation than the consent of the several legislatures,  
11 it has been exposed to frequent and intricate questions concerning the validity of its powers, and has,  
12 in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its  
13 ratification to the law of a State, it has been contended that the same authority might repeal the law by  
14 which it was ratified. However gross a heresy it may be to maintain that a party to a compact has a  
15 right to revoke that compact, the doctrine itself has had respectable advocates. The possibility of a  
16 question of this nature proves the necessity of laying the foundations of our national government  
17 deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest  
18 on the solid basis of the consent of the people. The streams of national power ought to flow  
19 immediately from that pure, original fountain of all legitimate authority.

20 Publius.

21 Notes: [1] This, as nearly as I can recollect, was the sense of his speech on introducing the last bill.;  
22 [2] Encyclopedia, article ``Empire.''; [3] New Hampshire, Rhode Island, New Jersey, Delaware,  
23 Georgia, South Carolina, and Maryland are a majority of the whole number of the States, but they do  
24 not contain one third of the people.; [4] Add New York and Connecticut to the foregoing seven, and  
25 they will be less than a majority.

1 The Federalist 23

2 The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union

3 Hamilton for the New York Packet. Tuesday, December 18, 1787.

4 To the People of the State of New York:

5 THE necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of  
6 the Union, is the point at the examination of which we are now arrived.

7 This inquiry will naturally divide itself into three branches the objects to be provided for by the federal  
8 government, the quantity of power necessary to the accomplishment of those objects, the persons upon  
9 whom that power ought to operate. Its distribution and organization will more properly claim our  
10 attention under the succeeding head.

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

15 The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to  
16 prescribe rules for the government of both; to direct their operations; to provide for their support.

17 These powers ought to exist without limitation, because it is impossible to foresee or define the extent  
18 and variety of national exigencies, or the correspondent extent and variety of the means which may  
19 be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and  
20 for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is  
21 committed. This power ought to be coextensive with all the possible combinations of such  
22 circumstances; and ought to be under the direction of the same councils which are appointed to  
23 preside over the common defense.

24 This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along  
25 with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon

1 axioms as simple as they are universal; the means ought to be proportioned to the end; the persons,  
2 from whose agency the attainment of any end is expected, ought to possess the means by which it is to  
3 be attained.

4 Whether there ought to be a federal government intrusted with the care of the common defense, is a  
5 question in the first instance, open for discussion; but the moment it is decided in the affirmative, it will  
6 follow, that that government ought to be clothed with all the powers requisite to complete execution of  
7 its trust. And unless it can be shown that the circumstances which may affect the public safety are  
8 reducible within certain determinate limits; unless the contrary of this position can be fairly and  
9 rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of  
10 that authority which is to provide for the defense and protection of the community, in any matter  
11 essential to its efficacy that is, in any matter essential to the formation, direction, or support of  
12 the national forces.

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

22 The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and  
23 the observations, made under the last head, will, I imagine, have sufficed to convince the impartial and  
24 discerning, that there is an absolute necessity for an entire change in the first principles of the  
25 system; that if we are in earnest about giving the Union energy and duration, we must abandon the

1 vain project of legislating upon the States in their collective capacities; we must extend the laws of the  
2 federal government to the individual citizens of America; we must discard the fallacious scheme of  
3 quotas and requisitions, as equally impracticable and unjust. The result from all this is that the Union  
4 ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues  
5 which will be required for the formation and support of an army and navy, in the customary and  
6 ordinary modes practiced in other governments.

7 If the circumstances of our country are such as to demand a compound instead of a simple, a  
8 confederate instead of a sole, government, the essential point which will remain to be adjusted will be to  
9 discriminate the objects, as far as it can be done, which shall appertain to the different provinces or  
10 departments of power; allowing to each the most ample authority for fulfilling the objects committed to  
11 its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies  
12 and revenues necessary to this purpose? The government of the Union must be empowered to pass all  
13 laws, and to make all regulations which have relation to them. The same must be the case in respect to  
14 commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the  
15 administration of justice between the citizens of the same State the proper department of the local  
16 governments? These must possess all the authorities which are connected with this object, and with  
17 every other that may be allotted to their particular cognizance and direction. Not to confer in each  
18 case a degree of power commensurate to the end, would be to violate the most obvious rules of  
19 prudence and propriety, and improvidently to trust the great interests of the nation to hands which  
20 are disabled from managing them with vigor and success.

21 Who is likely to make suitable provisions for the public defense, as that body to which the  
22 guardianship of the public safety is confided; which, as the centre of information, will best understand  
23 the extent and urgency of the dangers that threaten; as the representative of the whole, will feel itself  
24 most deeply interested in the preservation of every part; which, from the responsibility implied in the  
25 duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which,

1 by the extension of its authority throughout the States, can alone establish uniformity and concert in  
2 the plans and measures by which the common safety is to be secured? Is there not a manifest  
3 inconsistency in devolving upon the federal government the care of the general defense, and leaving in  
4 the State governments the effective powers by which it is to be provided for? Is not a want of co-  
5 operation the infallible consequence of such a system? And will not weakness, disorder, an undue  
6 distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense,  
7 be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the  
8 course of the revolution which we have just accomplished?

9 Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it  
10 is both unwise and dangerous to deny the federal government an unconfined authority, as to all those  
11 objects which are intrusted to its management. It will indeed deserve the most vigilant and careful  
12 attention of the people, to see that it be modeled in such a manner as to admit of its being safely vested  
13 with the requisite powers. If any plan which has been, or may be, offered to our consideration, should  
14 not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A  
15 government, the constitution of which renders it unfit to be trusted with all the powers which a free  
16 people ought to delegate to any government, would be an unsafe and improper depositary of  
17 the national interests. Wherever these can with propriety be confided, the coincident powers may  
18 safely accompany them. This is the true result of all just reasoning upon the subject. And the  
19 adversaries of the plan promulgated by the convention ought to have confined themselves to showing,  
20 that the internal structure of the proposed government was such as to render it unworthy of the  
21 confidence of the people. They ought not to have wandered into inflammatory declamations and  
22 unmeaning cavils about the extent of the powers. The powers are not too extensive for the objects of  
23 federal administration, or, in other words, for the management of our national interests; nor can any  
24 satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as  
25 has been insinuated by some of the writers on the other side, that the difficulty arises from the nature

1 of the thing, and that the extent of the country will not permit us to form a government in which such  
2 ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to  
3 the expedient of separate confederacies, which will move within more practicable spheres. For the  
4 absurdity must continually stare us in the face of confiding to a government the direction of the most  
5 essential national interests, without daring to trust it to the authorities which are indispensable to their  
6 proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a  
7 rational alternative.

8 I trust, however, that the impracticability of one general system cannot be shown. I am greatly  
9 mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the  
10 observations which have been made in the course of these papers have served to place the reverse of  
11 that position in as clear a light as any matter still in the womb of time and experience can be  
12 susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent  
13 of the country, is the strongest argument in favor of an energetic government; for any other can  
14 certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose  
15 the adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to  
16 verify the gloomy doctrines which predict the impracticability of a national system pervading entire  
17 limits of the present Confederacy.

18 Publius.

19

20

21

22

23

24

25

1 The Federalist 24

2 The Powers Necessary to the Common Defense Further Considered

3 Hamilton for the Independent Journal.

4 To the People of the State of New York:

5 To THE powers proposed to be conferred upon the federal government, in respect to the creation and  
6 direction of the national forces, I have met with but one specific objection, which, if I understand it  
7 right, is this, that proper provision has not been made against the existence of standing armies in time  
8 of peace; an objection which, I shall now endeavor to show, rests on weak and unsubstantial  
9 foundations.

10 It has indeed been brought forward in the most vague and general form, supported only by bold  
11 assertions, without the appearance of argument; without even the sanction of theoretical opinions; in  
12 contradiction to the practice of other free nations, and to the general sense of America, as expressed  
13 in most of the existing constitutions. The propriety of this remark will appear, the moment it is  
14 recollected that the objection under consideration turns upon a supposed necessity of restraining  
15 the legislative authority of the nation, in the article of military establishments; a principle unheard of,  
16 except in one or two of our State constitutions, and rejected in all the rest.

17 A stranger to our politics, who was to read our newspapers at the present juncture, without having  
18 previously inspected the plan reported by the convention, would be naturally led to one of two  
19 conclusions: either that it contained a positive injunction, that standing armies should be kept up in  
20 time of peace; or that it vested in the executive the whole power of levying troops, without subjecting  
21 his discretion, in any shape, to the control of the legislature.

22 If he came afterwards to peruse the plan itself, he would be surprised to discover, that neither the one  
23 nor the other was the case; that the whole power of raising armies was lodged in the legislature, not in  
24 the executive; that this legislature was to be a popular body, consisting of the representatives of the  
25 people periodically elected; and that instead of the provision he had supposed in favor of standing

1 armies, there was to be found, in respect to this object, an important qualification even of the legislative  
2 discretion, in that clause which forbids the appropriation of money for the support of an army for any  
3 longer period than two years a precaution which, upon a nearer view of it, will appear to be a great and  
4 real security against the keeping up of troops without evident necessity.

5 Disappointed in his first surmise, the person I have supposed would be apt to pursue his conjectures a  
6 little further. He would naturally say to himself, it is impossible that all this vehement and pathetic  
7 declamation can be without some colorable pretext. It must needs be that this people, so jealous of their  
8 liberties, have, in all the preceding models of the constitutions which they have established, inserted  
9 the most precise and rigid precautions on this point, the omission of which, in the new plan, has given  
10 birth to all this apprehension and clamor.

11 If, under this impression, he proceeded to pass in review the several State constitutions, how great  
12 would be his disappointment to find that two only of them[1] contained an interdiction of standing  
13 armies in time of peace; that the other eleven had either observed a profound silence on the subject, or  
14 had in express terms admitted the right of the Legislature to authorize their existence.

15 Still, however he would be persuaded that there must be some plausible foundation for the cry raised  
16 on this head. He would never be able to imagine, while any source of information remained  
17 unexplored, that it was nothing more than an experiment upon the public credulity, dictated either by  
18 a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous. It  
19 would probably occur to him, that he would be likely to find the precautions he was in search of in the  
20 primitive compact between the States. Here, at length, he would expect to meet with a solution of the  
21 enigma. No doubt, he would observe to himself, the existing Confederation must contain the most  
22 explicit provisions against military establishments in time of peace; and a departure from this model,  
23 in a favorite point, has occasioned the discontent which appears to influence these political  
24 champions.

25 If he should now apply himself to a careful and critical survey of the articles of Confederation, his

1 astonishment would not only be increased, but would acquire a mixture of indignation, at the  
2 unexpected discovery, that these articles, instead of containing the prohibition he looked for, and  
3 though they had, with jealous circumspection, restricted the authority of the State legislatures in this  
4 particular, had not imposed a single restraint on that of the United States. If he happened to be a man of  
5 quick sensibility, or ardent temper, he could now no longer refrain from regarding these clamors as the  
6 dishonest artifices of a sinister and unprincipled opposition to a plan which ought at least to receive a  
7 fair and candid examination from all sincere lovers of their country! How else, he would say, could the  
8 authors of them have been tempted to vent such loud censures upon that plan, about a point in which it  
9 seems to have conformed itself to the general sense of America as declared in its different forms of  
10 government, and in which it has even superadded a new and powerful guard unknown to any of them?

11 If, on the contrary, he happened to be a man of calm and dispassionate feelings, he would indulge a  
12 sigh for the frailty of human nature, and would lament, that in a matter so interesting to the  
13 happiness of millions, the true merits of the question should be perplexed and entangled by expedients  
14 so unfriendly to an impartial and right determination. Even such a man could hardly forbear  
15 remarking, that a conduct of this kind has too much the appearance of an intention to mislead the  
16 people by alarming their passions, rather than to convince them by arguments addressed to their  
17 understandings.

18 But however little this objection may be countenanced, even by precedents among ourselves, it may be  
19 satisfactory to take a nearer view of its intrinsic merits. From a close examination it will appear that  
20 restraints upon the discretion of the legislature in respect to military establishments in time of peace,  
21 would be improper to be imposed, and if imposed, from the necessities of society, would be unlikely to  
22 be observed.

23 Though a wide ocean separates the United States from Europe, yet there are various considerations  
24 that warn us against an excess of confidence or security. On one side of us, and stretching far into our  
25 rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to

1 meet the British settlements, are colonies and establishments subject to the dominion of Spain. This  
2 situation and the vicinity of the West India Islands, belonging to these two powers create between them,  
3 in respect to their American possessions and in relation to us, a common interest. The savage tribes on  
4 our Western frontier ought to be regarded as our natural enemies, their natural allies, because they  
5 have most to fear from us, and most to hope from them. The improvements in the art of navigation  
6 have, as to the facility of communication, rendered distant nations, in a great measure, neighbors.  
7 Britain and Spain are among the principal maritime powers of Europe. A future concert of views  
8 between these nations ought not to be regarded as improbable. The increasing remoteness of  
9 consanguinity is every day diminishing the force of the family compact between France and Spain. And  
10 politicians have ever with great reason considered the ties of blood as feeble and precarious links of  
11 political connection. These circumstances combined, admonish us not to be too sanguine in  
12 considering ourselves as entirely out of the reach of danger.  
13 Previous to the Revolution, and ever since the peace, there has been a constant necessity for keeping  
14 small garrisons on our Western frontier. No person can doubt that these will continue to be  
15 indispensable, if it should only be against the ravages and depredations of the Indians. These garrisons  
16 must either be furnished by occasional detachments from the militia, or by permanent corps in the  
17 pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia  
18 would not long, if at all, submit to be dragged from their occupations and families to perform that most  
19 disagreeable duty in times of profound peace. And if they could be prevailed upon or compelled to do it,  
20 the increased expense of a frequent rotation of service, and the loss of labor and disconcertion of the  
21 industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as  
22 burdensome and injurious to the public as ruinous to private citizens. The latter resource of  
23 permanent corps in the pay of the government amounts to a standing army in time of peace; a small  
24 one, indeed, but not the less real for being small. Here is a simple view of the subject, that shows us at  
25 once the impropriety of a constitutional interdiction of such establishments, and the necessity of

1 leaving the matter to the discretion and prudence of the legislature.

2 In proportion to our increase in strength, it is probable, nay, it may be said certain, that Britain and

3 Spain would augment their military establishments in our neighborhood. If we should not be willing to

4 be exposed, in a naked and defenseless condition, to their insults and encroachments, we should find it

5 expedient to increase our frontier garrisons in some ratio to the force by which our Western

6 settlements might be annoyed. There are, and will be, particular posts, the possession of which will

7 include the command of large districts of territory, and facilitate future invasions of the remainder. It

8 may be added that some of those posts will be keys to the trade with the Indian nations. Can any man

9 think it would be wise to leave such posts in a situation to be at any instant seized by one or the other of

10 two neighboring and formidable powers? To act this part would be to desert all the usual maxims of

11 prudence and policy.

12 If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavor, as

13 soon as possible, to have a navy. To this purpose there must be dock-yards and arsenals; and for the

14 defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea

15 that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that

16 purpose; but where naval establishments are in their infancy, moderate garrisons will, in all

17 likelihood, be found an indispensable security against descents for the destruction of the arsenals and

18 dock-yards, and sometimes of the fleet itself.

19 Publius.

20 This statement of the matter is taken from the printed collection of State constitutions. Pennsylvania

21 and North Carolina are the two which contain the interdiction in these words: ``As standing armies in

22 time of peace are dangerous to liberty, they ought not to be kept up." This is, in truth, rather

23 a caution than a prohibition. New Hampshire, Massachusetts, Delaware, and Maryland have, in each

24 of their bills of rights, a clause to this effect: ``Standing armies are dangerous to liberty, and ought not

25 to be raised or kept up without the consent of the legislature"; which is a formal admission of the

1 authority of the Legislature. New York has no bills of rights, and her constitution says not a word about  
2 the matter. No bills of rights appear annexed to the constitutions of the other States, except the  
3 foregoing, and their constitutions are equally silent. I am told, however that one or two States have bills  
4 of rights which do not appear in this collection; but that those also recognize the right of the legislative  
5 authority in this respect.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 25

2 The Same Subject Continued

3 (The Powers Necessary to the Common Defense Further Considered)

4 Hamilton for the New York Packet. Friday, December 21, 1787.

5 To the People of the State of New York:

6 IT MAY perhaps be urged that the objects enumerated in the preceding number ought to be provided for  
7 by the State governments, under the direction of the Union. But this would be, in reality, an inversion of  
8 the primary principle of our political association, as it would in practice transfer the care of the  
9 common defense from the federal head to the individual members: a project oppressive to some States,  
10 dangerous to all, and baneful to the Confederacy.

11 The territories of Britain, Spain, and of the Indian nations in our neighborhood do not border on  
12 particular States, but encircle the Union from Maine to Georgia. The danger, though in different  
13 degrees, is therefore common. And the means of guarding against it ought, in like manner, to be the  
14 objects of common councils and of a common treasury. It happens that some States, from local  
15 situation, are more directly exposed. New York is of this class. Upon the plan of separate provisions,  
16 New York would have to sustain the whole weight of the establishments requisite to her immediate  
17 safety, and to the mediate or ultimate protection of her neighbors. This would neither be equitable as it  
18 respected New York nor safe as it respected the other States. Various inconveniences would attend  
19 such a system. The States, to whose lot it might fall to support the necessary establishments, would be  
20 as little able as willing, for a considerable time to come, to bear the burden of competent provisions.

21 The security of all would thus be subjected to the parsimony, improvidence, or inability of a part. If the  
22 resources of such part becoming more abundant and extensive, its provisions should be  
23 proportionally enlarged, the other States would quickly take the alarm at seeing the whole military  
24 force of the Union in the hands of two or three of its members, and those probably amongst the most  
25 powerful. They would each choose to have some counterpoise, and pretenses could easily be contrived.

1 In this situation, military establishments, nourished by mutual jealousy, would be apt to swell beyond  
2 their natural or proper size; and being at the separate disposal of the members, they would be engines  
3 for the abridgment or demolition of the national authority.

4 Reasons have been already given to induce a supposition that the State governments will too naturally  
5 be prone to a rivalship with that of the Union, the foundation of which will be the love of power; and that  
6 in any contest between the federal head and one of its members the people will be most apt to unite with  
7 their local government. If, in addition to this immense advantage, the ambition of the members should  
8 be stimulated by the separate and independent possession of military forces, it would afford too strong  
9 a temptation and too great a facility to them to make enterprises upon, and finally to subvert, the  
10 constitutional authority of the Union. On the other hand, the liberty of the people would be less safe in  
11 this state of things than in that which left the national forces in the hands of the national government.  
12 As far as an army may be considered as a dangerous weapon of power, it had better be in those hands  
13 of which the people are most likely to be jealous than in those of which they are least likely to be  
14 jealous. For it is a truth, which the experience of ages has attested, that the people are always most in  
15 danger when the means of injuring their rights are in the possession of those of whom they entertain  
16 the least suspicion.

17 The framers of the existing Confederation, fully aware of the danger to the Union from the separate  
18 possession of military forces by the States, have, in express terms, prohibited them from having either  
19 ships or troops, unless with the consent of Congress. The truth is, that the existence of a federal  
20 government and military establishments under State authority are not less at variance with each  
21 other than a due supply of the federal treasury and the system of quotas and requisitions.

22 There are other lights besides those already taken notice of, in which the impropriety of restraints on  
23 the discretion of the national legislature will be equally manifest. The design of the objection, which  
24 has been mentioned, is to preclude standing armies in time of peace, though we have never been  
25 informed how far it is designed the prohibition should extend; whether to raising armies as well as

1 to keeping them up in a season of tranquillity or not. If it be confined to the latter it will have no precise  
2 signification, and it will be ineffectual for the purpose intended. When armies are once raised what shall  
3 be denominated ``keeping them up," contrary to the sense of the Constitution? What time shall be  
4 requisite to ascertain the violation? Shall it be a week, a month, a year? Or shall we say they may be  
5 continued as long as the danger which occasioned their being raised continues? This would be to admit  
6 that they might be kept up in time of peace, against threatening or impending danger, which would be at  
7 once to deviate from the literal meaning of the prohibition, and to introduce an extensive latitude of  
8 construction. Who shall judge of the continuance of the danger? This must undoubtedly be submitted to  
9 the national government, and the matter would then be brought to this issue, that the national  
10 government, to provide against apprehended danger, might in the first instance raise troops, and  
11 might afterwards keep them on foot as long as they supposed the peace or safety of the community  
12 was in any degree of jeopardy. It is easy to perceive that a discretion so latitudinary as this would  
13 afford ample room for eluding the force of the provision.

14 The supposed utility of a provision of this kind can only be founded on the supposed probability, or at  
15 least possibility, of a combination between the executive and the legislative, in some scheme of  
16 usurpation. Should this at any time happen, how easy would it be to fabricate pretenses of  
17 approaching danger! Indian hostilities, instigated by Spain or Britain, would always be at hand.  
18 Provocations to produce the desired appearances might even be given to some foreign power, and  
19 appeased again by timely concessions. If we can reasonably presume such a combination to have been  
20 formed, and that the enterprise is warranted by a sufficient prospect of success, the army, when once  
21 raised, from whatever cause, or on whatever pretext, may be applied to the execution of the project.  
22 If, to obviate this consequence, it should be resolved to extend the prohibition to the raising of armies  
23 in time of peace, the United States would then exhibit the most extraordinary spectacle which the  
24 world has yet seen, that of a nation incapacitated by its Constitution to prepare for defense, before it  
25 was actually invaded. As the ceremony of a formal denunciation of war has of late fallen into disuse,

1 the presence of an enemy within our territories must be waited for, as the legal warrant to the  
2 government to begin its levies of men for the protection of the State. We must receive the blow, before  
3 we could even prepare to return it. All that kind of policy by which nations anticipate distant danger,  
4 and meet the gathering storm, must be abstained from, as contrary to the genuine maxims of a free  
5 government. We must expose our property and liberty to the mercy of foreign invaders, and invite  
6 them by our weakness to seize the naked and defenseless prey, because we are afraid that rulers,  
7 created by our choice, dependent on our will, might endanger that liberty, by an abuse of the means  
8 necessary to its preservation.

9 Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all  
10 times equal to the national defense. This doctrine, in substance, had like to have lost us our  
11 independence. It cost millions to the United States that might have been saved. The facts which, from  
12 our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a  
13 suggestion. The steady operations of war against a regular and disciplined army can only be  
14 successfully conducted by a force of the same kind. Considerations of economy, not less than of  
15 stability and vigor, confirm this position. The American militia, in the course of the late war, have, by  
16 their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them  
17 feel and know that the liberty of their country could not have been established by their efforts alone,  
18 however great and valuable they were. War, like most other things, is a science to be acquired and  
19 perfected by diligence, by perserverance, by time, and by practice.

20 All violent policy, as it is contrary to the natural and experienced course of human affairs, defeats  
21 itself. Pennsylvania, at this instant, affords an example of the truth of this remark. The Bill of Rights  
22 of that State declares that standing armies are dangerous to liberty, and ought not to be kept up in  
23 time of peace. Pennsylvania, nevertheless, in a time of profound peace, from the existence of partial  
24 disorders in one or two of her counties, has resolved to raise a body of troops; and in all probability  
25 will keep them up as long as there is any appearance of danger to the public peace. The conduct of

1 Massachusetts affords a lesson on the same subject, though on different ground. That State (without  
2 waiting for the sanction of Congress, as the articles of the Confederation require) was compelled to raise  
3 troops to quell a domestic insurrection, and still keeps a corps in pay to prevent a revival of the spirit of  
4 revolt. The particular constitution of Massachusetts opposed no obstacle to the measure; but the  
5 instance is still of use to instruct us that cases are likely to occur under our government, as well as  
6 under those of other nations, which will sometimes render a military force in time of peace essential to  
7 the security of the society, and that it is therefore improper in this respect to control the legislative  
8 discretion. It also teaches us, in its application to the United States, how little the rights of a feeble  
9 government are likely to be respected, even by its own constituents. And it teaches us, in addition to the  
10 rest, how unequal parchment provisions are to a struggle with public necessity .

