

The Federalist Letters 43-64

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1 The Federalist 43

2 The Same Subject Continued (The Powers Conferred by the Constitution Further Considered) Madison
3 for the Independent Journal.

4 To the People of the State of New York:

5 THE FOURTH class comprises the following miscellaneous powers: 1. A power ``to promote the progress
6 of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right
7 to their respective writings and discoveries. "The utility of this power will scarcely be questioned. The
8 copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The
9 right to useful inventions seems with equal reason to belong to the inventors. The public good fully
10 coincides in both cases with the claims of individuals. The States cannot separately make effectual
11 provisions for either of the cases, and most of them have anticipated the decision of this point, by laws
12 passed at the instance of Congress. 2. ``To exercise exclusive legislation, in all cases whatsoever, over
13 such district (not exceeding ten miles square) as may, by cession of particular States and the
14 acceptance of Congress, become the seat of the government of the United States; and to exercise like
15 authority over all places purchased by the consent of the legislatures of the States in which the same
16 shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. "The
17 indispensable necessity of complete authority at the seat of government, carries its own evidence with
18 it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its
19 general supremacy. Without it, not only the public authority might be insulted and its proceedings
20 interrupted with impunity; but a dependence of the members of the general government on the State
21 comprehending the seat of the government, for protection in the exercise of their duty, might bring on
22 the national councils an imputation of awe or influence, equally dishonorable to the government and
23 dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as
24 the gradual accumulation of public improvements at the stationary residence of the government
25 would be both too great a public pledge to be left in the hands of a single State, and would create so

1 many obstacles to a removal of the government, as still further to abridge its necessary independence.
2 The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite
3 nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State
4 will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the
5 inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they
6 will have had their voice in the election of the government which is to exercise authority over them; as
7 a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed
8 them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it,
9 to concur in the cession, will be derived from the whole people of the State in their adoption of the
10 Constitution, every imaginable objection seems to be obviated. The necessity of a like authority over
11 forts, magazines, etc. , established by the general government, is not less evident. The public money
12 expended on such places, and the public property deposited in them, requires that they should be
13 exempt from the authority of the particular State. Nor would it be proper for the places on which the
14 security of the entire Union may depend, to be in any degree dependent on a particular member of it.
15 All objections and scruples are here also obviated, by requiring the concurrence of the States
16 concerned, in every such establishment. 3. ``To declare the punishment of treason, but no attainder of
17 treason shall work corruption of blood, or forfeiture, except during the life of the person attained. "As
18 treason may be committed against the United States, the authority of the United States ought to be
19 enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which
20 violent factions, the natural offspring of free government, have usually wreaked their alternate
21 malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar
22 danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction
23 of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt
24 beyond the person of its author. 4. ``To admit new States into the Union; but no new State shall be
25 formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of

1 two or more States, or parts of States, without the consent of the legislatures of the States concerned,
2 as well as of the Congress. "In the articles of Confederation, no provision is found on this important
3 subject. Canada was to be admitted of right, on her joining in the measures of the United States; and the
4 other colonies, by which were evidently meant the other British colonies, at the discretion of nine
5 States. The eventual establishment of new states seems to have been overlooked by the compilers of
6 that instrument. We have seen the inconvenience of this omission, and the assumption of power into
7 which Congress have been led by it. With great propriety, therefore, has the new system supplied the
8 defect. The general precaution, that no new States shall be formed, without the concurrence of the
9 federal authority, and that of the States concerned, is consonant to the principles which ought to
10 govern such transactions. The particular precaution against the erection of new States, by the
11 partition of a State without its consent, quiets the jealousy of the larger States; as that of the smaller is
12 quieted by a like precaution, against a junction of States without their consent. 5. ``To dispose of and
13 make all needful rules and regulations respecting the territory or other property belonging to the
14 United States, with a proviso, that nothing in the Constitution shall be so construed as to prejudice any
15 claims of the United States, or of any particular State. "This is a power of very great importance, and
16 required by considerations similar to those which show the propriety of the former. The proviso
17 annexed is proper in itself, and was probably rendered absolutely necessary by jealousies and
18 questions concerning the Western territory sufficiently known to the public. 6. ``To guarantee to
19 every State in the Union a republican form of government; to protect each of them against invasion;
20 and on application of the legislature, or of the executive (when the legislature cannot be convened),
21 against domestic violence. "In a confederacy founded on republican principles, and composed of
22 republican members, the superintending government ought clearly to possess authority to defend the
23 system against aristocratic or monarchical innovations. The more intimate the nature of such a union
24 may be, the greater interest have the members in the political institutions of each other; and the
25 greater right to insist that the forms of government under which the compact was entered into should

1 be substantially maintained. But a right implies a remedy; and where else could the remedy be
2 deposited, than where it is deposited by the Constitution? Governments of dissimilar principles and
3 forms have been found less adapted to a federal coalition of any sort, than those of a kindred nature.
4 ``As the confederate republic of Germany," says Montesquieu, ``consists of free cities and petty states,
5 subject to different princes, experience shows us that it is more imperfect than that of Holland and
6 Switzerland. " ``Greece was undone," he adds, ``as soon as the king of Macedon obtained a seat among
7 the Amphictyons. " In the latter case, no doubt, the disproportionate force, as well as the monarchical
8 form, of the new confederate, had its share of influence on the events. It may possibly be asked, what
9 need there could be of such a precaution, and whether it may not become a pretext for alterations in the
10 State governments, without the
11 concurrence of the States themselves. These questions admit of ready answers. If the interposition of
12 the general government should not be needed, the provision for such an event will be a harmless
13 superfluity only in the Constitution. But who can say what experiments may be produced by the
14 caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence
15 of foreign powers? To the second question it may be answered, that if the general government should
16 interpose by virtue of this constitutional authority, it will be, of course, bound to pursue the authority.
17 But the authority extends no further than to a guaranty of a republican form of government, which
18 supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the
19 existing republican forms are continued by the States, they are guaranteed by the federal
20 Constitution. Whenever the States may choose to substitute other republican forms, they have a right
21 to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that
22 they shall not exchange republican for antirepublican Constitutions; a restriction which, it is
23 presumed, will hardly be considered as a grievance. A protection against invasion is due from every
24 society to the parts composing it. The latitude of the expression here used seems to secure each State,
25 not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful

1 neighbors. The history, both of ancient and modern confederacies, proves that the weaker members of
2 the union ought not to be insensible to the policy of this article. Protection against domestic violence is
3 added with equal propriety. It has been remarked, that even among the Swiss cantons, which, properly
4 speaking, are not under one government, provision is made for this object; and the history of that
5 league informs us that mutual aid is frequently claimed and afforded; and as well by the most
6 democratic, as the other cantons. A recent and well-known event among ourselves has warned us to be
7 prepared for emergencies of a like nature. At first view, it might seem not to square with the republican
8 theory, to suppose, either that a majority have not the right, or that a minority will have the force, to
9 subvert a government; and consequently, that the federal interposition can never be required, but when
10 it would be improper. But theoretic reasoning, in this as in most other cases, must be qualified by the
11 lessons of practice. Why may not illicit combinations, for purposes of violence, be formed as well by a
12 majority of a State, especially a small State as by a majority of a county, or a district of the same State;
13 and if the authority of the State ought, in the latter case, to protect the local magistracy, ought not the
14 federal authority, in the former, to support the State authority? Besides, there are certain parts of the
15 State constitutions which are so interwoven with the federal Constitution, that a violent blow cannot
16 be given to the one without communicating the wound to the other. Insurrections in a State will rarely
17 induce a federal interposition, unless the number concerned in them bear some proportion to the
18 friends of government. It will be much better that the violence in such cases should be repressed by
19 the superintending power, than that the majority should be left to maintain their cause by a bloody
20 and obstinate contest. The existence of a right to interpose, will generally prevent the necessity of
21 exerting it. Is it true that force and right are necessarily on the same side in republican governments?
22 May not the minor party possess such a superiority of pecuniary resources, of military talents and
23 experience, or of secret succors from foreign powers, as will render it superior also in an appeal to the
24 sword? May not a more compact and advantageous position turn the scale on the same side, against a
25 superior number so situated as to be less capable of a prompt and collected exertion of its strength?

1 Nothing can be more chimerical than to imagine that in a trial of actual force, victory may be calculated
2 by the rules which prevail in a census of the inhabitants, or which determine
3 the event of an election! May it not happen, in fine, that the minority of citizens may become a majority
4 of persons, by the accession of alien residents, of a casual concourse of adventurers, or of those whom
5 the constitution of the State has not admitted to the rights of suffrage? I take no notice of an unhappy
6 species of population abounding in some of the States, who, during the calm of regular government, are
7 sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into the
8 human character, and give a superiority of strength to any party with which they may associate
9 themselves. In cases where it may be doubtful on which side justice lies, what better umpires could be
10 desired by two violent factions, flying to arms, and tearing a State to pieces, than the representatives
11 of confederate States, not heated by the local flame? To the impartiality of judges, they would unite the
12 affection of friends. Happy would it be if such a remedy for its infirmities could be enjoyed by all free
13 governments; if a project equally effectual could be established for the universal peace of mankind!
14 Should it be asked, what is to be the redress for an insurrection pervading all the States, and
15 comprising a superiority of the entire force, though not a constitutional right? the answer must be,
16 that such a case, as it would be without the compass of human remedies, so it is fortunately not within
17 the compass of human probability; and that it is a sufficient recommendation of the federal
18 Constitution, that it diminishes the risk of a calamity for which no possible constitution can provide a
19 cure. Among the advantages of a confederate republic enumerated by Montesquieu, an important one
20 is, ``that should a popular insurrection happen in one of the States, the others are able to quell it.
21 Should abuses creep into one part, they are reformed by those that remain sound. "7. ``To consider all
22 debts contracted, and engagements entered into, before the adoption of this Constitution, as being no
23 less valid against the United States, under this Constitution, than under the Confederation. "This can
24 only be considered as a declaratory proposition; and may have been inserted, among other reasons,
25 for the satisfaction of the foreign

1 creditors of the United States, who cannot be strangers to the pretended doctrine, that a change in the
2 political form of civil society has the magical effect of dissolving its moral obligations. Among the lesser
3 criticisms which have been exercised on the Constitution, it has been remarked that the validity of
4 engagements ought to have been asserted in favor of the United States, as well as against them; and in
5 the spirit which usually characterizes little critics, the omission has been transformed and magnified
6 into a plot against the national rights. The authors of this discovery may be told, what few others need
7 to be informed of, that as engagements are in their nature reciprocal, an assertion of their validity on
8 one side, necessarily involves a validity on the other side; and that as the article is merely declaratory,
9 the establishment of the principle in one case is sufficient for every case. They may be further told, that
10 every constitution must limit its precautions to dangers that are not altogether imaginary; and that no
11 real danger can exist that the government would dare, with, or even without, this constitutional
12 declaration before it, to remit the debts justly due to the public, on the pretext here condemned. 8.
13 ``To provide for amendments to be ratified by three fourths of the States under two exceptions only.
14 "That useful alterations will be suggested by experience, could not but be foreseen. It was requisite,
15 therefore, that a mode for introducing them should be provided. The mode preferred by the
16 convention seems to be stamped with every mark of propriety. It guards equally against that extreme
17 facility, which would render the Constitution too mutable; and that extreme difficulty, which might
18 perpetuate its discovered faults. It, moreover, equally enables the general and the State governments
19 to originate the amendment of errors, as they may be pointed out by the experience on one side, or on
20 the other. The exception in favor of the equality of suffrage
21 in the Senate, was probably meant as a palladium to the residuary sovereignty of the States, implied
22 and secured by that principle of representation in one branch of the legislature; and was probably
23 insisted on by the States particularly attached to that equality. The other exception must have been
24 admitted on the same considerations which produced the privilege defended by it. 9. ``The ratification
25 of the conventions of nine States shall be sufficient for the establishment of this Constitution between