11 It was a fundamental maxim of the Lacedaemonian commonwealth, that the post of admiral should  
12 not be conferred twice on the same person. The Peloponnesian confederates, having suffered a severe  
13 defeat at sea from the Athenians, demanded Lysander, who had before served with success in that  
14 capacity, to command the combined fleets. The Lacedaemonians, to gratify their allies, and yet  
15 preserve the semblance of an adherence to their ancient institutions, had recourse to the flimsy  
16 subterfuge of investing Lysander with the real power of admiral, under the nominal title of vice-  
17 admiral. This instance is selected from among a multitude that might be cited to confirm the truth  
18 already advanced and illustrated by domestic examples; which is, that nations pay little regard to  
19 rules and maxims calculated in their very nature to run counter to the necessities of society. Wise  
20 politicians will be cautious about fettering the government with restrictions that cannot be observed,  
21 because they know that every breach of the fundamental laws, though dictated by necessity, impairs  
22 that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of  
23 a country, and forms a precedent for other breaches where the same plea of necessity does not exist at  
24 all, or is less urgent and palpable.

25 Publius.

1 The Federalist 26

2 The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered

3 Hamilton for the Independent Journal.

4 To the People of the State of New York:

5 IT WAS a thing hardly to be expected that in a popular revolution the minds of men should stop at that

6 happy mean which marks the salutary boundary between power and privilege, and combines the

7 energy of government with the security of private rights. A failure in this delicate and important point

8 is the great source of the inconveniences we experience, and if we are not cautious to avoid a repetition

9 of the error, in our future attempts to rectify and ameliorate our system, we may travel from one

10 chimerical project to another; we may try change after change; but we shall never be likely to make

11 any material change for the better.

12 The idea of restraining the legislative authority, in the means of providing for the national defense, is

13 one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened. We

14 have seen, however, that it has not had thus far an extensive prevalency; that even in this country,

15 where it made its first appearance, Pennsylvania and North Carolina are the only two States by which

16 it has been in any degree patronized; and that all the others have refused to give it the least

17 countenance; wisely judging that confidence must be placed somewhere; that the necessity of doing it,

18 is implied in the very act of delegating power; and that it is better to hazard the abuse of that

19 confidence than to embarrass the government and endanger the public safety by impolitic restrictions

20 on the legislative authority. The opponents of the proposed Constitution combat, in this respect, the

21 general decision of America; and instead of being taught by experience the propriety of correcting any

22 extremes into which we may have heretofore run, they appear disposed to conduct us into others still

23 more dangerous, and more extravagant. As if the tone of government had been found too high, or too

24 rigid, the doctrines they teach are calculated to induce us to depress or to relax it, by expedients

25 which, upon other occasions, have been condemned or forborne. It may be affirmed without the

1 imputation of invective, that if the principles they inculcate, on various points, could so far obtain as to  
2 become the popular creed, they would utterly unfit the people of this country for any species of  
3 government whatever. But a danger of this kind is not to be apprehended. The citizens of America have  
4 too much discernment to be argued into anarchy. And I am much mistaken, if experience has not  
5 wrought a deep and solemn conviction in the public mind, that greater energy of government is  
6 essential to the welfare and prosperity of the community.

7 It may not be amiss in this place concisely to remark the origin and progress of the idea, which aims at  
8 the exclusion of military establishments in time of peace. Though in speculative minds it may arise  
9 from a contemplation of the nature and tendency of such institutions, fortified by the events that have  
10 happened in other ages and countries, yet as a national sentiment, it must be traced to those habits of  
11 thinking which we derive from the nation from whom the inhabitants of these States have in general  
12 sprung.

13 In England, for a long time after the Norman Conquest, the authority of the monarch was almost  
14 unlimited. Inroads were gradually made upon the prerogative, in favor of liberty, first by the barons,  
15 and afterwards by the people, till the greatest part of its most formidable pretensions became extinct.

16 But it was not till the revolution in 1688, which elevated the Prince of Orange to the throne of Great  
17 Britain, that English liberty was completely triumphant. As incident to the undefined power of making  
18 war, an acknowledged prerogative of the crown, Charles II. had, by his own authority, kept on foot in  
19 time of peace a body of 5,000 regular troops. And this number James II. increased to 30,000; who  
20 were paid out of his civil list. At the revolution, to abolish the exercise of so dangerous an authority, it  
21 became an article of the Bill of Rights then framed, that ``the raising or keeping a standing army  
22 within the kingdom in time of peace, unless with the consent of parliament, was against law."

23 In that kingdom, when the pulse of liberty was at its highest pitch, no security against the danger of  
24 standing armies was thought requisite, beyond a prohibition of their being raised or kept up by the  
25 mere authority of the executive magistrate. The patriots, who effected that memorable revolution,

1 were too temperate, too wellinformed, to think of any restraint on the legislative discretion. They were  
2 aware that a certain number of troops for guards and garrisons were indispensable; that no precise  
3 bounds could be set to the national exigencies; that a power equal to every possible contingency must  
4 exist somewhere in the government: and that when they referred the exercise of that power to the  
5 judgment of the legislature, they had arrived at the ultimate point of precaution which was reconcilable  
6 with the safety of the community.

7 From the same source, the people of America may be said to have derived an hereditary impression of  
8 danger to liberty, from standing armies in time of peace. The circumstances of a revolution quickened  
9 the public sensibility on every point connected with the security of popular rights, and in some  
10 instances raise the warmth of our zeal beyond the degree which consisted with the due temperature of  
11 the body politic. The attempts of two of the States to restrict the authority of the legislature in the  
12 article of military establishments, are of the number of these instances. The principles which had  
13 taught us to be jealous of the power of an hereditary monarch were by an injudicious excess extended  
14 to the representatives of the people in their popular assemblies. Even in some of the States, where this  
15 error was not adopted, we find unnecessary declarations that standing armies ought not to be kept up,  
16 in time of peace, without the consent of the legislative. I call them unnecessary, because the reason  
17 which had introduced a similar provision into the English Bill of Rights is not applicable to any of the  
18 State constitutions. The power of raising armies at all, under those constitutions, can by no  
19 construction be deemed to reside anywhere else, than in the legislatures themselves; and it was  
20 superfluous, if not absurd, to declare that a matter should not be done without the consent of a body,  
21 which alone had the power of doing it. Accordingly, in some of these constitutions, and among others,  
22 in that of this State of New York, which has been justly celebrated, both in Europe and America, as one  
23 of the best of the forms of government established in this country, there is a total silence upon the  
24 subject.

25 It is remarkable, that even in the two States which seem to have meditated an interdiction of military

1 establishments in time of peace, the mode of expression made use of is rather cautionary than  
2 prohibitory. It is not said, that standing armies shall not be kept up, but that they ought not to be kept  
3 up, in time of peace. This ambiguity of terms appears to have been the result of a conflict between  
4 jealousy and conviction; between the desire of excluding such establishments at all events, and the  
5 persuasion that an absolute exclusion would be unwise and unsafe.

6 Can it be doubted that such a provision, whenever the situation of public affairs was understood to  
7 require a departure from it, would be interpreted by the legislature into a mere admonition, and would  
8 be made to yield to the necessities or supposed necessities of the State? Let the fact already mentioned,  
9 with respect to Pennsylvania, decide. What then (it may be asked) is the use of such a provision, if it  
10 cease to operate the moment there is an inclination to disregard it?

11 Let us examine whether there be any comparison, in point of efficacy, between the provision alluded to  
12 and that which is contained in the new Constitution, for restraining the appropriations of money for  
13 military purposes to the period of two years. The former, by aiming at too much, is calculated to effect  
14 nothing; the latter, by steering clear of an imprudent extreme, and by being perfectly compatible with  
15 a proper provision for the exigencies of the nation, will have a salutary and powerful operation.

16 The legislature of the United States will be obliged, by this provision, once at least in every two years,  
17 to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the  
18 point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They  
19 are not at liberty to vest in the executive department permanent funds for the support of an army, if  
20 they were even incautious enough to be willing to repose in it so improper a confidence. As the spirit of  
21 party, in different degrees, must be expected to infect all political bodies, there will be, no doubt,  
22 persons in the national legislature willing enough to arraign the measures and criminate the views of  
23 the majority. The provision for the support of a military force will always be a favorable topic for  
24 declamation. As often as the question comes forward, the public attention will be roused and attracted  
25 to the subject, by the party in opposition; and if the majority should be really disposed to exceed the

1 proper limits, the community will be warned of the danger, and will have an opportunity of taking  
2 measures to guard against it. Independent of parties in the national legislature itself, as often as the  
3 period of discussion arrived, the State legislatures, who will always be not only vigilant but suspicious  
4 and jealous guardians of the rights of the citizens against encroachments from the federal government,  
5 will constantly have their attention awake to the conduct of the national rulers, and will be ready  
6 enough, if any thing improper appears, to sound the alarm to the people, and not only to be the voice,  
7 but, if necessary, the arm of their discontent.

8 Schemes to subvert the liberties of a great community require time to mature them for execution. An  
9 army, so large as seriously to menace those liberties, could only be formed by progressive  
10 augmentations; which would suppose, not merely a temporary combination between the legislature  
11 and executive, but a continued conspiracy for a series of time. Is it probable that such a combination  
12 would exist at all? Is it probable that it would be persevered in, and transmitted along through all the  
13 successive variations in a representative body, which biennial elections would naturally produce in  
14 both houses? Is it presumable, that every man, the instant he took his seat in the national Senate or  
15 House of Representatives, would commence a traitor to his constituents and to his country? Can it be  
16 supposed that there would not be found one man, discerning enough to detect so atrocious a  
17 conspiracy, or bold or honest enough to apprise his constituents of their danger? If such presumptions  
18 can fairly be made, there ought at once to be an end of all delegated authority. The people should  
19 resolve to recall all the powers they have heretofore parted with out of their own hands, and to divide  
20 themselves into as many States as there are counties, in order that they may be able to manage their  
21 own concerns in person.

22 If such suppositions could even be reasonably made, still the concealment of the design, for any  
23 duration, would be impracticable. It would be announced, by the very circumstance of augmenting the  
24 army to so great an extent in time of profound peace. What colorable reason could be assigned, in a  
25 country so situated, for such vast augmentations of the military force? It is impossible that the people

1 could be long deceived; and the destruction of the project, and of the projectors, would quickly follow  
2 the discovery.

3 It has been said that the provision which limits the appropriation of money for the support of an army  
4 to the period of two years would be unavailing, because the Executive, when once possessed of a force  
5 large enough to awe the people into submission, would find resources in that very force sufficient to  
6 enable him to dispense with supplies from the acts of the legislature. But the question again recurs,  
7 upon what pretense could he be put in possession of a force of that magnitude in time of peace? If we  
8 suppose it to have been created in consequence of some domestic insurrection or foreign war, then it  
9 becomes a case not within the principles of the objection; for this is levelled against the power of  
10 keeping up troops in time of peace. Few persons will be so visionary as seriously to contend that  
11 military forces ought not to be raised to quell a rebellion or resist an invasion; and if the defense of the  
12 community under such circumstances should make it necessary to have an army so numerous as to  
13 hazard its liberty, this is one of those calamities for which there is neither preventative nor cure. It  
14 cannot be provided against by any possible form of government; it might even result from a simple  
15 league offensive and defensive, if it should ever be necessary for the confederates or allies to form an  
16 army for common defense.

17 But it is an evil infinitely less likely to attend us in a united than in a disunited state; nay, it may be  
18 safely asserted that it is an evil altogether unlikely to attend us in the latter situation. It is not easy to  
19 conceive a possibility that dangers so formidable can assail the whole Union, as to demand a force  
20 considerable enough to place our liberties in the least jeopardy, especially if we take into our view the  
21 aid to be derived from the militia, which ought always to be counted upon as a valuable and powerful  
22 auxiliary. But in a state of disunion (as has been fully shown in another place), the contrary of this  
23 supposition would become not only probable, but almost unavoidable.

24 Publius.

25

1 The Federalist 27

2 The Same Subject Continued

3 (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered)

4 Hamilton for the New York Packet. Tuesday, December 25, 1787.

5 To the People of the State of New York:

6 IT HAS been urged, in different shapes, that a Constitution of the kind proposed by the convention

7 cannot operate without the aid of a military force to execute its laws. This, however, like most other

8 things that have been alleged on that side, rests on mere general assertion, unsupported by any precise

9 or intelligible designation of the reasons upon which it is founded. As far as I have been able to divine

10 the latent meaning of the objectors, it seems to originate in a presupposition that the people will be

11 disinclined to the exercise of federal authority in any matter of an internal nature. Waiving any

12 exception that might be taken to the inaccuracy or inexplicitness of the distinction between internal

13 and external, let us inquire what ground there is to presuppose that disinclination in the people.

14 Unless we presume at the same time that the powers of the general government will be worse

15 administered than those of the State government, there seems to be no room for the presumption of ill-

16 will, disaffection, or opposition in the people. I believe it may be laid down as a general rule that their

17 confidence in and obedience to a government will commonly be proportioned to the goodness or

18 badness of its administration. It must be admitted that there are exceptions to this rule; but these

19 exceptions depend so entirely on accidental causes, that they cannot be considered as having any

20 relation to the intrinsic merits or demerits of a constitution. These can only be judged of by general

21 principles and maxims.

22 Various reasons have been suggested, in the course of these papers, to induce a probability that the

23 general government will be better administered than the particular governments; the principal of

24 which reasons are that the extension of the spheres of election will present a greater option, or

25 latitude of choice, to the people; that through the medium of the State legislatures which are select

1 bodies of men, and which are to appoint the members of the national Senate there is reason to expect  
2 that this branch will generally be composed with peculiar care and judgment; that these circumstances  
3 promise greater knowledge and more extensive information in the national councils, and that they will  
4 be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill-humors,  
5 or temporary prejudices and propensities, which, in smaller societies, frequently contaminate the  
6 public councils, beget injustice and oppression of a part of the community, and engender schemes  
7 which, though they gratify a momentary inclination or desire, terminate in general distress,  
8 dissatisfaction, and disgust. Several additional reasons of considerable force, to fortify that probability,  
9 will occur when we come to survey, with a more critical eye, the interior structure of the edifice which  
10 we are invited to erect. It will be sufficient here to remark, that until satisfactory reasons can be  
11 assigned to justify an opinion, that the federal government is likely to be administered in such a  
12 manner as to render it odious or contemptible to the people, there can be no reasonable foundation for  
13 the supposition that the laws of the Union will meet with any greater obstruction from them, or will  
14 stand in need of any other methods to enforce their execution, than the laws of the particular  
15 members.

16 The hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionably  
17 strong discouragement to it. Will not the government of the Union, which, if possessed of a due degree  
18 of power, can call to its aid the collective resources of the whole Confederacy, be more likely to repress  
19 the former sentiment and to inspire the latter, than that of a single State, which can only command  
20 the resources within itself? A turbulent faction in a State may easily suppose itself able to contend  
21 with the friends to the government in that State; but it can hardly be so infatuated as to imagine itself  
22 a match for the combined efforts of the Union. If this reflection be just, there is less danger of  
23 resistance from irregular combinations of individuals to the authority of the Confederacy than to that  
24 of a single member.  
25 I will, in this place, hazard an observation, which will not be the less just because to some it may

1 appear new; which is, that the more the operations of the national authority are intermingled in the  
2 ordinary exercise of government, the more the citizens are accustomed to meet with it in the common  
3 occurrences of their political life, the more it is familiarized to their sight and to their feelings, the  
4 further it enters into those objects which touch the most sensible chords and put in motion the most  
5 active springs of the human heart, the greater will be the probability that it will conciliate the respect  
6 and attachment of the community. Man is very much a creature of habit. A thing that rarely strikes his  
7 senses will generally have but little influence upon his mind. A government continually at a distance  
8 and out of sight can hardly be expected to interest the sensations of the people. The inference is, that  
9 the authority of the Union, and the affections of the citizens towards it, will be strengthened, rather  
10 than weakened, by its extension to what are called matters of internal concern; and will have less  
11 occasion to recur to force, in proportion to the familiarity and comprehensiveness of its agency. The  
12 more it circulates through those channels and currents in which the passions of mankind naturally  
13 flow, the less will it require the aid of the violent and perilous expedients of compulsion.

14 One thing, at all events, must be evident, that a government like the one proposed would bid much  
15 fairer to avoid the necessity of using force, than that species of league contend for by most of its  
16 opponents; the authority of which should only operate upon the States in their political or collective  
17 capacities. It has been shown that in such a Confederacy there can be no sanction for the laws but  
18 force; that frequent delinquencies in the members are the natural offspring of the very frame of the  
19 government; and that as often as these happen, they can only be redressed, if at all, by war and  
20 violence.

21 The plan reported by the convention, by extending the authority of the federal head to the individual  
22 citizens of the several States, will enable the government to employ the ordinary magistracy of each,  
23 in the execution of its laws. It is easy to perceive that this will tend to destroy, in the common  
24 apprehension, all distinction between the sources from which they might proceed; and will give the  
25 federal government the same advantage for securing a due obedience to its authority which is enjoyed

1 by the government of each State, in addition to the influence on public opinion which will result from  
2 the important consideration of its having power to call to its assistance and support the resources of  
3 the whole Union. It merits particular attention in this place, that the laws of the Confederacy, as to  
4 the enumerated and legitimate objects of its jurisdiction, will become the supreme law of the land; to the  
5 observance of which all officers, legislative, executive, and judicial, in each State, will be bound by the  
6 sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be  
7 incorporated into the operations of the national government as far as its just and constitutional  
8 authority extends; and will be rendered auxiliary to the enforcement of its laws.[1] Any man who will  
9 pursue, by his own reflections, the consequences of this situation, will perceive that there is good  
10 ground to calculate upon a regular and peaceable execution of the laws of the Union, if its powers are  
11 administered with a common share of prudence. If we will arbitrarily suppose the contrary, we may  
12 deduce any inferences we please from the supposition; for it is certainly possible, by an injudicious  
13 exercise of the authorities of the best government that ever was, or ever can be instituted, to provoke  
14 and precipitate the people into the wildest excesses. But though the adversaries of the proposed  
15 Constitution should presume that the national rulers would be insensible to the motives of public good,  
16 or to the obligations of duty, I would still ask them how the interests of ambition, or the views of  
17 encroachment, can be promoted by such a conduct?

18 Publius.

19 The sophistry which has been employed, to show that this will tend to the destruction of the State  
20 Governments, will, in its proper place, be fully detected.??Publius.

21

22

23

24

25

1 The Federalist 28

2 The Same Subject Continued

3 (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered)

4 Hamilton for the Independent Journal.

5 To the People of the State of New York:

6 THAT there may happen cases in which the national government may be necessitated to resort to force,

7 cannot be denied. Our own experience has corroborated the lessons taught by the examples of other

8 nations; that emergencies of this sort will sometimes arise in all societies, however constituted; that

9 seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and

10 eruptions from the natural body; that the idea of governing at all times by the simple force of law

11 (which we have been told is the only admissible principle of republican government), has no place but

12 in the reveries of those political doctors whose sagacity despairs the admonitions of experimental

13 instruction.

14 Should such emergencies at any time happen under the national government, there could be no

15 remedy but force. The means to be employed must be proportioned to the extent of the mischief. If it

16 should be a slight commotion in a small part of a State, the militia of the residue would be adequate to

17 its suppression; and the national presumption is that they would be ready to do their duty. An

18 insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to

19 the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had

20 not communicated itself to oppose the insurgents; and if the general government should be found in

21 practice conducive to the prosperity and felicity of the people, it were irrational to believe that they

22 would be disinclined to its support.

23 If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the

24 employment of a different kind of force might become unavoidable. It appears that Massachusetts

25 found it necessary to raise troops for repressing the disorders within that State; that Pennsylvania,

1 from the mere apprehension of commotions among a part of her citizens, has thought proper to have  
2 recourse to the same measure. Suppose the State of New York had been inclined to re-establish her lost  
3 jurisdiction over the inhabitants of Vermont, could she have hoped for success in such an enterprise  
4 from the efforts of the militia alone? Would she not have been compelled to raise and to maintain a more  
5 regular force for the execution of her design? If it must then be admitted that the necessity of recurring  
6 to a force different from the militia, in cases of this extraordinary nature, is applicable to the State  
7 governments themselves, why should the possibility, that the national government might be under a  
8 like necessity, in similar extremities, be made an objection to its existence? Is it not surprising that  
9 men who declare an attachment to the Union in the abstract, should urge as an objection to the  
10 proposed Constitution what applies with tenfold weight to the plan for which they contend; and what,  
11 as far as it has any foundation in truth, is an inevitable consequence of civil society upon an enlarged  
12 scale? Who would not prefer that possibility to the unceasing agitations and frequent revolutions  
13 which are the continual scourges of petty republics?

14 Let us pursue this examination in another light. Suppose, in lieu of one general system, two, or three,  
15 or even four Confederacies were to be formed, would not the same difficulty oppose itself to the  
16 operations of either of these Confederacies? Would not each of them be exposed to the same casualties;  
17 and when these happened, be obliged to have recourse to the same expedients for upholding its  
18 authority which are objected to in a government for all the States? Would the militia, in this  
19 supposition, be more ready or more able to support the federal authority than in the case of a general  
20 union? All candid and intelligent men must, upon due consideration, acknowledge that the principle of  
21 the objection is equally applicable to either of the two cases; and that whether we have one  
22 government for all the States, or different governments for different parcels of them, or even if there  
23 should be an entire separation of the States, there might sometimes be a necessity to make use of a  
24 force constituted differently from the militia, to preserve the peace of the community and to maintain  
25 the just authority of the laws against those violent invasions of them which amount to insurrections

1 and rebellions.

2 Independent of all other reasonings upon the subject, it is a full answer to those who require a more  
3 peremptory provision against military establishments in time of peace, to say that the whole power of  
4 the proposed government is to be in the hands of the representatives of the people. This is the essential,  
5 and, after all, only efficacious security for the rights and privileges of the people, which is attainable in  
6 civil society.[1]

7 If the representatives of the people betray their constituents, there is then no resource left but in the  
8 exertion of that original right of self-defense which is paramount to all positive forms of government,  
9 and which against the usurpations of the national rulers, may be exerted with infinitely better prospect  
10 of success than against those of the rulers of an individual state. In a single state, if the persons  
11 intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of  
12 which it consists, having no distinct government in each, can take no regular measures for defense.  
13 The citizens must rush tumultuously to arms, without concert, without system, without resource;  
14 except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too  
15 often crush the opposition in embryo. The smaller the extent of the territory, the more difficult will it  
16 be for the people to form a regular or systematic plan of opposition, and the more easy will it be to  
17 defeat their early efforts. Intelligence can be more speedily obtained of their preparations and  
18 movements, and the military force in the possession of the usurpers can be more rapidly directed  
19 against the part where the opposition has begun. In this situation there must be a peculiar coincidence  
20 of circumstances to insure success to the popular resistance.

21 The obstacles to usurpation and the facilities of resistance increase with the increased extent of the  
22 state, provided the citizens understand their rights and are disposed to defend them. The natural  
23 strength of the people in a large community, in proportion to the artificial strength of the government,  
24 is greater than in a small, and of course more competent to a struggle with the attempts of the  
25 government to establish a tyranny. But in a confederacy the people, without exaggeration, may be said

1 to be entirely the masters of their own fate. Power being almost always the rival of power, the general  
2 government will at all times stand ready to check the usurpations of the state governments, and these  
3 will have the same disposition towards the general government. The people, by throwing themselves  
4 into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can  
5 make use of the other as the instrument of redress. How wise will it be in them by cherishing the union  
6 to preserve to themselves an advantage which can never be too highly prized!

7 It may safely be received as an axiom in our political system, that the State governments will, in all  
8 possible contingencies, afford complete security against invasions of the public liberty by the national  
9 authority. Projects of usurpation cannot be masked under pretenses so likely to escape the penetration  
10 of select bodies of men, as of the people at large. The legislatures will have better means of  
11 information. They can discover the danger at a distance; and possessing all the organs of civil power,  
12 and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can  
13 combine all the resources of the community. They can readily communicate with each other in the  
14 different States, and unite their common forces for the protection of their common liberty.

15 The great extent of the country is a further security. We have already experienced its utility against  
16 the attacks of a foreign power. And it would have precisely the same effect against the enterprises of  
17 ambitious rulers in the national councils. If the federal army should be able to quell the resistance of  
18 one State, the distant States would have it in their power to make head with fresh forces. The  
19 advantages obtained in one place must be abandoned to subdue the opposition in others; and the  
20 moment the part which had been reduced to submission was left to itself, its efforts would be renewed,  
21 and its resistance revive.

22 We should recollect that the extent of the military force must, at all events, be regulated by the  
23 resources of the country. For a long time to come, it will not be possible to maintain a large army; and  
24 as the means of doing this increase, the population and natural strength of the community will  
25 proportionably increase. When will the time arrive that the federal government can raise and

1 maintain an army capable of erecting a despotism over the great body of the people of an immense  
2 empire, who are in a situation, through the medium of their State governments, to take measures for  
3 their own defense, with all the celerity, regularity, and system of independent nations? The  
4 apprehension may be considered as a disease, for which there can be found no cure in the resources of  
5 argument and reasoning.

6 Publius.

7 Its full efficacy will be examined hereafter."

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 29

2 Concerning the Militia

3 Hamilton for the Daily Advertiser. Thursday, January 10, 1788.

4 To the People of the State of New York:

5 THE power of regulating the militia, and of commanding its services in times of insurrection and  
6 invasion are natural incidents to the duties of superintending the common defense, and of watching  
7 over the internal peace of the Confederacy.

8 It requires no skill in the science of war to discern that uniformity in the organization and discipline of  
9 the militia would be attended with the most beneficial effects, whenever they were called into service  
10 for the public defense. It would enable them to discharge the duties of the camp and of the field with  
11 mutual intelligence and concert an advantage of peculiar moment in the operations of an army; and it  
12 would fit them much sooner to acquire the degree of proficiency in military functions which would be  
13 essential to their usefulness. This desirable uniformity can only be accomplished by confiding the  
14 regulation of the militia to the direction of the national authority. It is, therefore, with the most  
15 evident propriety, that the plan of the convention proposes to empower the Union ``to provide for  
16 organizing, arming, and disciplining the militia, and for governing such part of them as may be  
17 employed in the service of the United States, reserving to the states respectively the appointment of  
18 the officers, and the authority of training the militia according to the discipline prescribed by  
19 congress."

20 Of the different grounds which have been taken in opposition to the plan of the convention, there is  
21 none that was so little to have been expected, or is so untenable in itself, as the one from which this  
22 particular provision has been attacked. If a well-regulated militia be the most natural defense of a free  
23 country, it ought certainly to be under the regulation and at the disposal of that body which is  
24 constituted the guardian of the national security. If standing armies are dangerous to liberty, an  
25 efficacious power over the militia, in the body to whose care the protection of the State is committed,

1 ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions. If  
2 the federal government can command the aid of the militia in those emergencies which call for the  
3 military arm in support of the civil magistrate, it can the better dispense with the employment of a  
4 different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To  
5 render an army unnecessary, will be a more certain method of preventing its existence than a thousand  
6 prohibitions upon paper.

7 In order to cast an odium upon the power of calling forth the militia to execute the laws of the Union, it  
8 has been remarked that there is nowhere any provision in the proposed Constitution for calling out  
9 the posse comitatus, to assist the magistrate in the execution of his duty, whence it has been inferred,  
10 that military force was intended to be his only auxiliary. There is a striking incoherence in the  
11 objections which have appeared, and sometimes even from the same quarter, not much calculated to  
12 inspire a very favorable opinion of the sincerity or fair dealing of their authors. The same persons who  
13 tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform  
14 us in the next, that it has not authority sufficient even to call out the posse comitatus. The latter,  
15 fortunately, is as much short of the truth as the former exceeds it. It would be as absurd to doubt, that  
16 a right to pass all laws necessary and proper to execute its declared powers, would include that of  
17 requiring the assistance of the citizens to the officers who may be intrusted with the execution of those  
18 laws, as it would be to believe, that a right to enact laws necessary and proper for the imposition and  
19 collection of taxes would involve that of varying the rules of descent and of the alienation of landed  
20 property, or of abolishing the trial by jury in cases relating to it. It being therefore evident that the  
21 supposition of a want of power to require the aid of the posse comitatus is entirely destitute of color, it  
22 will follow, that the conclusion which has been drawn from it, in its application to the authority of the  
23 federal government over the militia, is as uncandid as it is illogical. What reason could there be to  
24 infer, that force was intended to be the sole instrument of authority, merely because there is a power  
25 to make use of it when necessary? What shall we think of the motives which could induce men of

1 sense to reason in this manner? How shall we prevent a conflict between charity and judgment?  
2 By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend danger  
3 from the militia itself, in the hands of the federal government. It is observed that select corps may be  
4 formed, composed of the young and ardent, who may be rendered subservient to the views of arbitrary  
5 power. What plan for the regulation of the militia may be pursued by the national government, is  
6 impossible to be foreseen. But so far from viewing the matter in the same light with those who object to  
7 select corps as dangerous, were the Constitution ratified, and were I to deliver my sentiments to a  
8 member of the federal legislature from this State on the subject of a militia establishment, I should hold  
9 to him, in substance, the following discourse:

10 "The project of disciplining all the militia of the United States is as futile as it would be injurious, if it  
11 were capable of being carried into execution. A tolerable expertness in military movements is a  
12 business that requires time and practice. It is not a day, or even a week, that will suffice for the  
13 attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be  
14 under arms for the purpose of going through military exercises and evolutions, as often as might be  
15 necessary to acquire the degree of perfection which would entitle them to the character of a well-  
16 regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss.  
17 It would form an annual deduction from the productive labor of the country, to an amount which,  
18 calculating upon the present numbers of the people, would not fall far short of the whole expense of  
19 the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and  
20 industry to so considerable an extent, would be unwise: and the experiment, if made, could not  
21 succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to  
22 the people at large, than to have them properly armed and equipped; and in order to see that this be  
23 not neglected, it will be necessary to assemble them once or twice in the course of a year.  
24 "But though the scheme of disciplining the whole nation must be abandoned as mischievous or  
25 impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as

1 possible, be adopted for the proper establishment of the militia. The attention of the government ought  
2 particularly to be directed to the formation of a select corps of moderate extent, upon such principles as  
3 will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have  
4 an excellent body of well-trained militia, ready to take the field whenever the defense of the State shall  
5 require it. This will not only lessen the call for military establishments, but if circumstances should at  
6 any time oblige the government to form an army of any magnitude that army can never be formidable  
7 to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in  
8 discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-  
9 citizens. This appears to me the only substitute that can be devised for a standing army, and the best  
10 possible security against it, if it should exist."

11 Thus differently from the adversaries of the proposed Constitution should I reason on the same  
12 subject, deducing arguments of safety from the very sources which they represent as fraught with  
13 danger and perdition. But how the national legislature may reason on the point, is a thing which  
14 neither they nor I can foresee.

15 There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia,  
16 that one is at a loss whether to treat it with gravity or with railly; whether to consider it as a mere  
17 trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instil prejudices at any  
18 price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our  
19 fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What  
20 shadow of danger can there be from men who are daily mingling with the rest of their countrymen and  
21 who participate with them in the same feelings, sentiments, habits and interests? What reasonable  
22 cause of apprehension can be inferred from a power in the Union to prescribe regulations for the  
23 militia, and to command its services when necessary, while the particular States are to have the sole  
24 and exclusive appointment of the officers? If it were possible seriously to indulge a jealousy of the  
25 militia upon any conceivable establishment under the federal government, the circumstance of the

1 officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that  
2 this circumstance will always secure to them a preponderating influence over the militia.  
3 In reading many of the publications against the Constitution, a man is apt to imagine that he is perusing  
4 some ill-written tale or romance, which instead of natural and agreeable images, exhibits to the mind  
5 nothing but frightful and distorted shapes "Gorgons, hydras, and chimeras dire"; discoloring and  
6 disfiguring whatever it represents, and transforming everything it touches into a monster.  
7 A sample of this is to be observed in the exaggerated and improbable suggestions which have taken  
8 place respecting the power of calling for the services of the militia. That of New Hampshire is to be  
9 marched to Georgia, of Georgia to New Hampshire, of New York to Kentucky, and of Kentucky to Lake  
10 Champlain. Nay, the debts due to the French and Dutch are to be paid in militiamen instead of louis  
11 d'ors and ducats. At one moment there is to be a large army to lay prostrate the liberties of the people;  
12 at another moment the militia of Virginia are to be dragged from their homes five or six hundred  
13 miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to be  
14 transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians. Do  
15 the persons who rave at this rate imagine that their art or their eloquence can impose any conceits or  
16 absurdities upon the people of America for infallible truths?  
17 If there should be an army to be made use of as the engine of despotism, what need of the militia? If  
18 there should be no army, whither would the militia, irritated by being called upon to undertake a  
19 distant and hopeless expedition, for the purpose of riveting the chains of slavery upon a part of their  
20 countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as  
21 so wicked a project, to crush them in their imagined intrenchments of power, and to make them an  
22 example of the just vengeance of an abused and incensed people? Is this the way in which usurpers  
23 stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation  
24 of the very instruments of their intended usurpations? Do they usually commence their career by  
25 wanton and disgusting acts of power, calculated to answer no end, but to draw upon themselves

1 universal hatred and execration? Are suppositions of this sort the sober admonitions of discerning  
2 patriots to a discerning people? Or are they the inflammatory ravings of incendiaries or distempered  
3 enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable  
4 ambition, it is impossible to believe that they would employ such preposterous means to accomplish  
5 their designs.

6 In times of insurrection, or invasion, it would be natural and proper that the militia of a neighboring  
7 State should be marched into another, to resist a common enemy, or to guard the republic against the  
8 violence of faction or sedition. This was frequently the case, in respect to the first object, in the course  
9 of the late war; and this mutual succor is, indeed, a principal end of our political association. If the  
10 power of affording it be placed under the direction of the Union, there will be no danger of a supine and  
11 listless inattention to the dangers of a neighbor, till its near approach had superadded the incitements  
12 of selfpreservation to the too feeble impulses of duty and sympathy.

13 Publius.

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 30

2 Concerning the General Power of Taxation

3 Hamilton for the New York Packet. Friday, December 28, 1787.

4 To the People of the State of New York:

5 IT HAS been already observed that the federal government ought to possess the power of providing for  
6 the support of the national forces; in which proposition was intended to be included the expense of  
7 raising troops, of building and equipping fleets, and all other expenses in any wise connected with  
8 military arrangements and operations. But these are not the only objects to which the jurisdiction of  
9 the Union, in respect to revenue, must necessarily be empowered to extend. It must embrace a  
10 provision for the support of the national civil list; for the payment of the national debts contracted, or  
11 that may be contracted; and, in general, for all those matters which will call for disbursements out of  
12 the national treasury. The conclusion is, that there must be interwoven, in the frame of the  
13 government, a general power of taxation, in one shape or another.

14 Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its  
15 life and motion, and enables it to perform its most essential functions. A complete power, therefore, to  
16 procure a regular and adequate supply of it, as far as the resources of the community will permit, may  
17 be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular,  
18 one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute  
19 for a more eligible mode of supplying the public wants, or the government must sink into a fatal  
20 atrophy, and, in a short course of time, perish.

21 In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the lives  
22 and fortunes of his subjects, has no right to impose a new tax. The consequence is that he permits the  
23 bashaws or governors of provinces to pillage the people without mercy; and, in turn, squeezes out of  
24 them the sums of which he stands in need, to satisfy his own exigencies and those of the state. In  
25 America, from a like cause, the government of the Union has gradually dwindled into a state of decay,

1 approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries  
2 would be promoted by competent authorities in the proper hands, to provide the revenues which the  
3 necessities of the public might require?

4 The present Confederation, feeble as it is intended to repose in the United States, an unlimited power of  
5 providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle, it has  
6 been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which  
7 compose that compact (as has already been stated), are authorized to ascertain and call for any sums of  
8 money necessary, in their judgment, to the service of the United States; and their requisitions, if  
9 conformable to the rule of apportionment, are in every constitutional sense obligatory upon the States.  
10 These have no right to question the propriety of the demand; no discretion beyond that of devising the  
11 ways and means of furnishing the sums demanded. But though this be strictly and truly the case;  
12 though the assumption of such a right would be an infringement of the articles of Union; though it may  
13 seldom or never have been avowedly claimed, yet in practice it has been constantly exercised, and  
14 would continue to be so, as long as the revenues of the Confederacy should remain dependent on the  
15 intermediate agency of its members. What the consequences of this system have been, is within the  
16 knowledge of every man the least conversant in our public affairs, and has been amply unfolded in  
17 different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation,  
18 which affords ample cause both of mortification to ourselves, and of triumph to our enemies.  
19 What remedy can there be for this situation, but in a change of the system which has produced it in a  
20 change of the fallacious and delusive system of quotas and requisitions? What substitute can there be  
21 imagined for this ignis fatuus in finance, but that of permitting the national government to raise its  
22 own revenues by the ordinary methods of taxation authorized in every well-ordered constitution of  
23 civil government? Ingenious men may declaim with plausibility on any subject; but no human  
24 ingenuity can point out any other expedient to rescue us from the inconveniences and  
25 embarrassments naturally resulting from defective supplies of the public treasury.

1 The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they  
2 qualify their admission by a distinction between what they call internal and external taxation. The  
3 former they would reserve to the State governments; the latter, which they explain into commercial  
4 imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal  
5 head. This distinction, however, would violate the maxim of good sense and sound policy, which dictates  
6 that every power ought to be in proportion to its object; and would still leave the general government in  
7 a kind of tutelage to the State governments, inconsistent with every idea of vigor or efficiency. Who can  
8 pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of  
9 the Union? Taking into the account the existing debt, foreign and domestic, upon any plan of  
10 extinguishment which a man moderately impressed with the importance of public justice and public  
11 credit could approve, in addition to the establishments which all parties will acknowledge to be  
12 necessary, we could not reasonably flatter ourselves, that this resource alone, upon the most improved  
13 scale, would even suffice for its present necessities. Its future necessities admit not of calculation or  
14 limitation; and upon the principle, more than once adverted to, the power of making provision for  
15 them as they arise ought to be equally unconfined. I believe it may be regarded as a position warranted  
16 by the history of mankind, that, in the usual progress of things, the necessities of a nation, in every  
17 stage of its existence, will be found at least equal to its resources.

18 To say that deficiencies may be provided for by requisitions upon the States, is on the one hand to  
19 acknowledge that this system cannot be depended upon, and on the other hand to depend upon it for  
20 every thing beyond a certain limit. Those who have carefully attended to its vices and deformities as  
21 they have been exhibited by experience or delineated in the course of these papers, must feel  
22 invincible repugnancy to trusting the national interests in any degree to its operation. Its inevitable  
23 tendency, whenever it is brought into activity, must be to enfeeble the Union, and sow the seeds of  
24 discord and contention between the federal head and its members, and between the members  
25 themselves. Can it be expected that the deficiencies would be better supplied in this mode than the

1 total wants of the Union have heretofore been supplied in the same mode? It ought to be recollect that  
2 if less will be required from the States, they will have proportionably less means to answer the demand.  
3 If the opinions of those who contend for the distinction which has been mentioned were to be received  
4 as evidence of truth, one would be led to conclude that there was some known point in the economy of  
5 national affairs at which it would be safe to stop and to say: Thus far the ends of public happiness will be  
6 promoted by supplying the wants of government, and all beyond this is unworthy of our care or anxiety.  
7 How is it possible that a government half supplied and always necessitous, can fulfill the purposes of its  
8 institution, can provide for the security, advance the prosperity, or support the reputation of the  
9 commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at  
10 home or respectability abroad? How can its administration be any thing else than a succession of  
11 expedients temporizing, impotent, disgraceful? How will it be able to avoid a frequent sacrifice of its  
12 engagements to immediate necessity? How can it undertake or execute any liberal or enlarged plans  
13 of public good?

14 Let us attend to what would be the effects of this situation in the very first war in which we should  
15 happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost  
16 duties answers the purposes of a provision for the public debt and of a peace establishment for the  
17 Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government  
18 in such an emergency? Taught by experience that proper dependence could not be placed on the  
19 success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by  
20 considerations of national danger, would it not be driven to the expedient of diverting the funds  
21 already appropriated from their proper objects to the defense of the State? It is not easy to see how a  
22 step of this kind could be avoided; and if it should be taken, it is evident that it would prove the  
23 destruction of public credit at the very moment that it was becoming essential to the public safety. To  
24 imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In  
25 the modern system of war, nations the most wealthy are obliged to have recourse to large loans. A

1 country so little opulent as ours must feel this necessity in a much stronger degree. But who would lend  
2 to a government that prefaced its overtures for borrowing by an act which demonstrated that no  
3 reliance could be placed on the steadiness of its measures for paying? The loans it might be able to  
4 procure would be as limited in their extent as burdensome in their conditions. They would be made  
5 upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors, with a  
6 sparing hand and at enormous premiums.

7 It may perhaps be imagined that, from the scantiness of the resources of the country, the necessity of  
8 diverting the established funds in the case supposed would exist, though the national government  
9 should possess an unrestrained power of taxation. But two considerations will serve to quiet all  
10 apprehension on this head: one is, that we are sure the resources of the community, in their full  
11 extent, will be brought into activity for the benefit of the Union; the other is, that whatever deficiencies  
12 there may be, can without difficulty be supplied by loans.

13 The power of creating new funds upon new objects of taxation, by its own authority, would enable the  
14 national government to borrow as far as its necessities might require. Foreigners, as well as the  
15 citizens of America, could then reasonably repose confidence in its engagements; but to depend upon a  
16 government that must itself depend upon thirteen other governments for the means of fulfilling its  
17 contracts, when once its situation is clearly understood, would require a degree of credulity not often  
18 to be met with in the pecuniary transactions of mankind, and little reconcilable with the usual sharp-  
19 sightedness of avarice.

20 Reflections of this kind may have trifling weight with men who hope to see realized in America the  
21 halcyon scenes of the poetic or fabulous age; but to those who believe we are likely to experience a  
22 common portion of the vicissitudes and calamities which have fallen to the lot of other nations, they  
23 must appear entitled to serious attention. Such men must behold the actual situation of their country  
24 with painful solicitude, and deprecate the evils which ambition or revenge might, with too much  
25 facility, inflict upon it.

Publius.

1 The Federalist 31

2 The Same Subject Continued

3 (Concerning the General Power of Taxation)

4 Hamilton for the New York Packet. Tuesday, January 1, 1788.

5 To the People of the State of New York:

6 IN DISQUISITIONS of every kind, there are certain primary truths, or first principles, upon which all  
7 subsequent reasonings must depend. These contain an internal evidence which, antecedent to all  
8 reflection or combination, commands the assent of the mind. Where it produces not this effect, it must  
9 proceed either from some defect or disorder in the organs of perception, or from the influence of some  
10 strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that ``the whole  
11 is greater than its part; things equal to the same are equal to one another; two straight lines cannot  
12 enclose a space; and all right angles are equal to each other." Of the same nature are these other  
13 maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to  
14 be proportioned to the end; that every power ought to be commensurate with its object; that there  
15 ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation.

16 And there are other truths in the two latter sciences which, if they cannot pretend to rank in the class  
17 of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to  
18 the natural and unsophisticated dictates of common-sense, that they challenge the assent of a sound  
19 and unbiased mind, with a degree of force and conviction almost equally irresistible.

20 The objects of geometrical inquiry are so entirely abstracted from those pursuits which stir up and put  
21 in motion the unruly passions of the human heart, that mankind, without difficulty, adopt not only the  
22 more simple theorems of the science, but even those abstruse paradoxes which, however they may  
23 appear susceptible of demonstration, are at variance with the natural conceptions which the mind,  
24 without the aid of philosophy, would be led to entertain upon the subject. The infinite divisibility of  
25 matter, or, in other words, the infinite divisibility of a finite thing, extending even to the minutest

1 atom, is a point agreed among geometricians, though not less incomprehensible to common-sense than  
2 any of those mysteries in religion, against which the batteries of infidelity have been so industriously  
3 leveled.

4 But in the sciences of morals and politics, men are found far less tractable. To a certain degree, it is  
5 right and useful that this should be the case. Caution and investigation are a necessary armor against  
6 error and imposition. But this untractableness may be carried too far, and may degenerate into  
7 obstinacy, perverseness, or disingenuity. Though it cannot be pretended that the principles of moral  
8 and political knowledge have, in general, the same degree of certainty with those of the mathematics,  
9 yet they have much better claims in this respect than, to judge from the conduct of men in particular  
10 situations, we should be disposed to allow them. The obscurity is much oftener in the passions and  
11 prejudices of the reasoner than in the subject. Men, upon too many occasions, do not give their own  
12 understandings fair play; but, yielding to some untoward bias, they entangle themselves in words and  
13 confound themselves in subtleties.

14 How else could it happen (if we admit the objectors to be sincere in their opposition), that positions so  
15 clear as those which manifest the necessity of a general power of taxation in the government of the  
16 Union, should have to encounter any adversaries among men of discernment? Though these positions  
17 have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as  
18 introductory to an examination of what may have been offered by way of objection to them. They are  
19 in substance as follows:

20 A government ought to contain in itself every power requisite to the full accomplishment of the objects  
21 committed to its care, and to the complete execution of the trusts for which it is responsible, free from  
22 every other control but a regard to the public good and to the sense of the people.  
23 As the duties of superintending the national defense and of securing the public peace against foreign  
24 or domestic violence involve a provision for casualties and dangers to which no possible limits can be  
25 assigned, the power of making that provision ought to know no other bounds than the exigencies of

1 the nation and the resources of the community.

2 As revenue is the essential engine by which the means of answering the national exigencies must be

3 procured, the power of procuring that article in its full extent must necessarily be comprehended in

4 that of providing for those exigencies.

5 As theory and practice conspire to prove that the power of procuring revenue is unavailing when

6 exercised over the States in their collective capacities, the federal government must of necessity be

7 invested with an unqualified power of taxation in the ordinary modes.

8 Did not experience evince the contrary, it would be natural to conclude that the propriety of a general

9 power of taxation in the national government might safely be permitted to rest on the evidence of these

10 propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that the

11 antagonists of the proposed Constitution, so far from acquiescing in their justness or truth, seem to

12 make their principal and most zealous effort against this part of the plan. It may therefore be

13 satisfactory to analyze the arguments with which they combat it.

14 Those of them which have been most labored with that view, seem in substance to amount to this: ``It

15 is not true, because the exigencies of the Union may not be susceptible of limitation, that its power of

16 laying taxes ought to be unconfined. Revenue is as requisite to the purposes of the local

17 administrations as to those of the Union; and the former are at least of equal importance with the

18 latter to the happiness of the people. It is, therefore, as necessary that the State governments should

19 be able to command the means of supplying their wants, as that the national government should

20 possess the like faculty in respect to the wants of the Union. But an indefinite power of taxation in

21 the latter might, and probably would in time, deprive the former of the means of providing for their

22 own necessities; and would subject them entirely to the mercy of the national legislature. As the laws

23 of the Union are to become the supreme law of the land, as it is to have power to pass all laws that may

24 be necessary for carrying into execution the authorities with which it is proposed to vest it, the

25 national government might at any time abolish the taxes imposed for State objects upon the pretense

1 of an interference with its own. It might allege a necessity of doing this in order to give efficacy to the  
2 national revenues. And thus all the resources of taxation might by degrees become the subjects of  
3 federal monopoly, to the entire exclusion and destruction of the State governments."  
4 This mode of reasoning appears sometimes to turn upon the supposition of usurpation in the national  
5 government; at other times it seems to be designed only as a deduction from the constitutional  
6 operation of its intended powers. It is only in the latter light that it can be admitted to have any  
7 pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal  
8 government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all  
9 reasoning. Imagination may range at pleasure till it gets bewildered amidst the labyrinths of an  
10 enchanted castle, and knows not on which side to turn to extricate itself from the perplexities into  
11 which it has so rashly adventured. Whatever may be the limits or modifications of the powers of the  
12 Union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy  
13 and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here  
14 what I have observed in substance in another place, that all observations founded upon the danger of  
15 usurpation ought to be referred to the composition and structure of the government, not to the nature  
16 or extent of its powers. The State governments, by their original constitutions, are invested with  
17 complete sovereignty. In what does our security consist against usurpation from that quarter?  
18 Doubtless in the manner of their formation, and in a due dependence of those who are to administer  
19 them upon the people. If the proposed construction of the federal government be found, upon an  
20 impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all  
21 apprehensions on the score of usurpation ought to be discarded.  
22 It should not be forgotten that a disposition in the State governments to encroach upon the rights of  
23 the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State  
24 governments. What side would be likely to prevail in such a conflict, must depend on the means which  
25 the contending parties could employ toward insuring success. As in republics strength is always on

1 the side of the people, and as there are weighty reasons to induce a belief that the State governments  
2 will commonly possess most influence over them, the natural conclusion is that such contests will be  
3 most apt to end to the disadvantage of the Union; and that there is greater probability of  
4 encroachments by the members upon the federal head, than by the federal head upon the members. But  
5 it is evident that all conjectures of this kind must be extremely vague and fallible: and that it is by far  
6 the safest course to lay them altogether aside, and to confine our attention wholly to the nature and  
7 extent of the powers as they are delineated in the Constitution. Every thing beyond this must be left to  
8 the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be  
9 hoped, will always take care to preserve the constitutional equilibrium between the general and the  
10 State governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate  
11 the objections which have been made to an indefinite power of taxation in the United States.