1 the States, ratifying the same. "This article speaks for itself. The express authority of the people alone
2 could give due validity to the Constitution. To have required the unanimous ratification of the thirteen
3 States, would have subjected the essential interests of the whole to the caprice or corruption of a single
4 member. It would have marked a want of foresight in the convention, which our own experience would
5 have rendered inexcusable. Two questions of a very delicate nature present themselves on this
6 occasion: 1. On what principle the Confederation, which stands in the solemn form of a compact among
7 the States, can be superseded without the unanimous consent of the parties to it? 2. What relation is to
8 subsist between the nine or more States ratifying the Constitution, and the remaining few who do not
9 become parties to it? The first question is answered at once by recurring to the absolute necessity of the
10 case; to the great principle of self-preservation; to the transcendent law of nature and of nature's God,
11 which declares that the safety and happiness of society are the objects at which all political
12 institutions aim, and to which all such institutions must be sacrificed. Perhaps, also, an answer may be
13 found without searching beyond the principles of the compact itself. It has been heretofore noted
14 among the defects of the Confederation, that in many of the States it had received no higher sanction
15 than a mere legislative ratification. The principle of reciprocity seems to require that its obligation
16 on the other States should be reduced to the same standard. A compact between independent
17 sovereigns, founded on ordinary acts of legislative authority, can pretend to no higher validity than a
18 league or treaty between the parties. It is an established doctrine on the subject of treaties, that all the
19 articles are mutually conditions of each other; that a breach of any one article is a breach of the whole
20 treaty; and that a breach, committed by either of the parties, absolves the others, and authorizes
21 them, if they please, to pronounce the compact violated and void. Should it unhappily be necessary to
22 appeal to these delicate truths for a justification for dispensing with the consent of particular States to
23 a dissolution of the federal pact, will not the complaining parties find it a difficult task to answer
24 the multiplied and important infractions with which they may be confronted? The time has been when
25 it was incumbent on us all to veil the ideas which this paragraph exhibits. The scene is now changed,

1 and with it the part which the same motives dictate. The second question is not less delicate; and the
2 flattering prospect of its being merely hypothetical forbids an overcurious discussion of it. It is one of
3 those cases which must be left to provide for itself. In general, it may be observed, that although no
4 political relation can subsist between the assenting and dissenting States, yet the moral relations will
5 remain uncanceled. The claims of justice, both on one side and on the other, will be in force, and must
6 be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst
7 considerations of a common interest, and, above all, the remembrance of the endearing scenes which
8 are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not
9 urge in vain moderation on one side, and prudence on the other.

10 Publius.

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1 The Federalist 44

2 Restrictions on the Authority of the Several States

3 Madison From the New York Packet. Friday, January 25, 1788.

4 To the People of the State of New York:

5 A FIFTH class of provisions in favor of the federal authority consists of the following restrictions on the
6 authority of the several States:1. ``No State shall enter into any treaty, alliance, or confederation; grant
7 letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver a
8 legal tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the
9 obligation of contracts; or grant any title of nobility. "The prohibition against treaties, alliances, and
10 confederations makes a part of the existing articles of Union; and for reasons which need no
11 explanation, is copied into the new Constitution. The prohibition of letters of marque is another part of
12 the old system, but is somewhat extended in the new. According to the former, letters of marque could
13 be granted by the States after a declaration of war; according to the latter, these licenses must be
14 obtained, as well during war as previous to its declaration, from the government of the United States.
15 This alteration is fully justified by the advantage of uniformity in all points which relate to foreign
16 powers; and of immediate responsibility to the nation in all those for whose conduct the nation itself is
17 to be responsible. The right of coining money, which is here taken from the States, was left in their
18 hands by the Confederation, as a concurrent right with that of Congress, under an exception in favor
19 of the exclusive right of Congress to regulate the alloy and value. In this instance, also, the new
20 provision is an improvement on the old. Whilst the alloy and value depended on the general authority,
21 a right of coinage in the particular States could have no other effect than to multiply expensive mints
22 and diversify the forms and weights of the circulating pieces. The latter inconveniency defeats one
23 purpose for which the power was originally submitted to the federal head; and as far as the former
24 might prevent an inconvenient remittance of gold and silver to the central mint for recoinage, the end
25 can be as well attained by local mints established under the general authority. The extension of the

1 prohibition to bills of credit must give pleasure to every citizen, in proportion to his love of justice and
2 his knowledge of the true springs of public prosperity. The loss which America has sustained since the
3 peace, from the pestilent effects of paper money on the necessary confidence between man and man, on
4 the necessary confidence in the public councils, on the industry and morals of the people, and on the
5 character of republican government, constitutes an enormous debt against the States chargeable with
6 this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which
7 can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which
8 has been the instrument of it. In addition to these persuasive considerations, it may be observed, that
9 the same reasons which show the necessity of denying to the States the power of regulating coin, prove
10 with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin.
11 Had every State a right to regulate the value of its coin, there might be as many different currencies as
12 States, and thus the intercourse among them would be impeded; retrospective alterations in its value
13 might be made, and thus the citizens of other States be injured, and animosities be kindled among the
14 States themselves. The subjects of foreign powers might suffer from the same cause, and hence the
15 Union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is
16 less incident to a power in the States to emit paper money, than to coin gold or silver. The power to
17 make any thing but gold and silver a tender in payment of debts, is withdrawn from the States, on the
18 same principle with that of issuing a paper currency. Bills of attainder, ex-post-facto laws, and laws
19 impairing the obligation of contracts, are contrary to the first principles of the social compact, and to
20 every principle of sound legislation. The two former are expressly prohibited by the declarations
21 prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of
22 these fundamental charters. Our own experience has taught us, nevertheless, that additional fences
23 against these dangers ought not to be omitted. Very properly, therefore, have the convention added
24 this constitutional bulwark in favor of personal security and private rights; and I am much deceived if
25 they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of