12 Publius.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 32

2 The Same Subject Continued

3 (Concerning the General Power of Taxation)

4 Hamilton for the Daily Advertiser. Thursday, January 3, 1788.

5 To the People of the State of New York:

6 ALTHOUGH I am of opinion that there would be no real danger of the consequences which seem to be  
7 apprehended to the State governments from a power in the Union to control them in the levies of  
8 money, because I am persuaded that the sense of the people, the extreme hazard of provoking the  
9 resentments of the State governments, and a conviction of the utility and necessity of local  
10 administrations for local purposes, would be a complete barrier against the oppressive use of such a  
11 power; yet I am willing here to allow, in its full extent, the justness of the reasoning which requires  
12 that the individual States should possess an independent and uncontrollable authority to raise their  
13 own revenues for the supply of their own wants. And making this concession, I affirm that (with the  
14 sole exception of duties on imports and exports) they would, under the plan of the convention, retain  
15 that authority in the most absolute and unqualified sense; and that an attempt on the part of the  
16 national government to abridge them in the exercise of it, would be a violent assumption of power,  
17 unwarranted by any article or clause of its Constitution.

18 An entire consolidation of the States into one complete national sovereignty would imply an entire  
19 subordination of the parts; and whatever powers might remain in them, would be altogether  
20 dependent on the general will. But as the plan of the convention aims only at a partial union or  
21 consolidation, the State governments would clearly retain all the rights of sovereignty which they  
22 before had, and which were not, by that act, exclusively delegated to the United States. This exclusive  
23 delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the  
24 Constitution in express terms granted an exclusive authority to the Union; where it granted in one  
25 instance an authority to the Union, and in another prohibited the States from exercising the like

1 authority; and where it granted an authority to the Union, to which a similar authority in the States  
2 would be absolutely and totally contradictory and repugnant. I use these terms to distinguish this last  
3 case from another which might appear to resemble it, but which would, in fact, be essentially different; I  
4 mean where the exercise of a concurrent jurisdiction might be productive of occasional interferences in  
5 the policy of any branch of administration, but would not imply any direct contradiction or repugnancy  
6 in point of constitutional authority. These three cases of exclusive jurisdiction in the federal  
7 government may be exemplified by the following instances: The last clause but one in the eighth section  
8 of the first article provides expressly that Congress shall exercise ``exclusive legislation" over the  
9 district to be appropriated as the seat of government. This answers to the first case. The first clause of  
10 the same section empowers Congress ``to lay and collect taxes, duties, imposts and excises"; and the  
11 second clause of the tenth section of the same article declares that, ``no state shall, without the  
12 consent of Congress, lay any imposts or duties on imports or exports, except for the purpose of  
13 executing its inspection laws." Hence would result an exclusive power in the Union to lay duties on  
14 imports and exports, with the particular exception mentioned; but this power is abridged by another  
15 clause, which declares that no tax or duty shall be laid on articles exported from any State; in  
16 consequence of which qualification, it now only extends to the duties on imports. This answers to the  
17 second case. The third will be found in that clause which declares that Congress shall have power ``to  
18 establish an uniform rule of naturalization throughout the United States."

19 This must necessarily be exclusive; because if each State had power to prescribe a distinct rule, there  
20 could not be a uniform rule.

21 A case which may perhaps be thought to resemble the latter, but which is in fact widely different,  
22 affects the question immediately under consideration. I mean the power of imposing taxes on all  
23 articles other than exports and imports. This, I contend, is manifestly a concurrent and coequal  
24 authority in the United States and in the individual States. There is plainly no expression in the  
25 granting clause which makes that power exclusive in the Union. There is no independent clause or

1 sentence which prohibits the States from exercising it. So far is this from being the case, that a plain  
2 and conclusive argument to the contrary is to be deduced from the restraint laid upon the States in  
3 relation to duties on imports and exports. This restriction implies an admission that, if it were not  
4 inserted, the States would possess the power it excludes; and it implies a further admission, that as to  
5 all other taxes, the authority of the States remains undiminished. In any other view it would be both  
6 unnecessary and dangerous; it would be unnecessary, because if the grant to the Union of the power of  
7 laying such duties implied the exclusion of the States, or even their subordination in this particular,  
8 there could be no need of such a restriction; it would be dangerous, because the introduction of it leads  
9 directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors be  
10 just, could not have been intended; I mean that the States, in all cases to which the restriction did not  
11 apply, would have a concurrent power of taxation with the Union. The restriction in question amounts  
12 to what lawyers call a negative pregnant that is, a negation of one thing, and an affirmation of another;  
13 a negation of the authority of the States to impose taxes on imports and exports, and an affirmation of  
14 their authority to impose them on all other articles. It would be mere sophistry to argue that it was  
15 meant to exclude them absolutely from the imposition of taxes of the former kind, and to leave them at  
16 liberty to lay others subject to the control of the national legislature. The restraining or prohibitory  
17 clause only says, that they shall not, without the consent of congress, lay such duties; and if we are to  
18 understand this in the sense last mentioned, the Constitution would then be made to introduce a  
19 formal provision for the sake of a very absurd conclusion; which is, that the States, with the consent of  
20 the national legislature, might tax imports and exports; and that they might tax every other  
21 article, unless controlled by the same body. If this was the intention, why not leave it, in the first  
22 instance, to what is alleged to be the natural operation of the original clause, conferring a general  
23 power of taxation upon the Union? It is evident that this could not have been the intention, and that it  
24 will not bear a construction of the kind.

25 As to a supposition of repugnancy between the power of taxation in the States and in the Union, it

1 cannot be supported in that sense which would be requisite to work an exclusion of the States. It is,  
2 indeed, possible that a tax might be laid on a particular article by a State which might render  
3 it inexpedient that thus a further tax should be laid on the same article by the Union; but it would not  
4 imply a constitutional inability to impose a further tax. The quantity of the imposition, the expediency  
5 or inexpediency of an increase on either side, would be mutually questions of prudence; but there would  
6 be involved no direct contradiction of power. The particular policy of the national and of the State  
7 systems of finance might now and then not exactly coincide, and might require reciprocal forbearances.  
8 It is not, however a mere possibility of inconvenience in the exercise of powers, but an immediate  
9 constitutional repugnancy that can by implication alienate and extinguish a pre-existing right of  
10 sovereignty.

11 The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign  
12 power; and the rule that all authorities, of which the States are not explicitly divested in favor of the  
13 Union, remain with them in full vigor, is not a theoretical consequence of that division, but is clearly  
14 admitted by the whole tenor of the instrument which contains the articles of the proposed  
15 Constitution. We there find that, notwithstanding the affirmative grants of general authorities, there  
16 has been the most pointed care in those cases where it was deemed improper that the like authorities  
17 should reside in the States, to insert negative clauses prohibiting the exercise of them by the States.  
18 The tenth section of the first article consists altogether of such provisions. This circumstance is a clear  
19 indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the  
20 act, which justifies the position I have advanced and refutes every hypothesis to the contrary.

21 Publius.

22

23

24

25

1 The Federalist 33

2 The Same Subject Continued

3 (Concerning the General Power of Taxation)

4 Hamilton for the Daily Advertiser. January 3, 1788.

5 To the People of the State of New York:

6 THE residue of the argument against the provisions of the Constitution in respect to taxation is  
7 ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan  
8 under consideration authorizes the national legislature ``to make all laws which shall  
9 be necessary and proper for carrying into execution the powers by that Constitution vested in the  
10 government of the United States, or in any department or officer thereof'; and the second clause of the  
11 sixth article declares, ``that the Constitution and the laws of the United States made in pursuance  
12 thereof, and the treaties made by their authority shall be the supreme law of the land, any thing in the  
13 constitution or laws of any State to the contrary notwithstanding."

14 These two clauses have been the source of much virulent invective and petulant declamation against  
15 the proposed Constitution. They have been held up to the people in all the exaggerated colors of  
16 misrepresentation as the pernicious engines by which their local governments were to be destroyed  
17 and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither  
18 sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this  
19 clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed  
20 with perfect confidence that the constitutional operation of the intended government would be  
21 precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article.

22 They are only declaratory of a truth which would have resulted by necessary and unavoidable  
23 implication from the very act of constituting a federal government, and vesting it with certain  
24 specified powers. This is so clear a proposition, that moderation itself can scarcely listen to the  
25 railings which have been so copiously vented against this part of the plan, without emotions that

1 disturb its equanimity.

2 What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the  
3 power of employing the means necessary to its execution? What is a legislative power, but a power of  
4 making laws? What are the means to execute a legislative power but laws? What is the power of laying  
5 and collecting taxes, but a legislative power, or a power of making laws, to lay and collect taxes? What  
6 are the proper means of executing such a power, but necessary and proper laws?

7 This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the  
8 clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be  
9 a power to pass all laws necessary and proper for the execution of that power; and what does the  
10 unfortunate and culumniated provision in question do more than declare the same truth, to wit, that  
11 the national legislature, to whom the power of laying and collecting taxes had been previously given,  
12 might, in the execution of that power, pass all laws necessary and proper to carry it into effect? I have  
13 applied these observations thus particularly to the power of taxation, because it is the immediate  
14 subject under consideration, and because it is the most important of the authorities proposed to be  
15 conferred upon the Union. But the same process will lead to the same result, in relation to all other  
16 powers declared in the Constitution. And it is expressly to execute these powers that the sweeping  
17 clause, as it has been affectedly called, authorizes the national legislature to pass  
18 all necessary and proper laws. If there is any thing exceptionable, it must be sought for in the specific  
19 powers upon which this general declaration is predicated. The declaration itself, though it may be  
20 chargeable with tautology or redundancy, is at least perfectly harmless.

21 But suspicion may ask, Why then was it introduced? The answer is, that it could only have been done  
22 for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a  
23 disposition to curtail and evade the legitimatb authorities of the Union. The Convention probably  
24 foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most  
25 threatens our political welfare is that the State governments will finally sap the foundations of the

1 Union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction.

2 Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry

3 which has been raised against it; as that very cry betrays a disposition to question the great and

4 essential truth which it is manifestly the object of that provision to declare.

5 But it may be again asked, Who is to judge of the necessity and propriety of the laws to be passed for

6 executing the powers of the Union? I answer, first, that this question arises as well and as fully upon the

7 simple grant of those powers as upon the declaratory clause; and I answer, in the second place, that the

8 national government, like every other, must judge, in the first instance, of the proper exercise of its

9 powers, and its constituents in the last. If the federal government should overpass the just bounds of its

10 authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the

11 standard they have formed, and take such measures to redress the injury done to the Constitution as

12 the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must

13 always be determined by the nature of the powers upon which it is founded. Suppose, by some forced

14 constructions of its authority (which, indeed, cannot easily be imagined), the Federal legislature

15 should attempt to vary the law of descent in any State, would it not be evident that, in making such an

16 attempt, it had exceeded its jurisdiction, and infringed upon that of the State? Suppose, again, that

17 upon the pretense of an interference with its revenues, it should undertake to abrogate a landtax

18 imposed by the authority of a State; would it not be equally evident that this was an invasion of that

19 concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to

20 exist in the State governments? If there ever should be a doubt on this head, the credit of it will be

21 entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the

22 convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest

23 truths.

24 But it is said that the laws of the Union are to be the supreme law of the land. But what inference can

25 be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they

1 would amount to nothing. A law, by the very meaning of the term, includes supremacy. It is a rule which  
2 those to whom it is prescribed are bound to observe. This results from every political association. If  
3 individuals enter into a state of society, the laws of that society must be the supreme regulator of their  
4 conduct. If a number of political societies enter into a larger political society, the laws which the latter  
5 may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over  
6 those societies, and the individuals of whom they are composed. It would otherwise be a mere treaty,  
7 dependent on the good faith of the parties, and not a goverment, which is only another word for political  
8 power and supremacy. But it will not follow from this doctrine that acts of the large society which  
9 are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of  
10 the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation,  
11 and will deserve to be treated as such. Hence we perceive that the clause which declares the  
12 supremacy of the laws of the Union, like the one we have just before considered, only declares a truth,  
13 which flows immediately and necessarily from the institution of a federal government. It will not, I  
14 presume, have escaped observation, that it expressly confines this supremacy to laws made pursuant  
15 to the constitution; which I mention merely as an instance of caution in the convention; since that  
16 limitation would have been to be understood, though it had not been expressed.  
17 Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature,  
18 and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a  
19 tax laid by the authority of the State, (unless upon imports and exports), would not be the supreme  
20 law of the land, but a usurpation of power not granted by the Constitution. As far as an improper  
21 accumulation of taxes on the same object might tend to render the collection difficult or precarious,  
22 this would be a mutual inconvenience, not arising from a superiority or defect of power on either side,  
23 but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to  
24 both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this  
25 respect which would avoid any material inconvenience. The inference from the whole is, that the

1 individual States would, under the proposed Constitution, retain an independent and uncontrollable  
2 authority to raise revenue to any extent of which they may stand in need, by every kind of taxation,  
3 except duties on imports and exports. It will be shown in the next paper that this concurrent  
4 jurisdiction in the article of taxation was the only admissible substitute for an entire subordination, in  
5 respect to this branch of power, of the State authority to that of the Union.

6 Publius.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 34

2 The Same Subject Continued

3 (Concerning the General Power of Taxation)

4 Hamilton for the New York Packet. Friday, January 4, 1788.

5 To the People of the State of New York:

6 I FLATTER myself it has been clearly shown in my last number that the particular States, under the  
7 proposed Constitution, would have coequal authority with the Union in the article of revenue, except as  
8 to duties on imports. As this leaves open to the States far the greatest part of the resources of the  
9 community, there can be no color for the assertion that they would not possess means as abundant as  
10 could be desired for the supply of their own wants, independent of all external control. That the field is  
11 sufficiently wide will more fully appear when we come to advert to the inconsiderable share of the  
12 public expenses for which it will fall to the lot of the State governments to provide.

13 To argue upon abstract principles that this co-ordinate authority cannot exist, is to set up supposition  
14 and theory against fact and reality. However proper such reasonings might be to show that a  
15 thing ought not to exist, they are wholly to be rejected when they are made use of to prove that it does  
16 not exist contrary to the evidence of the fact itself. It is well known that in the Roman republic the  
17 legislative authority, in the last resort, resided for ages in two different political bodies not as branches  
18 of the same legislature, but as distinct and independent legislatures, in each of which an opposite  
19 interest prevailed: in one the patrician; in the other, the plebian. Many arguments might have been  
20 adduced to prove the unfitness of two such seemingly contradictory authorities, each having power  
21 to annul or repeal the acts of the other. But a man would have been regarded as frantic who should  
22 have attempted at Rome to disprove their existence. It will be readily understood that I allude to  
23 the comitia centuriata and the comitia tributa. The former, in which the people voted by centuries,  
24 was so arranged as to give a superiority to the patrician interest; in the latter, in which numbers  
25 prevailed, the plebian interest had an entire predominancy. And yet these two legislatures coexisted

1 for ages, and the Roman republic attained to the utmost height of human greatness.

2 In the case particularly under consideration, there is no such contradiction as appears in the example

3 cited; there is no power on either side to annul the acts of the other. And in practice there is little

4 reason to apprehend any inconvenience; because, in a short course of time, the wants of the States will

5 naturally reduce themselves within a very narrow compass; and in the interim, the United States will,

6 in all probability, find it convenient to abstain wholly from those objects to which the particular States

7 would be inclined to resort.

8 To form a more precise judgment of the true merits of this question, it will be well to advert to the

9 proportion between the objects that will require a federal provision in respect to revenue, and those

10 which will require a State provision. We shall discover that the former are altogether unlimited, and

11 that the latter are circumscribed within very moderate bounds. In pursuing this inquiry, we must bear

12 in mind that we are not to confine our view to the present period, but to look forward to remote

13 futurity. Constitutions of civil government are not to be framed upon a calculation of existing

14 exigencies, but upon a combination of these with the probable exigencies of ages, according to the

15 natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the

16 extent of any power, proper to be lodged in the national government, from an estimate of its immediate

17 necessities. There ought to be a capacity to provide for future contingencies as they may happen; and

18 as these are illimitable in their nature, it is impossible safely to limit that capacity. It is true, perhaps,

19 that a computation might be made with sufficient accuracy to answer the purpose of the quantity of

20 revenue requisite to discharge the subsisting engagements of the Union, and to maintain those

21 establishments which, for some time to come, would suffice in time of peace. But would it be wise, or

22 would it not rather be the extreme of folly, to stop at this point, and to leave the government intrusted

23 with the care of the national defense in a state of absolute incapacity to provide for the protection of

24 the community against future invasions of the public peace, by foreign war or domestic convulsions?

25 If, on the contrary, we ought to exceed this point, where can we stop, short of an indefinite power of

1 providing for emergencies as they may arise? Though it is easy to assert, in general terms, the  
2 possibility of forming a rational judgment of a due provision against probable dangers, yet we may  
3 safely challenge those who make the assertion to bring forward their data, and may affirm that they  
4 would be found as vague and uncertain as any that could be produced to establish the probable duration  
5 of the world. Observations confined to the mere prospects of internal attacks can deserve no weight;  
6 though even these will admit of no satisfactory calculation: but if we mean to be a commercial people, it  
7 must form a part of our policy to be able one day to defend that commerce. The support of a navy and of  
8 naval wars would involve contingencies that must baffle all the efforts of political arithmetic.  
9 Admitting that we ought to try the novel and absurd experiment in politics of tying up the hands of  
10 government from offensive war founded upon reasons of state, yet certainly we ought not to disable it  
11 from guarding the community against the ambition or enmity of other nations. A cloud has been for  
12 some time hanging over the European world. If it should break forth into a storm, who can insure us  
13 that in its progress a part of its fury would not be spent upon us? No reasonable man would hastily  
14 pronounce that we are entirely out of its reach. Or if the combustible materials that now seem to be  
15 collecting should be dissipated without coming to maturity, or if a flame should be kindled without  
16 extending to us, what security can we have that our tranquillity will long remain undisturbed from  
17 some other cause or from some other quarter? Let us recollect that peace or war will not always be left  
18 to our option; that however moderate or unambitious we may be, we cannot count upon the  
19 moderation, or hope to extinguish the ambition of others. Who could have imagined at the conclusion  
20 of the last war that France and Britain, wearied and exhausted as they both were, would so soon have  
21 looked with so hostile an aspect upon each other? To judge from the history of mankind, we shall be  
22 compelled to conclude that the fiery and destructive passions of war reign in the human breast with  
23 much more powerful sway than the mild and beneficent sentiments of peace; and that to model our  
24 political systems upon speculations of lasting tranquillity, is to calculate on the weaker springs of the  
25 human character.

1 What are the chief sources of expense in every government? What has occasioned that enormous  
2 accumulation of debts with which several of the European nations are oppressed? The answers plainly  
3 is, wars and rebellions; the support of those institutions which are necessary to guard the body politic  
4 against these two most mortal diseases of society. The expenses arising from those institutions which  
5 are relative to the mere domestic police of a state, to the support of its legislative, executive, and  
6 judicial departments, with their different appendages, and to the encouragement of agriculture and  
7 manufactures (which will comprehend almost all the objects of state expenditure), are insignificant in  
8 comparison with those which relate to the national defense.

9 In the kingdom of Great Britain, where all the ostentatious apparatus of monarchy is to be provided for,  
10 not above a fifteenth part of the annual income of the nation is  
11 appropriated to the class of expenses last mentioned; the other fourteen fifteenths are absorbed in the  
12 payment of the interest of debts contracted for carrying on the wars in which that country has been  
13 engaged, and in the maintenance of fleets and armies. If, on the one hand, it should be observed that  
14 the expenses incurred in the prosecution of the ambitious enterprises and vainglorious pursuits of a  
15 monarchy are not a proper standard by which to judge of those which might be necessary in a  
16 republic, it ought, on the other hand, to be remarked that there should be as great a disproportion  
17 between the profusion and extravagance of a wealthy kingdom in its domestic administration, and the  
18 frugality and economy which in that particular become the modest simplicity of republican  
19 government. If we balance a proper deduction from one side against that which it is supposed ought to  
20 be made from the other, the proportion may still be considered as holding good.

21 But let us advert to the large debt which we have ourselves contracted in a single war, and let us only  
22 calculate on a common share of the events which disturb the peace of nations, and we shall instantly  
23 perceive, without the aid of any elaborate illustration, that there must always be an immense  
24 disproportion between the objects of federal and state expenditures. It is true that several of the  
25 States, separately, are encumbered with considerable debts, which are an excrescence of the late war.

1 But this cannot happen again, if the proposed system be adopted; and when these debts are discharged,  
2 the only call for revenue of any consequence, which the State governments will continue to experience,  
3 will be for the mere support of their respective civil list; to which, if we add all contingencies, the total  
4 amount in every State ought to fall considerably short of two hundred thousand pounds.  
5 In framing a government for posterity as well as ourselves, we ought, in those provisions which are  
6 designed to be permanent, to calculate, not on temporary, but on permanent causes of expense. If this  
7 principle be a just one our attention would be directed to a provision in favor of the State governments  
8 for an annual sum of about two hundred thousand pounds; while the exigencies of the Union could be  
9 susceptible of no limits, even in imagination. In this view of the subject, by what logic can it be  
10 maintained that the local governments ought to command, in perpetuity, an exclusive source of  
11 revenue for any sum beyond the extent of two hundred thousand pounds? To extend its power further,  
12 in exclusion of the authority of the Union, would be to take the resources of the community out of  
13 those hands which stood in need of them for the public welfare, in order to put them into other hands  
14 which could have no just or proper occasion for them.  
15 Suppose, then, the convention had been inclined to proceed upon the principle of a repartition of the  
16 objects of revenue, between the Union and its members, in proportion to their comparative necessities;  
17 what particular fund could have been selected for the use of the States, that would not either have  
18 been too much or too little too little for their present, too much for their future wants? As to the line of  
19 separation between external and internal taxes, this would leave to the States, at a rough  
20 computation, the command of two thirds of the resources of the community to defray from a tenth to a  
21 twentieth part of its expenses; and to the Union, one third of the resources of the community, to defray  
22 from nine tenths to nineteen twentieths of its expenses. If we desert this boundary and content  
23 ourselves with leaving to the States an exclusive power of taxing houses and lands, there would still be  
24 a great disproportion between the means and the end; the possession of one third of the resources of  
25 the community to supply, at most, one tenth of its wants. If any fund could have been selected and

1 appropriated, equal to and not greater than the object, it would have been inadequate to the discharge  
2 of the existing debts of the particular States, and would have left them dependent on the Union for a  
3 provision for this purpose.

4 The preceding train of observation will justify the position which has been elsewhere laid down, that ``a  
5 concurrent jurisdiction in the article of taxation was the only admissible substitute for an entire  
6 subordination, in respect to this branch of power, of State authority to that of the Union." Any  
7 separation of the objects of revenue that could have been fallen upon, would have amounted to a  
8 sacrifice of the great interests of the Union to the power of the individual States. The convention  
9 thought the concurrent jurisdiction preferable to that subordination; and it is evident that it has at  
10 least the merit of reconciling an indefinite constitutional power of taxation in the Federal government  
11 with an adequate and independent power in the States to provide for their own necessities. There  
12 remain a few other lights, in which this important subject of taxation will claim a further  
13 consideration.

14 Publius.

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 35

2 (Concerning the General Power of Taxation)

3 Hamilton for the Independent Journal.

4 To the People of the State of New York:

5 BEFORE we proceed to examine any other objections to an indefinite power of taxation in the Union, I  
6 shall make one general remark; which is, that if the jurisdiction of the national government, in the  
7 article of revenue, should be restricted to particular objects, it would naturally occasion an undue  
8 proportion of the public burdens to fall upon those objects. Two evils would spring from this source: the  
9 oppression of particular branches of industry; and an unequal distribution of the taxes, as well among  
10 the several States as among the citizens of the same State.

11 Suppose, as has been contended for, the federal power of taxation were to be confined to duties on  
12 imports, it is evident that the government, for want of being able to command other resources, would  
13 frequently be tempted to extend these duties to an injurious excess. There are persons who imagine  
14 that they can never be carried to too great a length; since the higher they are, the more it is alleged  
15 they will tend to discourage an extravagant consumption, to produce a favorable balance of trade, and  
16 to promote domestic manufactures. But all extremes are pernicious in various ways. Exorbitant duties  
17 on imported articles would beget a general spirit of smuggling; which is always prejudicial to the fair  
18 trader, and eventually to the revenue itself: they tend to render other classes of the community  
19 tributary, in an improper degree, to the manufacturing classes, to whom they give a premature  
20 monopoly of the markets; they sometimes force industry out of its more natural channels into others  
21 in which it flows with less advantage; and in the last place, they oppress the merchant, who is often  
22 obliged to pay them himself without any retribution from the consumer. When the demand is equal to  
23 the quantity of goods at market, the consumer generally pays the duty; but when the markets happen  
24 to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his  
25 profits, but breaks in upon his capital. I am apt to think that a division of the duty, between the seller

1 and the buyer, more often happens than is commonly imagined. It is not always possible to raise the  
2 price of a commodity in exact proportion to every additional imposition laid upon it. The merchant,  
3 especially in a country of small commercial capital, is often under a necessity of keeping prices down in  
4 order to a more expeditious sale.

5 The maxim that the consumer is the payer, is so much oftener true than the reverse of the proposition,  
6 that it is far more equitable that the duties on imports should go into a common stock, than that they  
7 should redound to the exclusive benefit of the importing States. But it is not so generally true as to  
8 render it equitable, that those duties should form the only national fund. When they are paid by the  
9 merchant they operate as an additional tax upon the importing State, whose citizens pay their  
10 proportion of them in the character of consumers. In this view they are productive of inequality  
11 among the States; which inequality would be increased with the increased extent of the duties. The  
12 confinement of the national revenues to this species of imposts would be attended with inequality,  
13 from a different cause, between the manufacturing and the non-manufacturing States. The States  
14 which can go farthest towards the supply of their own wants, by their own manufactures, will not,  
15 according to their numbers or wealth, consume so great a proportion of imported articles as those  
16 States which are not in the same favorable situation. They would not, therefore, in this mode alone  
17 contribute to the public treasury in a ratio to their abilities. To make them do this it is necessary that  
18 recourse be had to excises, the proper objects of which are particular kinds of manufactures. New  
19 York is more deeply interested in these considerations than such of her citizens as contend for limiting  
20 the power of the Union to external taxation may be aware of. New York is an importing State, and is  
21 not likely speedily to be, to any great extent, a manufacturing State. She would, of course, suffer in a  
22 double light from restraining the jurisdiction of the Union to commercial imposts.  
23 So far as these observations tend to inculcate a danger of the import duties being extended to an  
24 injurious extreme it may be observed, conformably to a remark made in another part of these papers,  
25 that the interest of the revenue itself would be a sufficient guard against such an extreme. I readily

1 admit that this would be the case, as long as other resources were open; but if the avenues to them were  
2 closed, hope, stimulated by necessity, would beget experiments, fortified by rigorous precautions and  
3 additional penalties, which, for a time, would have the intended effect, till there had been leisure to  
4 contrive expedients to elude these new precautions. The first success would be apt to inspire false  
5 opinions, which it might require a long course of subsequent experience to correct. Necessity, especially  
6 in politics, often occasions false hopes, false reasonings, and a system of measures correspondingly  
7 erroneous. But even if this supposed excess should not be a consequence of the limitation of the federal  
8 power of taxation, the inequalities spoken of would still ensue, though not in the same degree, from the  
9 other causes that have been noticed. Let us now return to the examination of objections.

10 One which, if we may judge from the frequency of its repetition, seems most to be relied on, is, that the  
11 House of Representatives is not sufficiently numerous for the reception of all the different classes of  
12 citizens, in order to combine the interests and feelings of every part of the community, and to produce  
13 a due sympathy between the representative body and its constituents. This argument presents itself  
14 under a very specious and seducing form; and is well calculated to lay hold of the prejudices of those to  
15 whom it is addressed. But when we come to dissect it with attention, it will appear to be made up of  
16 nothing but fair-sounding words. The object it seems to aim at is, in the first place, impracticable, and  
17 in the sense in which it is contended for, is unnecessary. I reserve for another place the discussion of  
18 the question which relates to the sufficiency of the representative body in respect to numbers, and  
19 shall content myself with examining here the particular use which has been made of a contrary  
20 supposition, in reference to the immediate subject of our inquiries.

21 The idea of an actual representation of all classes of the people, by persons of each class, is altogether  
22 visionary. Unless it were expressly provided in the Constitution, that each different occupation should  
23 send one or more members, the thing would never take place in practice. Mechanics and  
24 manufacturers will always be inclined, with few exceptions, to give their votes to merchants, in  
25 preference to persons of their own professions or trades. Those discerning citizens are well aware that

1 the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry.  
2 Many of them, indeed, are immediately connected with the operations of commerce. They know that  
3 the merchant is their natural patron and friend; and they are aware, that however great the confidence  
4 they may justly feel in their own good sense, their interests can be more effectually promoted by the  
5 merchant than by themselves. They are sensible that their habits in life have not been such as to give  
6 them those acquired endowments, without which, in a deliberative assembly, the greatest natural  
7 abilities are for the most part useless; and that the influence and weight, and superior acquirements of  
8 the merchants render them more equal to a contest with any spirit which might happen to infuse itself  
9 into the public councils, unfriendly to the manufacturing and trading interests. These considerations,  
10 and many others that might be mentioned prove, and experience confirms it, that artisans and  
11 manufacturers will commonly be disposed to bestow their votes upon merchants and those whom they  
12 recommend. We must therefore consider merchants as the natural representatives of all these classes  
13 of the community.

14 With regard to the learned professions, little need be observed; they truly form no distinct interest in  
15 society, and according to their situation and talents, will be indiscriminately the objects of the  
16 confidence and choice of each other, and of other parts of the community.

17 Nothing remains but the landed interest; and this, in a political view, and particularly in relation to  
18 taxes, I take to be perfectly united, from the wealthiest landlord down to the poorest tenant. No tax  
19 can be laid on land which will not affect the proprietor of millions of acres as well as the proprietor of a  
20 single acre. Every landholder will therefore have a common interest to keep the taxes on land as low  
21 as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if  
22 we even could suppose a distinction of interest between the opulent landholder and the middling  
23 farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to  
24 the national legislature than the last? If we take fact as our guide, and look into our own senate and  
25 assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in

1 the senate, which consists of a smaller number, than in the assembly, which is composed of a greater  
2 number. Where the qualifications of the electors are the same, whether they have to choose a small or a  
3 large number, their votes will fall upon those in whom they have most confidence; whether these  
4 happen to be men of large fortunes, or of moderate property, or of no property at all.  
5 It is said to be necessary, that all classes of citizens should have some of their own number in the  
6 representative body, in order that their feelings and interests may be the better understood and  
7 attended to. But we have seen that this will never happen under any arrangement that leaves the votes  
8 of the people free. Where this is the case, the representative body, with too few exceptions to have any  
9 influence on the spirit of the government, will be composed of landholders, merchants, and men of the  
10 learned professions. But where is the danger that the interests and feelings of the different classes of  
11 citizens will not be understood or attended to by these three descriptions of men? Will not the  
12 landholder know and feel whatever will promote or insure the interest of landed property? And will he  
13 not, from his own interest in that species of property, be sufficiently prone to resist every attempt to  
14 prejudice or encumber it? Will not the merchant understand and be disposed to cultivate, as far as  
15 may be proper, the interests of the mechanic and manufacturing arts, to which his commerce is so  
16 nearly allied? Will not the man of the learned profession, who will feel a neutrality to the rivalships  
17 between the different branches of industry, be likely to prove an impartial arbiter between them,  
18 ready to promote either, so far as it shall appear to him conducive to the general interests of the  
19 society?  
20 If we take into the account the momentary humors or dispositions which may happen to prevail in  
21 particular parts of the society, and to which a wise administration will never be inattentive, is the man  
22 whose situation leads to extensive inquiry and information less likely to be a competent judge of their  
23 nature, extent, and foundation than one whose observation does not travel beyond the circle of his  
24 neighbors and acquaintances? Is it not natural that a man who is a candidate for the favor of the  
25 people, and who is dependent on the suffrages of his fellow-citizens for the continuance of his public

1 honors, should take care to inform himself of their dispositions and inclinations, and should be willing  
2 to allow them their proper degree of influence upon his conduct? This dependence, and the necessity of  
3 being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they  
4 are the strong chords of sympathy between the representative and the constituent.  
5 There is no part of the administration of government that requires extensive information and a  
6 thorough knowledge of the principles of political economy, so much as the business of taxation. The  
7 man who understands those principles best will be least likely to resort to oppressive expedients, or  
8 sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that  
9 the most productive system of finance will always be the least burdensome. There can be no doubt that  
10 in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands  
11 it should be acquainted with the general genius, habits, and modes of thinking of the people at large,  
12 and with the resources of the country. And this is all that can be reasonably meant by a knowledge of  
13 the interests and feelings of the people. In any other sense the proposition has either no meaning, or  
14 an absurd one. And in that sense let every considerate citizen judge for himself where the requisite  
15 qualification is most likely to be found.

16 Publius.

17

18

19

20

21

22

23

24

25

1 The Federalist 36

2 The Same Subject Continued

3 (Concerning the General Power of Taxation)

4 Hamilton for the New York Packet. Tuesday January 8, 1788.

5 To the People of the State of New York:

6 WE HAVE seen that the result of the observations, to which the foregoing number has been principally  
7 devoted, is, that from the natural operation of the different interests and views of the various classes of  
8 the community, whether the representation of the people be more or less numerous, it will consist  
9 almost entirely of proprietors of land, of merchants, and of members of the learned professions, who  
10 will truly represent all those different interests and views. If it should be objected that we have seen  
11 other descriptions of men in the local legislatures, I answer that it is admitted there are exceptions to  
12 the rule, but not in sufficient number to influence the general complexion or character of the  
13 government. There are strong minds in every walk of life that will rise superior to the disadvantages  
14 of situation, and will command the tribute due to their merit, not only from the classes to which they  
15 particularly belong, but from the society in general. The door ought to be equally open to all; and I  
16 trust, for the credit of human nature, that we shall see examples of such vigorous plants flourishing in  
17 the soil of federal as well as of State legislation; but occasional instances of this sort will not render the  
18 reasoning founded upon the general course of things, less conclusive.

19 The subject might be placed in several other lights that would all lead to the same result; and in  
20 particular it might be asked, What greater affinity or relation of interest can be conceived between the  
21 carpenter and blacksmith, and the linen manufacturer or stocking weaver, than between the  
22 merchant and either of them? It is notorious that there are often as great rivalships between different  
23 branches of the mechanic or manufacturing arts as there are between any of the departments of labor  
24 and industry; so that, unless the representative body were to be far more numerous than would be  
25 consistent with any idea of regularity or wisdom in its deliberations, it is impossible that what seems

1 to be the spirit of the objection we have been considering should ever be realized in practice. But I  
2 forbear to dwell any longer on a matter which has hitherto worn too loose a garb to admit even of an  
3 accurate inspection of its real shape or tendency.

4 There is another objection of a somewhat more precise nature that claims our attention. It has been  
5 asserted that a power of internal taxation in the national legislature could never be exercised with  
6 advantage, as well from the want of a sufficient knowledge of local circumstances, as from an  
7 interference between the revenue laws of the Union and of the particular States. The supposition of a  
8 want of proper knowledge seems to be entirely destitute of foundation. If any question is depending in a  
9 State legislature respecting one of the counties, which demands a knowledge of local details, how is it  
10 acquired? No doubt from the information of the members of the county. Cannot the like knowledge be  
11 obtained in the national legislature from the representatives of each State? And is it not to be  
12 presumed that the men who will generally be sent there will be possessed of the necessary degree of  
13 intelligence to be able to communicate that information? Is the knowledge of local circumstances, as  
14 applied to taxation, a minute topographical acquaintance with all the mountains, rivers, streams,  
15 highways, and bypaths in each State; or is it a general acquaintance with its situation and resources,  
16 with the state of its agriculture, commerce, manufactures, with the nature of its products and  
17 consumptions, with the different degrees and kinds of its wealth, property, and industry?

18 Nations in general, even under governments of the more popular kind, usually commit the  
19 administration of their finances to single men or to boards composed of a few individuals, who digest  
20 and prepare, in the first instance, the plans of taxation, which are afterwards passed into laws by the  
21 authority of the sovereign or legislature.

22 Inquisitive and enlightened statesmen are deemed everywhere best qualified to make a judicious  
23 selection of the objects proper for revenue; which is a clear indication, as far as the sense of mankind  
24 can have weight in the question, of the species of knowledge of local circumstances requisite to the  
25 purposes of taxation.

1 The taxes intended to be comprised under the general denomination of internal taxes may be  
2 subdivided into those of the direct and those of the indirect kind. Though the objection be made to both,  
3 yet the reasoning upon it seems to be confined to the former branch. And indeed, as to the latter, by  
4 which must be understood duties and excises on articles of consumption, one is at a loss to conceive  
5 what can be the nature of the difficulties apprehended. The knowledge relating to them must evidently  
6 be of a kind that will either be suggested by the nature of the article itself, or can easily be procured  
7 from any well-informed man, especially of the mercantile class. The circumstances that may  
8 distinguish its situation in one State from its situation in another must be few, simple, and easy to be  
9 comprehended. The principal thing to be attended to, would be to avoid those articles which had been  
10 previously appropriated to the use of a particular State; and there could be no difficulty in  
11 ascertaining the revenue system of each. This could always be known from the respective codes of  
12 laws, as well as from the information of the members from the several States.

13 The objection, when applied to real property or to houses and lands, appears to have, at first sight,  
14 more foundation, but even in this view it will not bear a close examination. Land taxes are commonly  
15 laid in one of two modes, either by actual valuations, permanent or periodical, or  
16 by occasional assessments, at the discretion, or according to the best judgment, of certain officers  
17 whose duty it is to make them. In either case, the execution of the business, which alone requires the  
18 knowledge of local details, must be devolved upon discreet persons in the character of commissioners  
19 or assessors, elected by the people or appointed by the government for the purpose. All that the law  
20 can do must be to name the persons or to prescribe the manner of their election or appointment, to fix  
21 their numbers and qualifications and to draw the general outlines of their powers and duties. And  
22 what is there in all this that cannot as well be performed by the national legislature as by a State  
23 legislature? The attention of either can only reach to general principles; local details, as already  
24 observed, must be referred to those who are to execute the plan.

25 But there is a simple point of view in which this matter may be placed that must be altogether

1 satisfactory. The national legislature can make use of the system of each state within that state. The  
2 method of laying and collecting this species of taxes in each State can, in all its parts, be adopted and  
3 employed by the federal government.

4 Let it be recollect that the proportion of these taxes is not to be left to the discretion of the national  
5 legislature, but is to be determined by the numbers of each State, as described in the second section of  
6 the first article. An actual census or enumeration of the people must furnish the rule, a circumstance  
7 which effectually shuts the door to partiality or oppression. The abuse of this power of taxation seems  
8 to have been provided against with guarded circumspection. In addition to the precaution just  
9 mentioned, there is a provision that "all duties, imposts, and excises shall be uniform throughout the  
10 United States.'

11 It has been very properly observed by different speakers and writers on the side of the Constitution,  
12 that if the exercise of the power of internal taxation by the Union should be discovered on experiment  
13 to be really inconvenient, the federal government may then forbear the use of it, and have recourse to  
14 requisitions in its stead. By way of answer to this, it has been triumphantly asked, Why not in the first  
15 instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be  
16 given. The first is, that the exercise of that power, if convenient, will be preferable, because it will be  
17 more effectual; and it is impossible to prove in theory, or otherwise than by the experiment, that it  
18 cannot be advantageously exercised. The contrary, indeed, appears most probable. The second answer  
19 is, that the existence of such a power in the Constitution will have a strong influence in giving efficacy  
20 to requisitions. When the States know that the Union can apply itself without their agency, it will be a  
21 powerful motive for exertion on their part.

22 As to the interference of the revenue laws of the Union, and of its members, we have already seen that  
23 there can be no clashing or repugnancy of authority. The laws cannot, therefore, in a legal sense,  
24 interfere with each other; and it is far from impossible to avoid an interference even in the policy of  
25 their different systems. An effectual expedient for this purpose will be, mutually, to abstain from those

1 objects which either side may have first had recourse to. As neither can control the other, each will  
2 have an obvious and sensible interest in this reciprocal forbearance. And where there is  
3 an immediate common interest, we may safely count upon its operation. When the particular debts of  
4 the States are done away, and their expenses come to be limited within their natural compass, the  
5 possibility almost of interference will vanish. A small land tax will answer the purpose of the States,  
6 and will be their most simple and most fit resource.

7 Many spectres have been raised out of this power of internal taxation, to excite the apprehensions of  
8 the people: double sets of revenue officers, a duplication of their burdens by double taxations, and the  
9 frightful forms of odious and oppressive poll-taxes, have been played off with all the ingenious dexterity  
10 of political legerdemain.

11 As to the first point, there are two cases in which there can be no room for double sets of officers: one,  
12 where the right of imposing the tax is exclusively vested in the Union, which applies to the duties on  
13 imports; the other, where the object has not fallen under any State regulation or provision, which may  
14 be applicable to a variety of objects. In other cases, the probability is that the United States will either  
15 wholly abstain from the objects preoccupied for local purposes, or will make use of the State officers  
16 and State regulations for collecting the additional imposition. This will best answer the views of  
17 revenue, because it will save expense in the collection, and will best avoid any occasion of disgust to  
18 the State governments and to the people. At all events, here is a practicable expedient for avoiding  
19 such an inconvenience; and nothing more can be required than to show that evils predicted to not  
20 necessarily result from the plan.

21 As to any argument derived from a supposed system of influence, it is a sufficient answer to say that it  
22 ought not to be presumed; but the supposition is susceptible of a more precise answer. If such a spirit  
23 should infest the councils of the Union, the most certain road to the accomplishment of its aim would  
24 be to employ the State officers as much as possible, and to attach them to the Union by an  
25 accumulation of their emoluments. This would serve to turn the tide of State influence into the

1 channels of the national government, instead of making federal influence flow in an opposite and  
2 adverse current. But all suppositions of this kind are invidious, and ought to be banished from the  
3 consideration of the great question before the people. They can answer no other end than to cast a mist  
4 over the truth.

5 As to the suggestion of double taxation, the answer is plain. The wants of the Union are to be supplied in  
6 one way or another; if to be done by the authority of the federal government, it will not be to be done by  
7 that of the State government. The quantity of taxes to be paid by the community must be the same in  
8 either case; with this advantage, if the provision is to be made by the Union that the capital resource of  
9 commercial imposts, which is the most convenient branch of revenue, can be prudently improved to a  
10 much greater extent under federal than under State regulation, and of course will render it less  
11 necessary to recur to more inconvenient methods; and with this further advantage, that as far as  
12 there may be any real difficulty in the exercise of the power of internal taxation, it will impose a  
13 disposition to greater care in the choice and arrangement of the means; and must naturally tend to  
14 make it a fixed point of policy in the national administration to go as far as may be practicable in  
15 making the luxury of the rich tributary to the public treasury, in order to diminish the necessity of  
16 those impositions which might create dissatisfaction in the poorer and most numerous classes of the  
17 society. Happy it is when the interest which the government has in the preservation of its own power,  
18 coincides with a proper distribution of the public burdens, and tends to guard the least wealthy part of  
19 the community from oppression!

20 As to poll taxes, I, without scruple, confess my disapprobation of them; and though they have  
21 prevailed from an early period in those States[1] which have uniformly been the most tenacious of  
22 their rights, I should lament to see them introduced into practice under the national government. But  
23 does it follow because there is a power to lay them that they will actually be laid? Every State in the  
24 Union has power to impose taxes of this kind; and yet in several of them they are unknown in practice.  
25 Are the State governments to be stigmatized as tyrannies, because they possess this power? If they

1 are not, with what propriety can the like power justify such a charge against the national government,  
2 or even be urged as an obstacle to its adoption? As little friendly as I am to the species of imposition, I  
3 still feel a thorough conviction that the power of having recourse to it ought to exist in the federal  
4 government. There are certain emergencies of nations, in which expedients, that in the ordinary state  
5 of things ought to be forborne, become essential to the public weal. And the government, from the  
6 possibility of such emergencies, ought ever to have the option of making use of them. The real scarcity  
7 of objects in this country, which may be considered as productive sources of revenue, is a reason  
8 peculiar to itself, for not abridging the discretion of the national councils in this respect. There may  
9 exist certain critical and tempestuous conjunctures of the State, in which a poll tax may become an  
10 inestimable resource. And as I know nothing to exempt this portion of the globe from the common  
11 calamities that have befallen other parts of it, I acknowledge my aversion to every project that is  
12 calculated to disarm the government of a single weapon, which in any possible contingency might be  
13 usefully employed for the general defense and security.

14 I have now gone through the examination of such of the powers proposed to be vested in the United  
15 States, which may be considered as having an immediate relation to the energy of the government;  
16 and have endeavored to answer the principal objections which have been made to them. I have passed  
17 over in silence those minor authorities, which are either too inconsiderable to have been thought  
18 worthy of the hostilities of the opponents of the Constitution, or of too manifest propriety to admit of  
19 controversy. The mass of judiciary power, however, might have claimed an investigation under this  
20 head, had it not been for the consideration that its organization and its extent may be more  
21 advantageously considered in connection. This has determined me to refer it to the branch of our  
22 inquiries upon which we shall next enter.

23 Publius.

24 The New England States.

25

1 The Federalist 37

2 Concerning the Difficulties of the Convention in Devising a Proper Form of Government

3 Madison for the Daily Advertiser. Friday, January 11, 1788.

4 To the People of the State of New York:

5 IN REVIEWING the defects of the existing Confederation, and showing that they cannot be supplied by a  
6 government of less energy than that before the public, several of the most important principles of the  
7 latter fell of course under consideration. But as the ultimate object of these papers is to determine  
8 clearly and fully the merits of this Constitution, and the expediency of adopting it, our plan cannot be  
9 complete without taking a more critical and thorough survey of the work of the convention, without  
10 examining it on all its sides, comparing it in all its parts, and calculating its probable effects.

11 That this remaining task may be executed under impressions conducive to a just and fair result, some  
12 reflections must in this place be indulged, which candor previously suggests.

13 It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with  
14 that spirit of moderation which is essential to a just estimate of their real tendency to advance or  
15 obstruct the public good; and that this spirit is more apt to be diminished than promoted, by those  
16 occasions which require an unusual exercise of it. To those who have been led by experience to attend  
17 to this consideration, it could not appear surprising, that the act of the convention, which recommends  
18 so many important changes and innovations, which may be viewed in so many lights and relations,  
19 and which touches the springs of so many passions and interests, should find or excite dispositions  
20 unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits.