1 their constituents. The sober people of America are weary of the fluctuating policy which has directed
2 the public councils. They have seen with regret and indignation that sudden changes and legislative
3 interferences, in cases affecting personal rights, become jobs in the hands of enterprising and
4 influential speculators, and snares to the more-industrious and lessinformed part of the community.
5 They have seen, too, that one legislative interference is but the first link of a long chain of repetitions,
6 every subsequent interference being naturally produced by the effects of the preceding. They very
7 rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public
8 measures, inspire a general prudence and industry, and give a regular course to the business of society.
9 The prohibition with respect to titles of nobility is copied from the articles of Confederation and needs
10 no comment. 2. ``No State shall, without the consent of the Congress, lay any imposts or duties on
11 imports or exports, except what may be absolutely necessary for executing its inspection laws, and
12 the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of
13 the treasury of the United States; and all such laws shall be subject to the revision and control of the
14 Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or
15 ships of war in time of peace, enter into any agreement or compact with another State, or with a
16 foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit
17 of delay. "The restraint on the power of the States over imports and exports is enforced by all the
18 arguments which prove the necessity of submitting the regulation of trade to the federal councils. It is
19 needless, therefore, to remark further on this head, than that the manner in which the restraint is
20 qualified seems well calculated at once to secure to the States a reasonable discretion in providing for
21 the conveniency of their imports and exports, and to the United States a reasonable check against the
22 abuse of this discretion. The remaining particulars of this clause fall within reasonings which are
23 either so obvious, or have been so fully developed, that they may be passed over without remark.
24 The sixth and last class consists of the several powers and provisions by which efficacy is given to all
25 the rest. 1. Of these the first is, the ``power to make all laws which shall be necessary and proper for

1 carrying into execution the foregoing powers, and all other powers vested by this Constitution in the
2 government of the United States, or in any department or officer thereof. "Few parts of the Constitution
3 have been assailed with more intemperance than this; yet on a fair investigation of it, no part can
4 appear more completely invulnerable. Without the substance of this power, the whole Constitution
5 would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only
6 mean that the form of the provision is improper. But have they considered whether a better form could
7 have been substituted? There are four other possible methods which the Constitution might have taken
8 on this subject. They might have copied the second article of the existing Confederation, which would
9 have prohibited the exercise of any power not expressly delegated; they might have attempted a
10 positive enumeration of the powers comprehended under the general terms ``necessary and proper";
11 they might have attempted a negative enumeration of them, by specifying the powers excepted from
12 the general definition; they might have been altogether silent on the subject, leaving these necessary
13 and proper powers to construction and inference. Had the convention taken the first method of
14 adopting the second article of Confederation, it is evident that the new Congress would be continually
15 exposed, as their predecessors have been, to the alternative of construing the term ``expressly" with
16 so much rigor, as to disarm the government of all real authority whatever, or with so much latitude as
17 to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no
18 important power, delegated by the articles of Confederation, has been or can be executed by Congress,
19 without recurring more or less to the doctrine of construction or implication. As the powers delegated
20 under the new system are more extensive, the government which is to administer it would find itself
21 still more distressed with the alternative of betraying the public interests by doing nothing, or of
22 violating the Constitution by exercising powers indispensably necessary and proper, but, at the same
23 time, not expressly granted. Had the convention attempted a positive enumeration of the powers
24 necessary and proper for carrying their other powers into effect, the attempt would have involved a
25 complete digest of laws on every subject to which the Constitution relates; accommodated too, not only

1 to the existing state of things, but to all the possible changes which futurity may produce; for in every
2 new application of a general power, the particular powers, which are the means of attaining
3 the object of the general power, must always necessarily vary with that object, and be often properly
4 varied whilst the object remains the same. Had they attempted to enumerate the particular powers or
5 means not necessary or proper for carrying the general powers into execution, the task would have
6 been no less chimerical; and would have been liable to this further objection, that every defect in the
7 enumeration would have been equivalent to a positive grant of authority. If, to avoid this consequence,
8 they had attempted a partial enumeration of the exceptions, and described the residue by the general
9 terms, not necessary or proper, it must have happened that the enumeration would comprehend a few
10 of the excepted powers only; that these would be such as would be least likely to be assumed or
11 tolerated, because the enumeration would of course select such as would be least necessary or proper;
12 and that the unnecessary and improper powers included in the residuum, would be less forcibly
13 excepted, than if no partial enumeration had been made. Had the Constitution been silent on this
14 head, there can be no doubt that all the particular powers requisite as means of executing the general
15 powers would have resulted to the government, by unavoidable implication. No axiom is more clearly
16 established in law, or in reason, than that wherever the end is required, the means are authorized;
17 wherever a general power to do a thing is given, every particular power necessary for doing it is
18 included. Had this last method, therefore, been pursued by the convention, every objection now urged
19 against their plan would remain in all its plausibility; and the real inconveniency would be incurred of
20 not removing a pretext which may be seized on critical occasions for drawing into question the
21 essential powers of the Union. If it be asked what is to be the consequence, in case the Congress shall
22 misconstrue this part of the Constitution, and exercise powers not warranted by its true meaning, I
23 answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the
24 general power had been reduced to particulars, and any one of these were to be violated; the same, in
25 short, as if the State legislatures should violate the irrespective constitutional authorities. In the first

1 instance, the success of the usurpation will depend on the executive and judiciary departments, which
2 are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained
3 from the people who can, by the election of more faithful representatives, annul the acts of the
4 usurpers. The truth is, that this ultimate redress may be more confided in against unconstitutional acts
5 of the federal than of the State legislatures, for this plain reason, that as every such act of the former
6 will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound
7 the alarm to the people, and to exert their local influence in effecting a change of federal
8 representatives. There being no such intermediate body between the State legislatures and the people
9 interested in watching the conduct of the former, violations of the State constitutions are more likely to
10 remain unnoticed and unredressed. 2. ``This Constitution and the laws of the United States which
11 shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority
12 of the United States, shall be the supreme law of the land, and the judges in every State shall be bound
13 thereby, any thing in the constitution or laws of any State to the contrary notwithstanding. "The
14 indiscreet zeal of the adversaries to the Constitution has betrayed them into an attack on this part of it
15 also, without which it would have been evidently and radically defective. To be fully sensible of this, we
16 need only suppose for a moment that the supremacy of the State constitutions had been left complete
17 by a saving clause in their favor. In the first place, as these constitutions invest the State legislatures
18 with absolute sovereignty, in all cases not excepted by the existing articles of Confederation, all the
19 authorities contained in the proposed Constitution, so far as they exceed those enumerated in the
20 Confederation, would have been annulled, and the new Congress would have been reduced to the same
21 impotent condition with their predecessors. In the next place, as the constitutions of some of the
22 States do not even expressly and fully recognize the existing powers of the Confederacy, an express
23 saving of the supremacy of the former would, in such States, have brought into question every power
24 contained in the proposed Constitution. In the third place, as the constitutions of the States differ
25 much from each other, it might happen that a treaty or national law, of great and equal importance to

1 the States, would interfere with some and not with other constitutions, and would consequently be valid
2 in some of the States, at the same time that it would have no effect in others. In fine, the world would
3 have seen, for the first time, a system of government founded on an inversion of the fundamental
4 principles of all government; it would have seen the authority of the whole society every where
5 subordinate to the authority of the parts; it would have seen a monster, in which the head was under
6 the direction of the members. 3. ``The Senators and Representatives, and the members of the several
7 State legislatures, and all executive and judicial officers, both of the United States and the several
8 States, shall be bound by oath or affirmation to support this Constitution. "It has been asked why it was
9 thought necessary, that the State magistracy should be bound to support the federal Constitution, and
10 unnecessary that a like oath should be imposed on the officers of the United States, in favor of the
11 State constitutions. Several reasons might be assigned for the distinction. I content myself with one,
12 which is obvious and conclusive. The members of the federal government will have no agency in
13 carrying the State constitutions into effect. The members and officers of the State governments, on the
14 contrary, will have an essential agency in giving effect to the federal Constitution. The election of the
15 President and Senate will depend, in all cases, on the legislatures of the several States. And the
16 election of the House of Representatives will equally depend on the same authority in the first
17 instance; and will, probably, forever be conducted by the officers, and according to the laws, of the
18 States. 4. Among the provisions for giving efficacy to the federal powers might be added those which
19 belong to the executive and judiciary departments: but as these are reserved for particular
20 examination in another place, I pass them over in this. We have now reviewed, in detail, all the articles
21 composing the sum or quantity of power delegated by the proposed Constitution to the federal
22 government, and are brought to this undeniable conclusion, that no part of the power is unnecessary
23 or improper for accomplishing the necessary objects of the Union. The question, therefore, whether
24 this amount of power shall be granted or not, resolves itself into another question, whether or not a
25 government commensurate to the exigencies of the Union shall be established; or, in other words,

1 whether the Union itself shall be preserved.

2 Publius.

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1 The Federalist 45

2 The Alleged Danger From the Powers of the Union to the State Governments Considered

3 Madison for the Independent Journal.

4 To the People of the State of New York:

5 HAVING shown that no one of the powers transferred to the federal government is unnecessary or
6 improper, the next question to be considered is, whether the whole mass of them will be dangerous to
7 the portion of authority left in the several States. The adversaries to the plan of the convention, instead
8 of considering in the first place what degree of power was absolutely necessary for the purposes of the
9 federal government, have exhausted themselves in a secondary inquiry into the possible consequences
10 of the proposed degree of power to the governments of the particular States. But if the Union, as has
11 been shown, be essential to the security of the people of America against foreign danger; if it be
12 essential to their security against contentions and wars among the different States; if it be essential to
13 guard them against those violent and oppressive factions which embitter the blessings of liberty, and
14 against those military establishments which must gradually poison its very fountain; if, in a word, the
15 Union be essential to the happiness of the people of America, is it not preposterous, to urge as an
16 objection to a government, without which the objects of the Union cannot be attained, that such a
17 government may derogate from the importance of the governments of the individual States? Was,
18 then, the American Revolution effected, was the American Confederacy formed, was the precious
19 blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of
20 America should enjoy peace, liberty, and safety, but that the government of the individual States, that
21 particular municipal establishments, might enjoy a certain extent of power, and be arrayed with
22 certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the Old
23 World, that the people were made for kings, not kings for the people. Is the same doctrine to be revived
24 in the New, in another shape that the solid happiness of the people is to be sacrificed to the views of
25 political institutions of a different form? It is too early for politicians to presume on our forgetting that