21 In some, it has been too evident from their own publications, that they have scanned the proposed  
22 Constitution, not only with a predisposition to censure, but with a predetermination to condemn; as  
23 the language held by others betrays an opposite predetermination or bias, which must render their  
24 opinions also of little moment in the question. In placing, however, these different characters on a  
25 level, with respect to the weight of their opinions, I wish not to insinuate that there may not be a

1 material difference in the purity of their intentions. It is but just to remark in favor of the latter  
2 description, that as our situation is universally admitted to be peculiarly critical, and to require  
3 indispensably that something should be done for our relief, the predetermined patron of what has been  
4 actually done may have taken his bias from the weight of these considerations, as well as from  
5 considerations of a sinister nature. The predetermined adversary, on the other hand, can have been  
6 governed by no venial motive whatever. The intentions of the first may be upright, as they may on the  
7 contrary be culpable. The views of the last cannot be upright, and must be culpable. But the truth is,  
8 that these papers are not addressed to persons falling under either of these characters. They solicit the  
9 attention of those only, who add to a sincere zeal for the happiness of their country, a temper favorable  
10 to a just estimate of the means of promoting it.

11 Persons of this character will proceed to an examination of the plan submitted by the convention, not  
12 only without a disposition to find or to magnify faults; but will see the propriety of reflecting, that a  
13 faultless plan was not to be expected. Nor will they barely make allowances for the errors which may  
14 be chargeable on the fallibility to which the convention, as a body of men, were liable; but will keep in  
15 mind, that they themselves also are but men, and ought not to assume an infallibility in rejudging the  
16 fallible opinions of others.

17 With equal readiness will it be perceived, that besides these inducements to candor, many allowances  
18 ought to be made for the difficulties inherent in the very nature of the undertaking referred to the  
19 convention.

20 The novelty of the undertaking immediately strikes us. It has been shown in the course of these  
21 papers, that the existing Confederation is founded on principles which are fallacious; that we must  
22 consequently change this first foundation, and with it the superstructure resting upon it. It has been  
23 shown, that the other confederacies which could be consulted as precedents have been vitiated by the  
24 same erroneous principles, and can therefore furnish no other light than that of beacons, which give  
25 warning of the course to be shunned, without pointing out that which ought to be pursued. The most

1 that the convention could do in such a situation, was to avoid the errors suggested by the past  
2 experience of other countries, as well as of our own; and to provide a convenient mode of rectifying  
3 their own errors, as future experiences may unfold them.  
4 Among the difficulties encountered by the convention, a very important one must have lain in  
5 combining the requisite stability and energy in government, with the inviolable attention due to liberty  
6 and to the republican form. Without substantially accomplishing this part of their undertaking, they  
7 would have very imperfectly fulfilled the object of their appointment, or the expectation of the public;  
8 yet that it could not be easily accomplished, will be denied by no one who is unwilling to betray his  
9 ignorance of the subject. Energy in government is essential to that security against external and  
10 internal danger, and to that prompt and salutary execution of the laws which enter into the very  
11 definition of good government. Stability in government is essential to national character and to the  
12 advantages annexed to it, as well as to that repose and confidence in the minds of the people, which  
13 are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil  
14 in itself than it is odious to the people; and it may be pronounced with assurance that the people of this  
15 country, enlightened as they are with regard to the nature, and interested, as the great body of them  
16 are, in the effects of good government, will never be satisfied till some remedy be applied to the  
17 vicissitudes and uncertainties which characterize the State administrations. On comparing, however,  
18 these valuable ingredients with the vital principles of liberty, we must perceive at once the difficulty of  
19 mingling them together in their due proportions. The genius of republican liberty seems to demand on  
20 one side, not only that all power should be derived from the people, but that those intrusted with it  
21 should be kept in independence on the people, by a short duration of their appointments; and that  
22 even during this short period the trust should be placed not in a few, but a number of hands. Stability,  
23 on the contrary, requires that the hands in which power is lodged should continue for a length of time  
24 the same. A frequent change of men will result from a frequent return of elections; and a frequent  
25 change of measures from a frequent change of men: whilst energy in government requires not only a

1 certain duration of power, but the execution of it by a single hand.

2 How far the convention may have succeeded in this part of their work, will better appear on a more

3 accurate view of it. From the cursory view here taken, it must clearly appear to have been an arduous

4 part.

5 Not less arduous must have been the task of marking the proper line of partition between the authority

6 of the general and that of the State governments. Every man will be sensible of this difficulty, in

7 proportion as he has been accustomed to contemplate and discriminate objects extensive and

8 complicated in their nature. The faculties of the mind itself have never yet been distinguished and

9 defined, with satisfactory precision, by all the efforts of the most acute and metaphysical philosophers.

10 Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such

11 delicate shades and minute gradations that their boundaries have eluded the most subtle

12 investigations, and remain a pregnant source of ingenious disquisition and controversy. The

13 boundaries between the great kingdom of nature, and, still more, between the various provinces, and

14 lesser portions, into which they are subdivided, afford another illustration of the same important

15 truth. The most sagacious and laborious naturalists have never yet succeeded in tracing with

16 certainty the line which separates the district of vegetable life from the neighboring region of

17 unorganized matter, or which marks the ermination of the former and the commencement of the

18 animal empire. A still greater obscurity lies in the distinctive characters by which the objects in each

19 of these great departments of nature have been arranged and assorted.

20 When we pass from the works of nature, in which all the delineations are perfectly accurate, and

21 appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of

22 man, in which the obscurity arises as well from the object itself as from the organ by which it is

23 contemplated, we must perceive the necessity of moderating still further our expectations and hopes

24 from the efforts of human sagacity. Experience has instructed us that no skill in the science of

25 government has yet been able to discriminate and define, with sufficient certainty, its three great

1 provinces the legislative, executive, and judiciary; or even the privileges and powers of the different  
2 legislative branches. Questions daily occur in the course of practice, which prove the obscurity which  
3 reins in these subjects, and which puzzle the greatest adepts in political science.  
4 The experience of ages, with the continued and combined labors of the most enlightened legislatures  
5 and jurists, has been equally unsuccessful in delineating the several objects and limits of different codes  
6 of laws and different tribunals of justice. The precise extent of the common law, and the statute law, the  
7 maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remains  
8 still to be clearly and finally established in Great Britain, where accuracy in such subjects has been  
9 more industriously pursued than in any other part of the world. The jurisdiction of her several courts,  
10 general and local, of law, of equity, of admiralty, etc., is not less a source of frequent and intricate  
11 discussions, sufficiently denoting the indeterminate limits by which they are respectively  
12 circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest  
13 and most mature deliberation, are considered as more or less obscure and equivocal, until their  
14 meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides  
15 the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the  
16 medium through which the conceptions of men are conveyed to each other adds a fresh  
17 embarrassment. The use of words is to express ideas. Perspicuity, therefore, requires not only that the  
18 ideas should be distinctly formed, but that they should be expressed by words distinctly and  
19 exclusively appropriate to them. But no language is so copious as to supply words and phrases for  
20 every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it  
21 must happen that however accurately objects may be discriminated in themselves, and however  
22 accurately the discrimination may be considered, the definition of them may be rendered inaccurate  
23 by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be  
24 greater or less, according to the complexity and novelty of the objects defined. When the Almighty  
25 himself condescends to address mankind in their own language, his meaning, luminous as it must be,

1 is rendered dim and doubtful by the cloudy medium through which it is communicated.

2 Here, then, are three sources of vague and incorrect definitions: indistinctness of the object,

3 imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must

4 produce a certain degree of obscurity. The convention, in delineating the boundary between the federal

5 and State jurisdictions, must have experienced the full effect of them all.

6 To the difficulties already mentioned may be added the interfering pretensions of the larger and smaller

7 States. We cannot err in supposing that the former would contend for a participation in the

8 government, fully proportioned to their superior wealth and importance; and that the latter would not

9 be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side

10 would entirely yield to the other, and consequently that the struggle could be terminated only by

11 compromise. It is extremely probable, also, that after the ratio of representation had been adjusted,

12 this very compromise must have produced a fresh struggle between the same parties, to give such a

13 turn to the organization of the government, and to the distribution of its powers, as would increase the

14 importance of the branches, in forming which they had respectively obtained the greatest share of

15 influence. There are features in the Constitution which warrant each of these suppositions; and as far

16 as either of them is well founded, it shows that the convention must have been compelled to sacrifice

17 theoretical propriety to the force of extraneous considerations.

18 Nor could it have been the large and small States only, which would marshal themselves in opposition

19 to each other on various points. Other combinations, resulting from a difference of local position and

20 policy, must have created additional difficulties. As every State may be divided into different districts,

21 and its citizens into different classes, which give birth to contending interests and local jealousies, so

22 the different parts of the United States are distinguished from each other by a variety of

23 circumstances, which produce a like effect on a larger scale. And although this variety of interests, for

24 reasons sufficiently explained in a former paper, may have a salutary influence on the administration

25 of the government when formed, yet every one must be sensible of the contrary influence, which must

1 have been experienced in the task of forming it.  
2 Would it be wonderful if, under the pressure of all these difficulties, the convention should have been  
3 forced into some deviations from that artificial structure and regular symmetry which an abstract view  
4 of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his  
5 imagination? The real wonder is that so many difficulties should have been surmounted, and  
6 surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is  
7 impossible for any man of candor to reflect on this circumstance without partaking of the  
8 astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that  
9 Almighty hand which has been so frequently and signally extended to our relief in the critical stages of  
10 the revolution.

11 We had occasion, in a former paper, to take notice of the repeated trials which have been  
12 unsuccessfully made in the United Netherlands for reforming the baneful and notorious vices of their  
13 constitution. The history of almost all the great councils and consultations held among mankind for  
14 reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their  
15 respective interests, is a history of factions, contentions, and disappointments, and may be classed  
16 among the most dark and degraded pictures which display the infirmities and depravities of the  
17 human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as  
18 exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse  
19 prospect to which they are contrasted. In revolving the causes from which these exceptions result,  
20 and applying them to the particular instances before us, we are necessarily led to two important  
21 conclusions. The first is, that the convention must have enjoyed, in a very singular degree, an  
22 exemption from the pestilential influence of party animosities the disease most incident to  
23 deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is that all  
24 the deputations composing the convention were satisfactorily accommodated by the final act, or were  
25 induced to accede to it by a deep conviction of the necessity of sacrificing private opinions and partial

1 interests to the public good, and by a despair of seeing this necessity diminished by delays or by new  
2 experiments.

3 Publius.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 38

2 The Same Subject Continued, and the Incoherence of the Objections to the New Plan Exposed

3 Madison for the New York Packet. Tuesday, January 15, 1788.

4 To the People of the State of New York:

5 IT IS not a little remarkable that in every case reported by ancient history, in which government has

6 been established with deliberation and consent, the task of framing it has not been committed to an

7 assembly of men, but has been performed by some individual citizen of preeminent wisdom and

8 approved integrity.

9 Minos, we learn, was the primitive founder of the government of Crete, as Zaleucus was of that of the

10 Locrians. Theseus first, and after him Draco and Solon, instituted the government of Athens. Lycurgus

11 was the lawgiver of Sparta. The foundation of the original government of Rome was laid by Romulus,

12 and the work completed by two of his elective successors, Numa and Tullius Hostilius. On the abolition

13 of royalty the consular administration was substituted by Brutus, who stepped forward with a project

14 for such a reform, which, he alleged, had been prepared by Tullius Hostilius, and to which his address

15 obtained the assent and ratification of the senate and people. This remark is applicable to confederate

16 governments also. Amphictyon, we are told, was the author of that which bore his name. The Achaeans

17 league received its first birth from Achaeus, and its second from Aratus.

18 What degree of agency these reputed lawgivers might have in their respective establishments, or how

19 far they might be clothed with the legitimate authority of the people, cannot in every instance be

20 ascertained. In some, however, the proceeding was strictly regular. Draco appears to have been

21 intrusted by the people of Athens with indefinite powers to reform its government and laws. And

22 Solon, according to Plutarch, was in a manner compelled, by the universal suffrage of his fellow-

23 citizens, to take upon him the sole and absolute power of new-modeling the constitution. The

24 proceedings under Lycurgus were less regular; but as far as the advocates for a regular reform could

25 prevail, they all turned their eyes towards the single efforts of that celebrated patriot and sage,

1 instead of seeking to bring about a revolution by the intervention of a deliberative body of citizens.  
2 Whence could it have proceeded, that a people, jealous as the Greeks were of their liberty, should so far  
3 abandon the rules of caution as to place their destiny in the hands of a single citizen? Whence could it  
4 have proceeded, that the Athenians, a people who would not suffer an army to be commanded by fewer  
5 than ten generals, and who required no other proof of danger to their liberties than the illustrious merit  
6 of a fellow-citizen, should consider one illustrious citizen as a more eligible depositary of the fortunes of  
7 themselves and their posterity, than a select body of citizens, from whose common deliberations more  
8 wisdom, as well as more safety, might have been expected? These questions cannot be fully answered,  
9 without supposing that the fears of discord and disunion among a number of counsellors exceeded the  
10 apprehension of treachery or incapacity in a single individual. History informs us, likewise, of the  
11 difficulties with which these celebrated reformers had to contend, as well as the expedients which  
12 they were obliged to employ in order to carry their reforms into effect. Solon, who seems to have  
13 indulged a more temporizing policy, confessed that he had not given to his countrymen the  
14 government best suited to their happiness, but most tolerable to their prejudices. And Lycurgus, more  
15 true to his object, was under the necessity of mixing a portion of violence with the authority of  
16 superstition, and of securing his final success by a voluntary renunciation, first of his country, and  
17 then of his life. If these lessons teach us, on one hand, to admire the improvement made by America on  
18 the ancient mode of preparing and establishing regular plans of government, they serve not less, on  
19 the other, to admonish us of the hazards and difficulties incident to such experiments, and of the great  
20 imprudence of unnecessarily multiplying them.  
21 Is it an unreasonable conjecture, that the errors which may be contained in the plan of the convention  
22 are such as have resulted rather from the defect of antecedent experience on this complicated and  
23 difficult subject, than from a want of accuracy or care in the investigation of it; and, consequently such  
24 as will not be ascertained until an actual trial shall have pointed them out? This conjecture is  
25 rendered probable, not only by many considerations of a general nature, but by the particular case of

1 the Articles of Confederation. It is observable that among the numerous objections and amendments  
2 suggested by the several States, when these articles were submitted for their ratification, not one is  
3 found which alludes to the great and radical error which on actual trial has discovered itself. And if we  
4 except the observations which New Jersey was led to make, rather by her local situation, than by her  
5 peculiar foresight, it may be questioned whether a single suggestion was of sufficient moment to justify  
6 a revision of the system. There is abundant reason, nevertheless, to suppose that immaterial as these  
7 objections were, they would have been adhered to with a very dangerous inflexibility, in some States,  
8 had not a zeal for their opinions and supposed interests been stifled by the more powerful sentiment of  
9 selfpreservation. One State, we may remember, persisted for several years in refusing her concurrence,  
10 although the enemy remained the whole period at our gates, or rather in the very bowels of our  
11 country. Nor was her pliancy in the end effected by a less motive, than the fear of being chargeable  
12 with protracting the public calamities, and endangering the event of the contest. Every candid reader  
13 will make the proper reflections on these important facts.

14 A patient who finds his disorder daily growing worse, and that an efficacious remedy can no longer be  
15 delayed without extreme danger, after coolly revolving his situation, and the characters of different  
16 physicians, selects and calls in such of them as he judges most capable of administering relief, and best  
17 entitled to his confidence. The physicians attend; the case of the patient is carefully examined; a  
18 consultation is held; they are unanimously agreed that the symptoms are critical, but that the case,  
19 with proper and timely relief, is so far from being desperate, that it may be made to issue in an  
20 improvement of his constitution. They are equally unanimous in prescribing the remedy, by which this  
21 happy effect is to be produced. The prescription is no sooner made known, however, than a number of  
22 persons interpose, and, without denying the reality or danger of the disorder, assure the patient that  
23 the prescription will be poison to his constitution, and forbid him, under pain of certain death, to make  
24 use of it. Might not the patient reasonably demand, before he ventured to follow this advice, that the  
25 authors of it should at least agree among themselves on some other remedy to be substituted? And if

1 he found them differing as much from one another as from his first counsellors, would he not act  
2 prudently in trying the experiment unanimously recommended by the latter, rather than be  
3 hearkening to those who could neither deny the necessity of a speedy remedy, nor agree in proposing  
4 one?

5 Such a patient and in such a situation is America at this moment. She has been sensible of her malady.  
6 She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is  
7 warned by others against following this advice under pain of the most fatal consequences. Do the  
8 monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful  
9 remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed,  
10 or in the proper one to be substituted? Let them speak for themselves. This one tells us that the  
11 proposed Constitution ought to be rejected, because it is not a confederation of the States, but a  
12 government over individuals. Another admits that it ought to be a government over individuals to a  
13 certain extent, but by no means to the extent proposed. A third does not object to the government  
14 over individuals, or to the extent proposed, but to the want of a bill of rights. A fourth concurs in the  
15 absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal  
16 rights of individuals, but of the rights reserved to the States in their political capacity. A fifth is of  
17 opinion that a bill of rights of any sort would be superfluous and misplaced, and that the plan would be  
18 unexceptionable but for the fatal power of regulating the times and places of election. An objector in a  
19 large State exclaims loudly against the unreasonable equality of representation in the Senate. An  
20 objector in a small State is equally loud against the dangerous inequality in the House of  
21 Representatives. From this quarter, we are alarmed with the amazing expense, from the number of  
22 persons who are to administer the new government. From another quarter, and sometimes from the  
23 same quarter, on another occasion, the cry is that the Congress will be but a shadow of a  
24 representation, and that the government would be far less objectionable if the number and the  
25 expense were doubled. A patriot in a State that does not import or export, discerns insuperable

1 objections against the power of direct taxation. The patriotic adversary in a State of great exports and  
2 imports, is not less dissatisfied that the whole burden of taxes may be thrown on consumption. This  
3 politician discovers in the Constitution a direct and irresistible tendency to monarchy; that is equally  
4 sure it will end in aristocracy. Another is puzzled to say which of these shapes it will ultimately assume,  
5 but sees clearly it must be one or other of them; whilst a fourth is not wanting, who with no less  
6 confidence affirms that the Constitution is so far from having a bias towards either of these dangers,  
7 that the weight on that side will not be sufficient to keep it upright and firm against its opposite  
8 propensities. With another class of adversaries to the Constitution the language is that the legislative,  
9 executive, and judiciary departments are intermixed in such a manner as to contradict all the ideas of  
10 regular government and all the requisite precautions in favor of liberty. Whilst this objection  
11 circulates in vague and general expressions, there are but a few who lend their sanction to it. Let each  
12 one come forward with his particular explanation, and scarce any two are exactly agreed upon the  
13 subject. In the eyes of one the junction of the Senate with the President in the responsible function of  
14 appointing to offices, instead of vesting this executive power in the Executive alone, is the vicious part  
15 of the organization. To another, the exclusion of the House of Representatives, whose numbers alone  
16 could be a due security against corruption and partiality in the exercise of such a power, is equally  
17 obnoxious. With another, the admission of the President into any share of a power which ever must be  
18 a dangerous engine in the hands of the executive magistrate, is an unpardonable violation of the  
19 maxims of republican jealousy. No part of the arrangement, according to some, is more inadmissible  
20 than the trial of impeachments by the Senate, which is alternately a member both of the legislative  
21 and executive departments, when this power so evidently belonged to the judiciary department. ``We  
22 concur fully," reply others, "in the objection to this part of the plan, but we can never agree that a  
23 reference of impeachments to the judiciary authority would be an amendment of the error. Our  
24 principal dislike to the organization arises from the extensive powers already lodged in that  
25 department." Even among the zealous patrons of a council of state the most irreconcilable variance is

1 discovered concerning the mode in which it ought to be constituted. The demand of one gentleman is,  
2 that the council should consist of a small number to be appointed by the most numerous branch of the  
3 legislature. Another would prefer a larger number, and considers it as a fundamental condition that the  
4 appointment should be made by the President himself.

5 As it can give no umbrage to the writers against the plan of the federal Constitution, let us suppose, that  
6 as they are the most zealous, so they are also the most sagacious, of those who think the late  
7 convention were unequal to the task assigned them, and that a wiser and better plan might and ought  
8 to be substituted. Let us further suppose that their country should concur, both in this favorable  
9 opinion of their merits, and in their unfavorable opinion of the convention; and should accordingly  
10 proceed to form them into a second convention, with full powers, and for the express purpose of  
11 revising and remoulding the work of the first. Were the experiment to be seriously made, though it  
12 required some effort to view it seriously even in fiction, I leave it to be decided by the sample of  
13 opinions just exhibited, whether, with all their enmity to their predecessors, they would, in any one  
14 point, depart so widely from their example, as in the discord and ferment that would mark their own  
15 deliberations; and whether the Constitution, now before the public, would not stand as fair a chance  
16 for immortality, as Lycurgus gave to that of Sparta, by making its change to depend on his own return  
17 from exile and death, if it were to be immediately adopted, and were to continue in force, not until  
18 a better, but until another should be agreed upon by this new assembly of lawgivers.

19 It is a matter both of wonder and regret, that those who raise so many objections against the new  
20 Constitution should never call to mind the defects of that which is to be exchanged for it. It is not  
21 necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No man  
22 would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would  
23 refuse to quit a shattered and tottering habitation for a firm and commodious building, because the  
24 latter had not a porch to it, or because some of the rooms might be a little larger or smaller, or the  
25 ceilings a little higher or lower than his fancy would have planned them. But waiving illustrations of

1 this sort, is it not manifest that most of the capital objections urged against the new system lie with  
2 tenfold weight against the existing Confederation? Is an indefinite power to raise money dangerous in  
3 the hands of the federal government? The present Congress can make requisitions to any amount they  
4 please, and the States are constitutionally bound to furnish them; they can emit bills of credit as long as  
5 they will pay for the paper; they can borrow, both abroad and at home, as long as a shilling will be lent.  
6 Is an indefinite power to raise troops dangerous? The Confederation gives to Congress that power also;  
7 and they have already begun to make use of it. Is it improper and unsafe to intermix the different  
8 powers of government in the same body of men? Congress, a single body of men, are the sole depositary  
9 of all the federal powers. Is it particularly dangerous to give the keys of the treasury, and the command  
10 of the army, into the same hands? The Confederation places them both in the hands of Congress. Is a  
11 bill of rights essential to liberty? The Confederation has no bill of rights. Is it an objection against the  
12 new Constitution, that it empowers the Senate, with the concurrence of the Executive, to make  
13 treaties which are to be the laws of the land? The existing Congress, without any such control, can  
14 make treaties which they themselves have declared, and most of the States have recognized, to be the  
15 supreme law of the land. Is the importation of slaves permitted by the new Constitution for twenty  
16 years? By the old it is permitted forever.

17 I shall be told, that however dangerous this mixture of powers may be in theory, it is rendered  
18 harmless by the dependence of Congress on the State for the means of carrying them into practice;  
19 that however large the mass of powers may be, it is in fact a lifeless mass. Then, say I, in the first place,  
20 that the Confederation is chargeable with the still greater folly of declaring certain powers in the  
21 federal government to be absolutely necessary, and at the same time rendering them absolutely  
22 nugatory; and, in the next place, that if the Union is to continue, and no better government be  
23 substituted, effective powers must either be granted to, or assumed by, the existing Congress; in either  
24 of which events, the contrast just stated will hold good. But this is not all. Out of this lifeless mass has  
25 already grown an excrescent power, which tends to realize all the dangers that can be apprehended

1 from a defective construction of the supreme government of the Union. It is now no longer a point of  
2 speculation and hope, that the Western territory is a mine of vast wealth to the United States; and  
3 although it is not of such a nature as to extricate them from their present distresses, or for some time  
4 to come, to yield any regular supplies for the public expenses, yet must it hereafter be able, under  
5 proper management, both to effect a gradual discharge of the domestic debt, and to furnish, for a  
6 certain period, liberal tributes to the federal treasury. A very large proportion of this fund has been  
7 already surrendered by individual States; and it may with reason be expected that the remaining  
8 States will not persist in withholding similar proofs of their equity and generosity. We may calculate,  
9 therefore, that a rich and fertile country, of an area equal to the inhabited extent of the United States,  
10 will soon become a national stock. Congress have assumed the administration of this stock. They have  
11 begun to render it productive. Congress have undertaken to do more: they have proceeded to form  
12 new States, to erect temporary governments, to appoint officers for them, and to prescribe the  
13 conditions on which such States shall be admitted into the Confederacy. All this has been done; and  
14 done without the least color of constitutional authority. Yet no blame has been whispered; no alarm  
15 has been sounded. A great and independent fund of revenue is passing into the hands of a single  
16 body of men, who can raise troops to an indefinite number, and appropriate money to their support for  
17 an indefinite period of time. And yet there are men, who have not only been silent spectators of this  
18 prospect, but who are advocates for the system which exhibits it; and, at the same time, urge against  
19 the new system the objections which we have heard. Would they not act with more consistency, in  
20 urging the establishment of the latter, as no less necessary to guard the Union against the future  
21 powers and resources of a body constructed like the existing Congress, than to save it from the  
22 dangers threatened by the present impotency of that Assembly?