1 the public good, the real welfare of the great body of the people, is the supreme object to be pursued;
2 and that no form of government whatever has any other value than as it may be fitted for the
3 attainment of this object. Were the plan of the convention adverse to the public happiness, my voice
4 would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be,
5 Abolish the Union. In like manner, as far as the sovereignty of the States cannot be reconciled to the
6 happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the
7 latter. How far the sacrifice is necessary, has been shown. How far the unsacrificed residue will be
8 endangered, is the question before us. Several important considerations have been touched in the
9 course of these papers, which discountenance the supposition that the operation of the federal
10 government will by degrees prove fatal to the State governments. The more I revolve the subject, the
11 more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy
12 of the last than of the first scale. We have seen, in all the examples of ancient and modern
13 confederacies, the strongest tendency continually betraying itself in the members, to despoil the
14 general government of its authorities, with a very ineffectual capacity in the latter to defend itself
15 against the encroachments. Although, in most of these examples, the system has been so dissimilar
16 from that under consideration as greatly to weaken any inference concerning the latter from the fate
17 of the former, yet, as the States will retain, under the proposed Constitution, a very extensive portion
18 of active sovereignty, the inference ought not to be wholly disregarded. In the Achaean league it is
19 probable that the federal head had a degree and species of power, which gave it a considerable likeness
20 to the government framed by the convention. The Lycian Confederacy, as far as its principles and form
21 are transmitted, must have borne a still greater analogy to it. Yet history does not inform us that
22 either of them ever degenerated, or tended to degenerate, into one consolidated government. On the
23 contrary, we know that the ruin of one of them proceeded from the incapacity of the federal authority
24 to prevent the dissensions, and finally the disunion, of the subordinate authorities. These cases are
25 the more worthy of our attention, as the external causes by which the component parts were pressed

1 together were much more numerous and powerful than in our case; and consequently less powerful
2 ligaments within would be sufficient to bind the members to the head, and to each other. In the feudal
3 system, we have seen a similar propensity exemplified. Notwithstanding the want of proper sympathy
4 in every instance between the local sovereigns and the people, and the sympathy in some instances
5 between the general sovereign and the latter, it usually happened that the local sovereigns prevailed in
6 the rivalry for encroachments. Had no external dangers enforced internal harmony and
7 subordination, and particularly, had the local sovereigns possessed the affections of the people, the
8 great kingdoms in Europe would at this time consist of as many independent princes as there were
9 formerly feudatory barons. The State government will have the advantage of the Federal government,
10 whether we compare them in respect to the immediate dependence of the one on the other; to the
11 weight of personal influence which each side will possess; to the powers respectively vested in them; to
12 the predilection and probable support of the people; to the disposition and faculty of resisting and
13 frustrating the measures of each other. The State governments may be regarded as constituent and
14 essential parts of the federal government; whilst the latter is nowise essential to the operation or
15 organization of the former. Without the intervention of the State legislatures, the President of the
16 United States cannot be elected at all. They must in all cases have a great share in his appointment,
17 and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and
18 exclusively by the State legislatures. Even the House of Representatives, though drawn immediately
19 from the people, will be chosen very much under the influence of that class of men, whose influence
20 over the people obtains for themselves an election into the State legislatures. Thus, each of the
21 principal branches of the federal government will owe its existence more or less to the favor of the
22 State governments, and must consequently feel a dependence, which is much more likely to beget a
23 disposition too obsequious than too overbearing towards them. On the other side, the component parts
24 of the State governments will in no instance be indebted for their appointment to the direct agency of
25 the federal government, and very little, if at all, to the local influence of its members. The number of

1 individuals employed under the Constitution of the United States will be much smaller than the number
2 employed under the particular States. There will consequently be less of personal influence on the side
3 of the former than of the latter. The members of the legislative, executive, and judiciary departments of
4 thirteen and more States, the justices of peace, officers of militia, ministerial officers of justice, with all
5 the county, corporation, and town officers, for three millions and more of people, intermixed, and
6 having particular acquaintance with every class and circle of people, must exceed, beyond all
7 proportion, both in number and influence, those of every description who will be employed in the
8 administration of the federal system. Compare the members of the three great departments of the
9 thirteen States, excluding from the judiciary department the justices of peace, with the members of the
10 corresponding departments of the single government of the Union; compare the militia officers of
11 three millions of people with the military and marine officers of any establishment which is within the
12 compass of probability, or, I may add, of possibility, and in this view alone, we may pronounce the
13 advantage of the States to be decisive. If the federal government is to have collectors of revenue, the
14 State governments will have theirs also. And as those of the former will be principally on the seacoast,
15 and not very numerous, whilst those of the latter will be spread over the face of the country, and will
16 be very numerous, the advantage in this view also lies on the same side. It is true, that the
17 Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes
18 throughout the States; but it is probable that this power will not be resorted to, except for
19 supplemental purposes of revenue; that an option will then be given to the States to supply their
20 quotas by previous collections of their own; and that the eventual collection, under the immediate
21 authority of the Union, will generally be made by the officers, and according to the rules, appointed by
22 the several States. Indeed it is extremely probable, that in other instances, particularly in the
23 organization of the judicial power, the officers of the States will be clothed with the correspondent
24 authority of the Union. Should it happen, however, that separate collectors of internal revenue should
25 be appointed under the federal government, the influence of the whole number would not bear a