23 I mean not, by any thing here said, to throw censure on the measures which have been pursued by  
24 Congress. I am sensible they could not have done otherwise. The public interest, the necessity of the  
25 case, imposed upon them the task of overleaping their constitutional limits. But is not the fact an

1 alarming proof of the danger resulting from a government which does not possess regular powers  
2 commensurate to its objects? A dissolution or usurpation is the dreadful dilemma to which it is  
3 continually exposed.

4 Publius.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 39

2 The Conformity of the Plan to Republican Principles

3 Madison for the Independent Journal.

4 To the People of the State of New York:

5 THE last paper having concluded the observations which were meant to introduce a candid survey of  
6 the plan of government reported by the convention, we now proceed to the execution of that part of our  
7 undertaking.

8 The first question that offers itself is, whether the general form and aspect of the government be strictly  
9 republican. It is evident that no other form would be reconcilable with the genius of the people of  
10 America; with the fundamental principles of the Revolution; or with that honorable determination  
11 which animates every votary of freedom, to rest all our political experiments on the capacity of  
12 mankind for self-government. If the plan of the convention, therefore, be found to depart from the  
13 republican character, its advocates must abandon it as no longer defensible.

14 What, then, are the distinctive characters of the republican form? Were an answer to this question to  
15 be sought, not by recurring to principles, but in the application of the term by political writers, to the  
16 constitution of different States, no satisfactory one would ever be found. Holland, in which no particle  
17 of the supreme authority is derived from the people, has passed almost universally under the  
18 denomination of a republic. The same title has been bestowed on Venice, where absolute power over  
19 the great body of the people is exercised, in the most absolute manner, by a small body of hereditary  
20 nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been  
21 dignified with the same appellation. The government of England, which has one republican branch  
22 only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been  
23 frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other  
24 as to a genuine republic, show the extreme inaccuracy with which the term has been used in political  
25 disquisitions.

1 If we resort for a criterion to the different principles on which different forms of government are  
2 established, we may define a republic to be, or at least may bestow that name on, a government which  
3 derives all its powers directly or indirectly from the great body of the people, and is administered by  
4 persons holding their offices during pleasure, for a limited period, or during good behavior. It  
5 is essential to such a government that it be derived from the great body of the society, not from an  
6 inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising  
7 their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for  
8 their government the honorable title of republic. It is sufficient for such a government that the persons  
9 administering it be appointed, either directly or indirectly, by the people; and that they hold their  
10 appointments by either of the tenures just specified; otherwise every government in the United States,  
11 as well as every other popular government that has been or can be well organized or well executed,  
12 would be degraded from the republican character. According to the constitution of every State in the  
13 Union, some or other of the officers of government are appointed indirectly only by the people.  
14 According to most of them, the chief magistrate himself is so appointed. And according to one, this  
15 mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all  
16 the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many  
17 instances, both within the legislative and executive departments, to a period of years. According to the  
18 provisions of most of the constitutions, again, as well as according to the most respectable and  
19 received opinions on the subject, the members of the judiciary department are to retain their offices  
20 by the firm tenure of good behavior.  
21 On comparing the Constitution planned by the convention with the standard here fixed, we perceive at  
22 once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one  
23 branch at least of all the State legislatures, is elected immediately by the great body of the people. The  
24 Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly  
25 from the people. The President is indirectly derived from the choice of the people, according to the

1 example in most of the States. Even the judges, with all other officers of the Union, will, as in the several  
2 States, be the choice, though a remote choice, of the people themselves, the duration of the  
3 appointments is equally conformable to the republican standard, and to the model of State constitutions  
4 The House of Representatives is periodically elective, as in all the States; and for the period of two  
5 years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but  
6 one year more than the period of the Senate of Maryland, and but two more than that of the Senates of  
7 New York and Virginia. The President is to continue in office for the period of four years; as in New York  
8 and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the  
9 other States the election is annual. In several of the States, however, no constitutional provision is  
10 made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable  
11 till out of office. The President of the United States is impeachable at any time during his continuance  
12 in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be,  
13 that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal  
14 regulation, conformably to the reason of the case and the example of the State constitutions.  
15 Could any further proof be required of the republican complexion of this system, the most decisive one  
16 might be found in its absolute prohibition of titles of nobility, both under the federal and the State  
17 governments; and in its express guaranty of the republican form to each of the latter.  
18 "But it was not sufficient," say the adversaries of the proposed Constitution, ``for the convention to  
19 adhere to the republican form. They ought, with equal care, to have preserved the federal form, which  
20 regards the Union as a confederacy of sovereign states; instead of which, they have framed  
21 a national government, which regards the Union as a consolidation of the States." And it is asked by  
22 what authority this bold and radical innovation was undertaken? The handle which has been made of  
23 this objection requires that it should be examined with some precision.  
24 Without inquiring into the accuracy of the distinction on which the objection is founded, it will be  
25 necessary to a just estimate of its force, first, to ascertain the real character of the government in

1 question; secondly, to inquire how far the convention were authorized to propose such a government;  
2 and thirdly, how far the duty they owed to their country could supply any defect of regular authority.  
3 First. In order to ascertain the real character of the government, it may be considered in relation to the  
4 foundation on which it is to be established; to the sources from which its ordinary powers are to be  
5 drawn; to the operation of those powers; to the extent of them; and to the authority by which future  
6 changes in the government are to be introduced.

7 On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the  
8 assent and ratification of the people of America, given by deputies elected for the special purpose; but,  
9 on the other, that this assent and ratification is to be given by the people, not as individuals composing  
10 one entire nation, but as composing the distinct and independent States to which they respectively  
11 belong. It is to be the assent and ratification of the several States, derived from the supreme authority  
12 in each State, the authority of the people themselves. The act, therefore, establishing the Constitution,  
13 will not be a national, but a federal act.

14 That it will be a federal and not a national act, as these terms are understood by the objectors; the act  
15 of the people, as forming so many independent States, not as forming one aggregate nation, is obvious  
16 from this single consideration, that it is to result neither from the decision of a majority of the people  
17 of the Union, nor from that of a majority of the States. It must result from the unanimous assent of the  
18 several States that are parties to it, differing no otherwise from their ordinary assent than in its being  
19 expressed, not by the legislative authority, but by that of the people themselves. Were the people  
20 regarded in this transaction as forming one nation, the will of the majority of the whole people of the  
21 United States would bind the minority, in the same manner as the majority in each State must bind the  
22 minority; and the will of the majority must be determined either by a comparison of the individual  
23 votes, or by considering the will of the majority of the States as evidence of the will of a majority of the  
24 people of the United States. Neither of these rules have been adopted. Each State, in ratifying the  
25 Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its

1 own voluntary act. In this relation, then, the new Constitution will, if established, be a federal, and not  
2 a national constitution.

3 The next relation is, to the sources from which the ordinary powers of government are to be derived.  
4 The House of Representatives will derive its powers from the people of America; and the people will be  
5 represented in the same proportion, and on the same principle, as they are in the legislature of a  
6 particular State. So far the government is national, not federal. The Senate, on the other hand, will  
7 derive its powers from the States, as political and coequal societies; and these will be represented on the  
8 principle of equality in the Senate, as they now are in the existing Congress. So far the government  
9 is federal, not national. The executive power will be derived from a very compound source. The  
10 immediate election of the President is to be made by the States in their political characters. The votes  
11 allotted to them are in a compound ratio, which considers them partly as distinct and coequal  
12 societies, partly as unequal members of the same society. The eventual election, again, is to be made  
13 by that branch of the legislature which consists of the national representatives; but in this particular  
14 act they are to be thrown into the form of individual delegations, from so many distinct and coequal  
15 bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at  
16 least as many federal as national features.

17 The difference between a federal and national government, as it relates to the operation of the  
18 government, is supposed to consist in this, that in the former the powers operate on the political  
19 bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens  
20 composing the nation, in their individual capacities. On trying the Constitution by this criterion, it  
21 falls under the national, not the federal character; though perhaps not so completely as has been  
22 understood. In several cases, and particularly in the trial of controversies to which States may be  
23 parties, they must be viewed and proceeded against in their collective and political capacities only. So  
24 far the national countenance of the government on this side seems to be disfigured by a few federal  
25 features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on

1 the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the  
2 whole, designate it, in this relation, a national government.

3 But if the government be national with regard to the operation of its powers, it changes its aspect again  
4 when we contemplate it in relation to the extent of its powers. The idea of a national government  
5 involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all  
6 persons and things, so far as they are objects of lawful government. Among a people consolidated into  
7 one nation, this supremacy is completely vested in the national legislature. Among communities united  
8 for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the  
9 former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or  
10 abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and  
11 independent portions of the supremacy, no more subject, within their respective spheres, to the  
12 general authority, than the general authority is subject to them, within its own sphere. In this relation,  
13 then, the proposed government cannot be deemed a national one; since its jurisdiction extends to  
14 certain enumerated objects only, and leaves to the several States a residuary and inviolable  
15 sovereignty over all other objects. It is true that in controversies relating to the boundary between the  
16 two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general  
17 government. But this does not change the principle of the case. The decision is to be impartially made,  
18 according to the rules of the Constitution; and all the usual and most effectual precautions are taken to  
19 secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and  
20 a dissolution of the compact; and that it ought to be established under the general rather than under  
21 the local governments, or, to speak more properly, that it could be safely established under the first  
22 alone, is a position not likely to be combated.

23 If we try the Constitution by its last relation to the authority by which amendments are to be made, we  
24 find it neither wholly national nor wholly federal. Were it wholly national, the supreme and ultimate  
25 authority would reside in the majority of the people of the Union; and this authority would be

1 competent at all times, like that of a majority of every national society, to alter or abolish its established  
2 government. Were it wholly federal, on the other hand, the concurrence of each State in the Union  
3 would be essential to every alteration that would be binding on all. The mode provided by the plan of  
4 the convention is not founded on either of these principles. In requiring more than a majority, and  
5 principles. In requiring more than a majority, and particularly in computing the proportion by states,  
6 not by citizens, it departs from the national and advances towards the federal character; in rendering  
7 the concurrence of less than the whole number of States sufficient, it loses again the federal and  
8 partakes of the national character.

9 The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but  
10 a composition of both. In its foundation it is federal, not national; in the sources from which the  
11 ordinary powers of the government are drawn, it is partly federal and partly national; in the operation  
12 of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and,  
13 finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly  
14 national.

15 Publius.

16

17

18

19

20

21

22

23

24

25

1 The Federalist 40

2 The Powers of the Convention to Form a Mixed Government Examined and Sustained

3 Madison for the New York Packet. Friday, January 18, 1788.

4 To the People of the State of New York:

5 THE SECOND point to be examined is, whether the convention were authorized to frame and propose  
6 this mixed Constitution. The powers of the convention ought, in strictness, to be determined by an  
7 inspection of the commissions given to the members by their respective constituents. As all of these,  
8 however, had reference, either to the recommendation from the meeting at Annapolis, in September,  
9 1786, or to that from Congress, in February, 1787, it will be sufficient to recur to these particular acts.

10 The act from Annapolis recommends the ``appointment of commissioners to take into consideration  
11 the situation of the United States; to devise such further provisions as shall appear to them necessary  
12 to render the Constitution of the federal government adequate to the exigencies of the union; and to  
13 report such an act for that purpose, to the United States in Congress assembled, as when agreed to by  
14 them, and afterwards confirmed by the legislature of every State, will effectually provide for the same.

15 "The recommendatory act of Congress is in the words following: ``Whereas, There is provision in the  
16 articles of Confederation and perpetual Union, for making alterations therein, by the assent of a  
17 Congress of the United States, and of the legislatures of the several States; and whereas experience  
18 hath evinced, that there are defects in the present Confederation; as a mean to remedy which, several  
19 of the States, and particularly the state of New York, by express instructions to their delegates in  
20 Congress, have suggested a convention for the purposes expressed in the following resolution; and  
21 such convention appearing to be the most probable mean of establishing in these States a firm national  
22 government: ``Resolved, That in the opinion of Congress it is expedient, that on the second Monday of  
23 May next a convention of delegates, who shall have been appointed by the several States, be held at  
24 Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting  
25 to Congress and the several legislatures such alterations and provisions therein, as shall, when agreed

1 to in Congress, and confirmed by the States, render the federal Constitution adequate to the exigencies  
2 of government and the preservation of the union. "From these two acts, it appears, 1st, that the object  
3 of the convention was to establish, in these States, a firm national government; 2d, that this  
4 government was to be such as would be adequate to the exigencies of government and the preservation  
5 of the union; 3d, that these purposes were to be effected by alterations and provisions in the articles of  
6 confederation, as it is expressed in the act of Congress, or by such further provisions as should appear  
7 necessary, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and  
8 provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and  
9 confirmed by the latter. From a comparison and fair construction of these several modes of expression,  
10 is to be deduced the authority under which the convention acted. They were to frame a national  
11 government, adequate to the exigencies of government, and of the union; and to reduce the articles of  
12 Confederation into such form as to accomplish these purposes. There are two rules of construction,  
13 dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the  
14 expression ought, if possible, to be allowed some meaning, and be made to conspire to some common  
15 end. The other is, that where the several parts cannot be made to coincide, the less important should  
16 give way to the more important part; the means should be sacrificed to the end, rather than the end to  
17 the means. Suppose, then, that the expressions defining the authority of the convention were  
18 irreconcilably at variance with each other; that a national and adequate government could not  
19 possibly, in the judgment of the convention, be affected by alterations and provisions in the articles of  
20 confederation; which part of the definition ought to have been embraced, and which rejected? Which  
21 was the more important, which the less important part? Which the end; which the means? Let the  
22 most scrupulous expositors of delegated powers; let the most inveterate objectors against those  
23 exercised by the convention, answer these questions. Let them declare, whether it was of most  
24 importance to the happiness of the people of America, that the articles of Confederation should be  
25 disregarded, and an adequate government be provided, and the Union preserved; or that an adequate

1 government should be omitted, and the articles of Confederation preserved. Let them declare, whether  
2 the preservation of these articles was the end, for securing which a reform of the government was to be  
3 introduced as the means; or whether the establishment of a government, adequate to the national  
4 happiness, was the end at which these articles themselves originally aimed, and to which they ought, as  
5 insufficient means, to have been sacrificed. But is it necessary to suppose that these expressions are  
6 absolutely irreconcilable to each other; that no alterations or provisions in the articles of the  
7 confederation could possibly mould them into a national and adequate government; into such a  
8 government as has been proposed by the convention? No stress, it is presumed, will, in this case, be laid  
9 on the title; a change of that could never be deemed an exercise of ungranted power. Alterations in the  
10 body of the instrument are expressly authorized. New provisions therein are also expressly  
11 authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of  
12 necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those  
13 who maintain the affirmative ought at least to mark the boundary between authorized and usurped  
14 innovations; between that degree of change which lies within the compass of alterations and further  
15 provisions, and that which amounts to a transmutation of the government. Will it be said that the  
16 alterations ought not to have touched the substance of the Confederation? The States would never  
17 have appointed a convention with so much solemnity, nor described its objects with so much latitude,  
18 if some substantial reform had not been in contemplation. Will it be said that the fundamental  
19 principles of the Confederation were not within the purview of the convention, and ought not to have  
20 been varied? I ask, What are these principles? Do they require that, in the establishment of the  
21 Constitution, the States should be regarded as distinct and independent sovereigns? They are so  
22 regarded by the Constitution proposed. Do they require that the members of the government should  
23 derive their appointment from the legislatures, not from the people of the States? One branch of the  
24 new government is to be appointed by these legislatures; and under the Confederation, the delegates  
25 to Congress may all be appointed immediately by the people, and in two States[1] are actually so

1 appointed. Do they require that the powers of the government should act on the States, and not  
2 immediately on individuals? In some instances, as has been shown, the powers of the new government  
3 will act on the States in their collective characters. In some instances, also, those of the existing  
4 government act immediately on individuals. In cases of capture; of piracy; of the post office; of coins,  
5 weights, and measures; of trade with the Indians; of claims under grants of land by different States;  
6 and, above all, in the case of trials by courts-marshal in the army and navy, by which death may be  
7 inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases the powers of  
8 the Confederation operate immediately on the persons and interests of individual citizens. Do these  
9 fundamental principles require, particularly, that no tax should be levied without the intermediate  
10 agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post  
11 office. The power of coinage has been so construed by Congress as to levy a tribute immediately from  
12 that source also. But pretermitted these instances, was it not an acknowledged object of the  
13 convention and the universal expectation of the people, that the regulation of trade should be  
14 submitted to the general government in such a form as would render it an immediate source of general  
15 revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the  
16 fundamental principles of the Confederation? Had not every State but one; had not New York herself,  
17 so far complied with the plan of Congress as to recognize the principle of the innovation? Do these  
18 principles, in fine, require that the powers of the general government should be limited, and that,  
19 beyond this limit, the States should be left in possession of their sovereignty and independence? We  
20 have seen that in the new government, as in the old, the general powers are limited; and that the  
21 States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent  
22 jurisdiction. The truth is, that the great principles of the Constitution proposed by the convention may  
23 be considered less as absolutely new, than as the expansion of principles which are found in the  
24 articles of Confederation. The misfortune under the latter system has been, that these principles are  
25 so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and

1 to require a degree of enlargement which gives to the new system the aspect of an entire  
2 transformation of the old. In one particular it is admitted that the convention have departed from the  
3 tenor of their commission. Instead of reporting a plan requiring the confirmation of the legislatures of  
4 all the states, they have reported a plan which is to be confirmed by the people, and may be carried into  
5 effect by nine states only. It is worthy of remark that this objection, though the most plausible, has been  
6 the least urged in the publications which have swarmed against the convention. The forbearance can  
7 only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve  
8 States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given  
9 by a majority of one sixtieth of the people of America to a measure approved and called for by the voice  
10 of twelve States, comprising fifty-nine sixtieths of the people an example still fresh in the memory and  
11 indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this  
12 objection, therefore, has been in a manner waived by those who have criticised the powers of the  
13 convention, I dismiss it without further observation. The third point to be inquired into is, how far  
14 considerations of duty arising out of the case itself could have supplied any defect of regular authority.  
15 In the preceding inquiries the powers of the convention have been analyzed and tried with the same  
16 rigor, and by the same rules, as if they had been real and final powers for the establishment of a  
17 Constitution for the United States. We have seen in what manner they have borne the trial even on  
18 that supposition. It is time now to recollect that the powers were merely advisory and  
19 recommendatory; that they were so meant by the States, and so understood by the convention; and  
20 that the latter have accordingly planned and proposed a Constitution which is to be of no more  
21 consequence than the paper on which it is written, unless it be stamped with the approbation of those  
22 to whom it is addressed. This reflection places the subject in a point of view altogether different, and  
23 will enable us to judge with propriety of the course taken by the convention. Let us view the ground on  
24 which the convention stood. It may be collected from their proceedings, that they were deeply and  
25 unanimously impressed with the crisis, which had led their country almost with one voice to make so

1 singular and solemn an experiment for correcting the errors of a system by which this crisis had been  
2 produced; that they were no less deeply and unanimously convinced that such a reform as they have  
3 proposed was absolutely necessary to effect the purposes of their appointment. It could not be unknown  
4 to them that the hopes and expectations of the great body of citizens, throughout this great empire,  
5 were turned with the keenest anxiety to the event of their deliberations. They had every reason to  
6 believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe  
7 to the liberty and prosperity of the United States. They had seen in the origin and progress of the  
8 experiment, the alacrity with which the proposition, made by a single State (Virginia), towards a  
9 partial amendment of the Confederation, had been attended to and promoted. They had seen the liberty  
10 assumed by a very few deputies from a very few States, convened at Annapolis, of recommending a  
11 great and critical object, wholly foreign to their commission, not only justified by the public opinion,  
12 but actually carried into effect by twelve out of the thirteen States. They had seen, in a variety of  
13 instances, assumptions by Congress, not only of recommendatory, but of operative, powers,  
14 warranted, in the public estimation, by occasions and objects infinitely less urgent than those by which  
15 their conduct was to be governed. They must have reflected, that in all great changes of established  
16 governments, forms ought to give way to substance; that a rigid adherence in such cases to the former,  
17 would render nominal and nugatory the transcendent and precious right of the people to ``abolish or  
18 alter their governments as to them shall seem most likely to effect their safety and happiness,"<sup>2</sup> since  
19 it is impossible for the people spontaneously and universally to move in concert towards their object;  
20 and it is therefore essential that such changes be instituted by some informal and unauthorized  
21 propositions, made by some patriotic and respectable citizen or number of citizens. They must have  
22 recollected that it was by this irregular and assumed privilege of proposing to the people plans for  
23 their safety and happiness, that the States were first united against the danger with which they were  
24 threatened by their ancient government; that committees and congresses were formed for  
25 concentrating their efforts and defending their rights; and that conventions were elected in the

1 several states for establishing the constitutions under which they are now governed; nor could it have  
2 been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere  
3 seen, except in those who wished to indulge, under these masks, their secret enmity to the substance  
4 contended for. They must have borne in mind, that as the plan to be framed and proposed was to be  
5 submitted to the people themselves, the disapprobation of this supreme authority would destroy it  
6 forever; its approbation blot out antecedent errors and irregularities. It might even have occurred to  
7 them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in  
8 them, and still more their recommendation of any measure whatever, not warranted by their  
9 commission, would not less excite animadversion, than a recommendation at once of a measure fully  
10 commensurate to the national exigencies. Had the convention, under all these impressions, and in the  
11 midst of all these considerations, instead of exercising a manly confidence in their country, by whose  
12 confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their  
13 judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent  
14 hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the  
15 uncertainties of delay and the hazard of events, let me ask the man who can raise his mind to one  
16 elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to  
17 have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on  
18 the conduct and character of this assembly? Or if there be a man whose propensity to condemn is  
19 susceptible of no control, let me then ask what sentence he has in reserve for the twelve States  
20 who usurped the power of sending deputies to the convention, a body utterly unknown to their  
21 constitutions; for Congress, who recommended the appointment of this body, equally unknown to the  
22 Confederation; and for the State of New York, in particular, which first urged and then complied with  
23 this unauthorized interposition? But that the objectors may be disarmed of every pretext, it shall be  
24 granted for a moment that the convention were neither authorized by their commission, nor justified  
25 by circumstances in proposing a Constitution for their country: does it follow that the Constitution

1 ought, for that reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good  
2 advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is  
3 offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much from whom the  
4 advice comes, as whether the advice be good. The sum of what has been here advanced and proved is,  
5 that the charge against the convention of exceeding their powers, except in one instance little urged by  
6 the objectors, has no foundation to support it; that if they had exceeded their powers, they were not  
7 only warranted, but required, as the confidential servants of their country, by the circumstances in  
8 which they were placed, to exercise the liberty which they assume; and that finally, if they had violated  
9 both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be  
10 embraced, if it be calculated to accomplish the views and happiness of the people of America. How far  
11 this character is due to the Constitution, is the subject under investigation.