1 comparison with that of the multitude of State officers in the opposite scale. Within every district to
2 which a federal collector would be allotted, there would not be less than thirty or forty, or even more,
3 officers of different descriptions, and many of them persons of character and weight, whose influence
4 would lie on the side of the State. The powers delegated by the proposed Constitution to the federal
5 government are few and defined. Those which are to remain in the State governments are numerous
6 and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation,
7 and foreign commerce; with which last the power of taxation will, for the most part, be connected. The
8 powers reserved to the several States will extend to all the objects which, in the ordinary course of
9 affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement,
10 and prosperity of the State. The operations of the federal government will be most extensive and
11 important in times of war and danger; those of the State governments, in times of peace and security.
12 As the former periods will probably bear a small proportion to the latter, the State governments will
13 here enjoy another advantage over the federal government. The more adequate, indeed, the federal
14 powers may be rendered to the national defense, the less frequent will be those scenes of danger which
15 might favor their ascendancy over the governments of the particular States. If the new Constitution be
16 examined with accuracy and candor, it will be found that the change which it proposes consists much
17 less in the addition of new powers to the Union, than in the invigoration of its original powers. The
18 regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose,
19 and from which no apprehensions are entertained. The powers relating to war and peace, armies and
20 fleets, treaties and finance, with the other more considerable powers, are all vested in the existing
21 Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only
22 substitutes a more effectual mode of administering them. The change relating to taxation may be
23 regarded as the most important; and yet the present Congress have as complete authority
24 to require of the States indefinite supplies of money for the common defense and general welfare, as
25 the future Congress will have to require them of individual citizens; and the latter will be no more

1 bound than the States themselves have been, to pay the quotas respectively taxed on them. Had the
2 States complied punctually with the articles of Confederation, or could their compliance have been
3 enforced by as peaceable means as may be used with success towards single persons, our past
4 experience is very far from countenancing an opinion, that the State governments would have lost their
5 constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an
6 event would have ensued, would be to say at once, that the existence of the State governments is
7 incompatible with any system whatever that accomplishes the essential purposes of the Union.
8 Publius.

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1 The Federalist 46

2 The Influence of the State and Federal Governments Compared

3 Madison From the New York Packet. Tuesday, January 29, 1788.

4 To the People of the State of New York:

5 RESUMING the subject of the last paper, I proceed to inquire whether the federal government or the
6 State governments will have the advantage with regard to the predilection and support of the people.
7 Notwithstanding the different modes in which they are appointed, we must consider both of them as
8 substantially dependent on the great body of the citizens of the United States. I assume this position
9 here as it respects the first, reserving the proofs for another place. The federal and State governments
10 are in fact but different agents and trustees of the people, constituted with different powers, and
11 designed for different purposes. The adversaries of the Constitution seem to have lost sight of the
12 people altogether in their reasonings on this subject; and to have viewed these different
13 establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior
14 in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their
15 error. They must be told that the ultimate authority, wherever the derivative may be found, resides in
16 the people alone, and that it will not depend merely on the comparative ambition or address of the
17 different governments, whether either, or which of them, will be able to enlarge its sphere of
18 jurisdiction at the expense of the other. Truth, no less than decency, requires that the event in every
19 case should be supposed to depend on the sentiments and sanction of their common constituents.
20 Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt
21 that the first and most natural attachment of the people will be to the governments of their respective
22 States. Into the administration of these a greater number of individuals will expect to rise. From the
23 gift of these a greater number of offices and emoluments will flow. By the superintending care of these,
24 all the more domestic and personal interests of the people will be regulated and provided for. With the
25 affairs of these, the people will be more familiarly and minutely conversant. And with the members of

1 these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and
2 of family and party attachments; on the side of these, therefore, the popular bias may well be expected
3 most strongly to incline. Experience speaks the same language in this case. The federal administration,
4 though hitherto very defective in comparison with what may be hoped under a better system, had,
5 during the war, and particularly whilst the independent fund of paper emissions was in credit, an
6 activity and importance as great as it can well have in any future circumstances whatever. It was
7 engaged, too, in a course of measures which had for their object the protection of everything that was
8 dear, and the acquisition of everything that could be desirable to the people at large. It was,
9 nevertheless, invariably found, after the transient enthusiasm for the early Congresses was over, that
10 the attention and attachment of the people were turned anew to their own particular governments;
11 that the federal council was at no time the idol of popular favor; and that opposition to proposed
12 enlargements of its powers and importance was the side usually taken by the men who wished to build
13 their political consequence on the prepossessions of their fellow-citizens. If, therefore, as has been
14 elsewhere remarked, the people should in future become more partial to the federal than to the State
15 governments, the change can only result from such manifest and irresistible proofs of a better
16 administration, as will overcome all their antecedent propensities. And in that case, the people ought
17 not surely to be precluded from giving most of their confidence where they may discover it to be most
18 due; but even in that case the State governments could have little to apprehend, because it is only
19 within a certain sphere that the federal power can, in the nature of things, be advantageously
20 administered. The remaining points on which I propose to compare the federal and State
21 governments, are the disposition and the faculty they may respectively possess, to resist and
22 frustrate the measures of each other. It has been already proved that the members of the federal will
23 be more dependent on the members of the State governments, than the latter will be on the former. It
24 has appeared also, that the prepossessions of the people, on whom both will depend, will be more on
25 the side of the State governments, than of the federal government. So far as the disposition of each

1 towards the other may be influenced by these causes, the State governments must clearly have the
2 advantage. But in a distinct and very important point of view, the advantage will lie on the same side.
3 The prepossessions, which the members themselves will carry into the federal government, will
4 generally be favorable to the States; whilst it will rarely happen, that the members of the State
5 governments will carry into the public councils a bias in favor of the general government. A local spirit
6 will infallibly prevail much more in the members of Congress, than a national spirit will prevail in the
7 legislatures of the particular States. Every one knows that a great proportion of the errors committed
8 by the State legislatures proceeds from the disposition of the members to sacrifice the comprehensive
9 and permanent interest of the State, to the particular and separate views of the counties or districts in
10 which they reside. And if they do not sufficiently enlarge their policy to embrace the collective welfare
11 of their particular State, how can it be imagined that they will make the aggregate prosperity of the
12 Union, and the dignity and respectability of its government, the objects of their affections and
13 consultations? For the same reason that the members of the State legislatures will be unlikely to
14 attach themselves sufficiently to national objects, the members of the federal legislature will be likely
15 to attach themselves too much to local objects. The States will be to the latter what counties and towns
16 are to the former. Measures will too often be decided according to their probable effect, not on the
17 national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments
18 and people of the individual States. What is the spirit that has in general characterized the
19 proceedings of Congress? A perusal of their journals, as well as the candid acknowledgments of such
20 as have had a seat in that assembly, will inform us, that the members have but too frequently
21 displayed the character, rather of partisans of their respective States, than of impartial guardians of a
22 common interest; that where on one occasion improper sacrifices have been made of local
23 considerations, to the aggrandizement of the federal government, the great interests of the nation
24 have suffered on a hundred, from an undue attention to the local prejudices, interests, and views of
25 the particular States. I mean not by these reflections to insinuate, that the new federal government