12 Publius.

13 Connecticut and Rhode Island. Declaration of Independence.

14

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 41

2 General View of the Powers Conferred by The Constitution

3 Madison for the Independent Journal.

4 To the People of the State of New York:

5 THE Constitution proposed by the convention may be considered under two general points of view.

6 The first relates to the sum or quantity of power which it vests in the government, including the  
7 restraints imposed on the States. The second, to the particular structure of the government, and the  
8 distribution of this power among its several branches. Under the first view of the subject, two important  
9 questions arise: 1. Whether any part of the powers transferred to the general government be  
10 unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of  
11 jurisdiction left in the several States? Is the aggregate power of the general government greater than  
12 ought to have been vested in it? This is the first question. It cannot have escaped those who have  
13 attended with candor to the arguments employed against the extensive powers of the government,  
14 that the authors of them have very little considered how far these powers were necessary means of  
15 attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be  
16 unavoidably blended with all political advantages; and on the possible abuses which must be incident  
17 to every power or trust, of which a beneficial use can be made. This method of handling the subject  
18 cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it  
19 may open a boundless field for rhetoric and declamation; it may inflame the passions of the  
20 unthinking, and may confirm the prejudices of the misthinking: but cool and candid people will at once  
21 reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must  
22 always be made, if not of the lesser evil, at least of the greater, not the perfect, good; and that in every  
23 political institution, a power to advance the public happiness involves a discretion which may be  
24 misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the  
25 point first to be decided is, whether such a power be necessary to the public good; as the next will be,

1 in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to  
2 the public detriment. That we may form a correct judgment on this subject, it will be proper to review  
3 the several powers conferred on the government of the Union; and that this may be the more  
4 conveniently done they may be reduced into different classes as they relate to the following different  
5 objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3.  
6 Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of  
7 general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due  
8 efficacy to all these powers. The powers falling within the first class are those of declaring war and  
9 granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of  
10 levying and borrowing money. Security against foreign danger is one of the primitive objects of civil  
11 society. It is an avowed and essential object of the American Union. The powers requisite for attaining  
12 it must be effectually confided to the federal councils. Is the power of declaring war necessary? No  
13 man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof  
14 of the affirmative. The existing Confederation establishes this power in the most ample form. Is the  
15 power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is  
16 involved in the power of self-defense. But was it necessary to give an indefinite power of raising troops,  
17 as well as providing fleets; and of maintaining both in peace, as well as in war? The answer to these  
18 questions has been too far anticipated in another place to admit an extensive discussion of them in  
19 this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a  
20 discussion in any place. With what color of propriety could the force necessary for defense be limited  
21 by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set  
22 bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its  
23 own government, and set bounds to the exertions for its own safety. How could a readiness for war in  
24 time of peace be safely prohibited, unless we could prohibit, in like manner, the preparations and  
25 establishments of every hostile nation? The means of security can only be regulated by the means and

1 the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain  
2 to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it  
3 plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of  
4 unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready  
5 for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of  
6 its enterprises to take corresponding precautions. The fifteenth century was the unhappy epoch of  
7 military establishments in the time of peace. They were introduced by Charles VII. of France. All  
8 Europe has followed, or been forced into, the example. Had the example not been followed by other  
9 nations, all Europe must long ago have worn the chains of a universal monarch. Were every nation  
10 except France now to disband its peace establishments, the same event might follow. The veteran  
11 legions of Rome were an overmatch for the undisciplined valor of all other nations and rendered her  
12 the mistress of the world. Not the less true is it, that the liberties of Rome proved the final victim to  
13 her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few  
14 exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous,  
15 at the same time that it may be a necessary, provision. On the smallest scale it has its inconveniences.  
16 On an extensive scale its consequences may be fatal. On any scale it is an object of laudable  
17 circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does  
18 not rashly preclude itself from any resource which may become essential to its safety, will exert all its  
19 prudence in diminishing both the necessity and the danger of resorting to one which may be  
20 inauspicious to its liberties. The clearest marks of this prudence are stamped on the proposed  
21 Constitution. The Union itself, which it cements and secures, destroys every pretext for a military  
22 establishment which could be dangerous. America united, with a handful of troops, or without a single  
23 soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a  
24 hundred thousand veterans ready for combat. It was remarked, on a former occasion, that the want of  
25 this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation

1 and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain  
2 have never been able, by real or artificial dangers, to cheat the public into an extensive peace  
3 establishment. The distance of the United States from the powerful nations of the world gives them the  
4 same happy security. A dangerous establishment can never be necessary or plausible, so long as they  
5 continue a united people. But let it never, for a moment, be forgotten that they are indebted for this  
6 advantage to the Union alone. The moment of its dissolution will be the date of a new order of things.  
7 The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same  
8 example in the New, as Charles VII. did in the Old World. The example will be followed here from the  
9 same motives which produced universal imitation there. Instead of deriving from our situation the  
10 precious advantage which Great Britain has derived from hers, the face of America will be but a copy  
11 of that of the continent of Europe. It will present liberty everywhere crushed between standing armies  
12 and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of  
13 Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another  
14 quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render  
15 them the instruments of foreign ambition, jealousy, and revenge. In America the miseries springing  
16 from her internal jealousies, contentions, and wars, would form a part only of her lot. A plentiful  
17 addition of evils would have their source in that relation in which Europe stands to this quarter of the  
18 earth, and which no other quarter of the earth bears to Europe. This picture of the consequences of  
19 disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man  
20 who loves his country, every man who loves liberty, ought to have it ever before his eyes, that he may  
21 cherish in his heart a due attachment to the Union of America, and be able to set a due value on the  
22 means of preserving it. Next to the effectual establishment of the Union, the best possible precaution  
23 against danger from standing armies is a limitation of the term for which revenue may be  
24 appropriated to their support. This precaution the Constitution has prudently added. I will not repeat  
25 here the observations which I flatter myself have placed this subject in a just and satisfactory light.

1 But it may not be improper to take notice of an argument against this part of the Constitution, which  
2 has been drawn from the policy and practice of Great Britain. It is said that the continuance of an army  
3 in that kingdom requires an annual vote of the legislature; whereas the American Constitution has  
4 lengthened this critical period to two years. This is the form in which the comparison is usually stated  
5 to the public: but is it a just form? Is it a fair comparison? Does the British Constitution restrain the  
6 parliamentary discretion to one year? Does the American impose on the Congress appropriations for  
7 two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves, that the  
8 British Constitution fixes no limit whatever to the discretion of the legislature, and that the American  
9 ties down the legislature to two years, as the longest admissible term. Had the argument from the  
10 British example been truly stated, it would have stood thus: The term for which supplies may be  
11 appropriated to the army establishment, though unlimited by the British Constitution, has  
12 nevertheless, in practice, been limited by parliamentary discretion to a single year. Now, if in Great  
13 Britain, where the House of Commons is elected for seven years; where so great a proportion of the  
14 members are elected by so small a proportion of the people; where the electors are so corrupted by the  
15 representatives, and the representatives so corrupted by the Crown, the representative body can  
16 possess a power to make appropriations to the army for an indefinite term, without desiring, or  
17 without daring, to extend the term beyond a single year, ought not suspicion herself to blush, in  
18 pretending that the representatives of the United States, elected freely by the whole body of the  
19 people, every second year, cannot be safely intrusted with the discretion over such appropriations,  
20 expressly limited to the short period of two years? A bad cause seldom fails to betray itself. Of this  
21 truth, the management of the opposition to the federal government is an unvaried exemplification. But  
22 among all the blunders which have been committed, none is more striking than the attempt to enlist  
23 on that side the prudent jealousy entertained by the people, of standing armies. The attempt has  
24 awakened fully the public attention to that important subject; and has led to investigations which  
25 must terminate in a thorough and universal conviction, not only that the constitution has provided

1 the most effectual guards against danger from that quarter, but that nothing short of a Constitution  
2 fully adequate to the national defense and the preservation of the Union, can save America from as  
3 many standing armies as it may be split into States or Confederacies, and from such a progressive  
4 augmentation, of these establishments in each, as will render them as burdensome to the properties  
5 and ominous to the liberties of the people, as any establishment that can become necessary, under a  
6 united and efficient government, must be tolerable to the former and safe to the latter. The palpable  
7 necessity of the power to provide and maintain a navy has protected that part of the Constitution  
8 against a spirit of censure, which has spared few other parts. It must, indeed, be numbered among the  
9 greatest blessings of America, that as her Union will be the only source of her maritime strength, so this  
10 will be a principal source of her security against danger from abroad. In this respect our situation  
11 bears another likeness to the insular advantage of Great Britain. The batteries most capable of  
12 repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious  
13 government against our liberties. The inhabitants of the Atlantic frontier are all of them deeply  
14 interested in this provision for naval protection, and if they have hitherto been suffered to sleep  
15 quietly in their beds; if their property has remained safe against the predatory spirit of licentious  
16 adventurers; if their maritime towns have not yet been compelled to ransom themselves from the  
17 terrors of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances  
18 of good fortune are not to be ascribed to the capacity of the existing government for the protection of  
19 those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except  
20 perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of  
21 the Union ought to feel more anxiety on this subject than New York. Her seacoast is extensive. A very  
22 important district of the State is an island. The State itself is penetrated by a large navigable river for  
23 more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies  
24 every moment at the mercy of events, and may almost be regarded as a hostage for ignominious  
25 compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and

1 barbarians. Should a war be the result of the precarious situation of European affairs, and all the  
2 unruly passions attending it be let loose on the ocean, our escape from insults and depredations, not  
3 only on that element, but every part of the other bordering on it, will be truly miraculous. In the  
4 present condition of America, the States more immediately exposed to these calamities have nothing to  
5 hope from the phantom of a general government which now exists; and if their single resources were  
6 equal to the task of fortifying themselves against the danger, the object to be protected would be almost  
7 consumed by the means of protecting them. The power of regulating and calling forth the militia has  
8 been already sufficiently vindicated and explained. The power of levying and borrowing money, being  
9 the sinew of that which is to be exerted in the national defense, is properly thrown into the same class  
10 with it. This power, also, has been examined already with much attention, and has, I trust, been clearly  
11 shown to be necessary, both in the extent and form given to it by the Constitution. I will address one  
12 additional reflection only to those who contend that the power ought to have been restrained to  
13 external taxation by which they mean, taxes on articles imported from other countries. It cannot be  
14 doubted that this will always be a valuable source of revenue; that for a considerable time it must be a  
15 principal source; that at this moment it is an essential one. But we may form very mistaken ideas on  
16 this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign  
17 commerce must vary with the variations, both in the extent and the kind of imports; and that these  
18 variations do not correspond with the progress of population, which must be the general measure of  
19 the public wants. As long as agriculture continues the sole field of labor, the importation of  
20 manufactures must increase as the consumers multiply. As soon as domestic manufactures are begun  
21 by the hands not called for by agriculture, the imported manufactures will decrease as the numbers of  
22 people increase. In a more remote stage, the imports may consist in a considerable part of raw  
23 materials, which will be wrought into articles for exportation, and will, therefore, require rather the  
24 encouragement of bounties, than to be loaded with discouraging duties. A system of government,  
25 meant for duration, ought to contemplate these revolutions, and be able to accommodate itself to

1 them. Some, who have not denied the necessity of the power of taxation, have grounded a very fierce  
2 attack against the Constitution, on the language in which it is defined. It has been urged and echoed,  
3 that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for  
4 the common defense and general welfare of the United States," amounts to an unlimited commission to  
5 exercise every power which may be alleged to be necessary for the common defense or general welfare.  
6 No stronger proof could be given of the distress under which these writers labor for objections, than  
7 their stooping to such a misconstruction. Had no other enumeration or definition of the powers of the  
8 Congress been found in the Constitution, than the general expressions just cited, the authors of the  
9 objection might have had some color for it; though it would have been difficult to find a reason for so  
10 awkward a form of describing an authority to legislate in all possible cases. A power to destroy the  
11 freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of  
12 conveyances, must be very singularly expressed by the terms "to raise money for the general  
13 welfare. "But what color can the objection have, when a specification of the objects alluded to by these  
14 general terms immediately follows, and is not even separated by a longer pause than a semicolon? If  
15 the different parts of the same instrument ought to be so expounded, as to give meaning to every part  
16 which will bear it, shall one part of the same sentence be excluded altogether from a share in the  
17 meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the  
18 clear and precise expressions be denied any signification whatsoever? For what purpose could the  
19 enumeration of particular powers be inserted, if these and all others were meant to be included in the  
20 preceding general power? Nothing is more natural nor common than first to use a general phrase, and  
21 then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars  
22 which neither explain nor qualify the general meaning, and can have no other effect than to confound  
23 and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the  
24 authors of the objection or on the authors of the Constitution, we must take the liberty of supposing,  
25 had not its origin with the latter. The objection here is the more extraordinary, as it appears that the

1 language used by the convention is a copy from the articles of Confederation. The objects of the Union  
2 among the States, as described in article third, are ``their common defense, security of their liberties,  
3 and mutual and general welfare." The terms of article eighth are still more identical: ``All charges of  
4 war and all other expenses that shall be incurred for the common defense or general welfare, and  
5 allowed by the United States in Congress, shall be defrayed out of a common treasury," etc. A similar  
6 language again occurs in article ninth. Construe either of these articles by the rules which would justify  
7 the construction put on the new Constitution, and they vest in the existing Congress a power to  
8 legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching  
9 themselves to these general expressions, and disregarding the specifications which ascertain and limit  
10 their import, they had exercised an unlimited power of providing for the common defense and general  
11 welfare? I appeal to the objectors themselves, whether they would in that case have employed the  
12 same reasoning in justification of Congress as they now make use of against the convention. How  
13 difficult it is for error to escape its own condemnation!

14 Publius.

15

16

17

18

19

20

21

22

23

24

25

1 The Federalist 42

2 The Powers Conferred by the Constitution Further Considered

3 Madison for the New York Packet. Tuesday, January 22, 1788.

4 To the People of the State of New York:

5 THE SECOND class of powers, lodged in the general government, consists of those which regulate the  
6 intercourse with foreign nations, to wit: to make treaties; to send and receive ambassadors, other public  
7 ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and  
8 offenses against the law of nations; to regulate foreign commerce, including a power to prohibit, after  
9 the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a  
10 discouragement to such importations. This class of powers forms an obvious and essential branch of  
11 the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to  
12 other nations. The powers to make treaties and to send and receive ambassadors, speak their own  
13 propriety. Both of them are comprised in the articles of Confederation, with this difference only, that  
14 the former is disengaged, by the plan of the convention, of an exception, under which treaties  
15 might be substantially frustrated by regulations of the States; and that a power of appointing and  
16 receiving "other public ministers and consuls," is expressly and very properly added to the former  
17 provision concerning ambassadors. The term ambassador, if taken strictly, as seems to be required by  
18 the second of the articles of Confederation, comprehends the highest grade only of public ministers,  
19 and excludes the grades which the United States will be most likely to prefer, where foreign embassies  
20 may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has  
21 been found expedient, and has been the practice of Congress, to employ the inferior grades of public  
22 ministers, and to send and receive consuls. It is true, that where treaties of commerce stipulate for the  
23 mutual appointment of consuls, whose functions are connected with commerce, the admission of  
24 foreign consuls may fall within the power of making commercial treaties; and that where no such  
25 treaties exist, the mission of American consuls into foreign countries may perhaps be covered under

1 the authority, given by the ninth article of the Confederation, to appoint all such civil officers as may be  
2 necessary for managing the general affairs of the United States. But the admission of consuls into the  
3 United States, where no previous treaty has stipulated it, seems to have been nowhere provided for. A  
4 supply of the omission is one of the lesser instances in which the convention have improved on the  
5 model before them. But the most minute provisions become important when they tend to obviate the  
6 necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which  
7 Congress have been betrayed, or forced by the defects of the Confederation, into violations of their  
8 chartered authorities, would not a little surprise those who have paid no attention to the subject; and  
9 would be no inconsiderable argument in favor of the new Constitution, which seems to have provided no  
10 less studiously for the lesser, than the more obvious and striking defects of the old. The power to define  
11 and punish piracies and felonies committed on the high seas, and offenses against the law of nations,  
12 belongs with equal propriety to the general government, and is a still greater improvement on the  
13 articles of Confederation. These articles contain no provision for the case of offenses against the law of  
14 nations; and consequently leave it in the power of any indiscreet member to embroil the Confederacy  
15 with foreign nations. The provision of the federal articles on the subject of piracies and felonies  
16 extends no further than to the establishment of courts for the trial of these offenses. The definition of  
17 piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative  
18 definition of them is found in most municipal codes. A definition of felonies on the high seas is  
19 evidently requisite. Felony is a term of loose signification, even in the common law of England; and of  
20 various import in the statute law of that kingdom. But neither the common nor the statute law of that,  
21 or of any other nation, ought to be a standard for the proceedings of this, unless previously made its  
22 own by legislative adoption. The meaning of the term, as defined in the codes of the several States,  
23 would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not  
24 precisely the same in any two of the States; and varies in each with every revision of its criminal laws.  
25 For the sake of certainty and uniformity, therefore, the power of defining felonies in this case was in

1 every respect necessary and proper. The regulation of foreign commerce, having fallen within several  
2 views which have been taken of this subject, has been too fully discussed to need additional proofs here  
3 of its being properly submitted to the federal administration. It were doubtless to be wished, that the  
4 power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather  
5 that it had been suffered to have immediate operation. But it is not difficult to account, either for this  
6 restriction on the general government, or for the manner in which the whole clause is expressed. It  
7 ought to be considered as a great point gained in favor of humanity, that a period of twenty years may  
8 terminate forever, within these States, a traffic which has so long and so loudly upbraided the  
9 barbarism of modern policy; that within that period, it will receive a considerable discouragement from  
10 the federal government, and may be totally abolished, by a concurrence of the few States which  
11 continue the unnatural traffic, in the prohibitory example which has been given by so great a majority  
12 of the Union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them of  
13 being redeemed from the oppressions of their European brethren! Attempts have been made to  
14 pervert this clause into an objection against the Constitution, by representing it on one side as a  
15 criminal toleration of an illicit practice, and on another as calculated to prevent voluntary and  
16 beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to  
17 give them an answer, for they deserve none, but as specimens of the manner and spirit in which some  
18 have thought fit to conduct their opposition to the proposed government. The powers included in  
19 the third class are those which provide for the harmony and proper intercourse among the States.  
20 Under this head might be included the particular restraints imposed on the authority of the States,  
21 and certain powers of the judicial department; but the former are reserved for a distinct class, and the  
22 latter will be particularly examined when we arrive at the structure and organization of the  
23 government. I shall confine myself to a cursory review of the remaining powers comprehended under  
24 this third description, to wit: to regulate commerce among the several States and the Indian tribes; to  
25 coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of

1 counterfeiting the current coin and securities of the United States; to fix the standard of weights and  
2 measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe  
3 the manner in which the public acts, records, and judicial proceedings of each State shall be proved,  
4 and the effect they shall have in other States; and to establish post offices and post roads. The defect of  
5 power in the existing Confederacy to regulate the commerce between its several members, is in the  
6 number of those which have been clearly pointed out by experience. To the proofs and remarks which  
7 former papers have brought into view on this subject, it may be added that without this supplemental  
8 provision, the great and essential power of regulating foreign commerce would have been incomplete  
9 and ineffectual. A very material object of this power was the relief of the States which import and  
10 export through other States, from the improper contributions levied on them by the latter. Were these  
11 at liberty to regulate the trade between State and State, it must be foreseen that ways would be found  
12 out to load the articles of import and export, during the passage through their jurisdiction, with duties  
13 which would fall on the makers of the latter and the consumers of the former. We may be assured by  
14 past experience, that such a practice would be introduced by future contrivances; and both by that  
15 and a common knowledge of human affairs, that it would nourish unceasing animosities, and not  
16 improbably terminate in serious interruptions of the public tranquillity. To those who do not view the  
17 question through the medium of passion or of interest, the desire of the commercial States to collect, in  
18 any form, an indirect revenue from their uncommercial neighbors, must appear not less impolitic than  
19 it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to  
20 less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an  
21 enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals,  
22 by the clamors of an impatient avidity for immediate and immoderate gain. The necessity of a  
23 superintending authority over the reciprocal trade of confederated States, has been illustrated by  
24 other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is  
25 obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an

1 augmentation of the tolls. In Germany it is a law of the empire, that the princes and states shall not lay  
2 tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though  
3 it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances  
4 in that confederacy, has not followed the law, and has produced there the mischiefs which have been  
5 foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is,  
6 that they shall not establish imposts disadvantageous to their neighbors, without the general  
7 permission. The regulation of commerce with the Indian tribes is very properly unfettered from two  
8 limitations in the articles of Confederation, which render the provision obscure and contradictory. The  
9 power is there restrained to Indians, not members of any of the States, and is not to violate or infringe  
10 the legislative right of any State within its own limits. What description of Indians are to be deemed  
11 members of a State, is not yet settled, and has been a question of frequent perplexity and contention in  
12 the federal councils. And how the trade with Indians, though not members of a State, yet residing  
13 within its legislative jurisdiction, can be regulated by an external authority, without so far intruding  
14 on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which  
15 the articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to  
16 reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a  
17 mathematical axiom, by taking away a part, and letting the whole remain. All that need be remarked  
18 on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for  
19 this last case, the Constitution has supplied a material omission in the articles of Confederation. The  
20 authority of the existing Congress is restrained to the regulation of coin struck by their own authority,  
21 or that of the respective States. It must be seen at once that the proposed uniformity in the value of  
22 the current coin might be destroyed by subjecting that of foreign coin to the different regulations of  
23 the different States. The punishment of counterfeiting the public securities, as well as the current  
24 coin, is submitted of course to that authority which is to secure the value of both. The regulation of  
25 weights and measures is transferred from the articles of Confederation, and is founded on like

1 considerations with the preceding power of regulating coin. The dissimilarity in the rules of  
2 naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate  
3 and delicate questions. In the fourth article of the Confederation, it is declared ``that the free  
4 inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be  
5 entitled to all privileges and immunities of free citizens in the several States; and the people of each  
6 State shall, in every other, enjoy all the privileges of trade and commerce," etc. There is a confusion of  
7 language here, which is remarkable. Why the terms free inhabitants are used in one part of the  
8 article, free citizens in another, and people in another; or what was meant by superadding to ``all  
9 privileges and immunities of free citizens," ``all the privileges of trade and commerce," cannot easily be  
10 determined. It seems to be a construction scarcely avoidable, however, that those who come under the  
11 denomination of free inhabitants of a State, although not citizens of such State, are entitled, in every  
12 other State, to all the privileges of free citizens of the latter; that is, to greater privileges than they  
13 may be entitled to in their own State: so that it may be in the power of a particular State, or rather  
14 every State is laid under a necessity, not only to confer the rights of citizenship in other States upon  
15 any whom it may admit to such rights within itself, but upon any whom it may allow to become  
16 inhabitants within its jurisdiction. But were an exposition of the term ``inhabitants" to be admitted  
17 which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not  
18 removed. The very improper power would still be retained by each State, of naturalizing aliens in  
19 every other State. In one State, residence for a short term confirms all the rights of citizenship: in  
20 another, qualifications of greater importance are required. An alien, therefore, legally incapacitated  
21 for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and  
22 thus the law of one State be preposterously rendered paramount to the law of another, within the  
23 jurisdiction of the other. We owe it to mere casualty, that very serious embarrassments on this subject  
24 have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had  
25 rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of

1 citizenship but with the privilege of residence. What would have been the consequence, if such persons,  
2 by residence or otherwise, had acquired the character of citizens under the laws of another State, and  
3 then asserted their rights as such, both to residence and citizenship, within the State proscribing  
4 them? Whatever the legal consequences might have been, other consequences would probably have  
5 resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with  
6 great propriety, made provision against them, and all others proceeding from the defect of the  
7 Confederation on this head, by authorizing the general government to establish a uniform rule of  
8 naturalization throughout the United States. The power of establishing uniform laws of bankruptcy is  
9 so intimately connected with the regulation of commerce, and will prevent so many frauds where the  
10 parties or their property may lie or be removed into different States, that the expediency of it seems  
11 not likely to be drawn into question. The power of prescribing by general laws, the manner in which  
12 the public acts, records and judicial proceedings of each State shall be proved, and the effect they shall  
13 have in other States, is an evident and valuable improvement on the clause relating to this subject in  
14 the articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little  
15 importance under any interpretation which it will bear. The power here established may be rendered a  
16 very convenient instrument of justice, and be particularly beneficial on the borders of contiguous  
17 States, where the effects liable to justice may be suddenly and secretly translated, in any stage of the  
18 process, within a foreign jurisdiction. The power of establishing post roads must, in every view, be a  
19 harmless power, and may, perhaps, by judicious management, become productive of great public  
20 conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed  
21 unworthy of the public care.

22 Publius.

23

24

25