1 will not embrace a more enlarged plan of policy than the existing government may have pursued; much
2 less, that its views will be as confined as those of the State legislatures; but only that it will partake
3 sufficiently of the spirit of both, to be disinclined to invade the rights of the individual States, or the
4 preorgatives of their governments. The motives on the part of the State governments, to augment their
5 prerogatives by defalcations from the federal government, will be overruled by no reciprocal
6 predispositions in the members. Were it admitted, however, that the Federal government may feel an
7 equal disposition with the State governments to extend its power beyond the due limits, the latter
8 would still have the advantage in the means of defeating such encroachments. If an act of a particular
9 State, though unfriendly to the national government, be generally popular in that State and should not
10 too grossly violate the oaths of the State officers, it is executed immediately and, of course, by means
11 on the spot and depending on the State alone. The opposition of the federal government, or the
12 interposition of federal officers, would but inflame the zeal of all parties on the side of the State, and
13 the evil could not be prevented or repaired, if at all, without the employment of means which must
14 always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable
15 measure of the federal government be unpopular in particular States, which would seldom fail to be
16 the case, or even a warrantable measure be so, which may sometimes be the case, the means of
17 opposition to it are powerful and at hand. The disquietude of the people; their repugnance and,
18 perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of
19 the State; the embarrassments created by legislative devices, which would often be added on such
20 occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very
21 serious impediments; and where the sentiments of several adjoining States happened to be in unison,
22 would present obstructions which the federal government would hardly be willing to encounter. But
23 ambitious encroachments of the federal government, on the authority of the State governments,
24 would not excite the opposition of a single State, or of a few States only. They would be signals of
25 general alarm. Every government would espouse the common cause. A correspondence would be

1 opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The
2 same combinations, in short, would result from an apprehension of the federal, as was produced by the
3 dread of a foreign, yoke; and unless the projected innovations should be voluntarily renounced, the
4 same appeal to a trial of force would be made in the one case as was made in the other. But what degree
5 of madness could ever drive the federal government to such an extremity. In the contest with Great
6 Britain, one part of the empire was employed against the other. The more numerous part invaded the
7 rights of the less numerous part. The attempt was unjust and unwise; but it was not in speculation
8 absolutely chimerical. But what would be the contest in the case we are supposing? Who would be the
9 parties? A few representatives of the people would be opposed to the people themselves; or rather one
10 set of representatives would be contending against thirteen sets of representatives, with the whole
11 body of their common constituents on the side of the latter. The only refuge left for those who
12 prophesy the downfall of the State governments is the visionary supposition that the federal
13 government may previously accumulate a military force for the projects of ambition. The reasonings
14 contained in these papers must have been employed to little purpose indeed, if it could be necessary
15 now to disprove the reality of this danger. That the people and the States should, for a sufficient period
16 of time, elect an uninterrupted succession of men ready to betray both; that the traitors should,
17 throughout this period, uniformly and systematically pursue some fixed plan for the extension of the
18 military establishment; that the governments and the people of the States should silently and
19 patiently behold the gathering storm, and continue to supply the materials, until it should be prepared
20 to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious
21 jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of
22 genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army,
23 fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the
24 federal government; still it would not be going too far to say, that the State governments, with the
25 people on their side, would be able to repel the danger. The highest number to which, according to the

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

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

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1 The Federalist 47

2 The Particular Structure of the New Government and the Distribution of Power Among Its Different
3 Parts

4 Madison From the New York Packet. Friday, February 1, 1788.

5 To the People of the State of New York:

6 HAVING reviewed the general form of the proposed government and the general mass of power allotted
7 to it, I proceed to examine the particular structure of this government, and the distribution of this mass
8 of power among its constituent parts. One of the principal objections inculcated by the more respectable
9 adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative,
10 executive, and judiciary departments ought to be separate and distinct. In the structure of the federal
11 government, no regard, it is said, seems to have been paid to this essential precaution in favor of
12 liberty. The several departments of power are distributed and blended in such a manner as at once to
13 destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the
14 danger of being crushed by the disproportionate weight of other parts. No political truth is certainly of
15 greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than
16 that on which the objection is founded. The accumulation of all powers, legislative, executive, and
17 judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or
18 elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution,
19 therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a
20 dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a
21 universal reprobation of the system. I persuade myself, however, that it will be made apparent to
22 every one, that the charge cannot be supported, and that the maxim on which it relies has been totally
23 misconceived and misapplied. In order to form correct ideas on this important subject, it will be
24 proper to investigate the sense in which the preservation of liberty requires that the three great
25 departments of power should be separate and distinct. The oracle who is always consulted and cited

1 on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the
2 science of politics, he has the merit at least of displaying and recommending it most effectually to the
3 attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point. The
4 British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As
5 the latter have considered the work of the immortal bard as the perfect model from which the
6 principles and rules of the epic art were to be drawn, and by which all similar works were to be judged,
7 so this great political critic appears to have viewed the Constitution of England as the standard, or to
8 use his own expression, as the mirror of political liberty; and to have delivered, in the form of
9 elementary truths, the several characteristic principles of that particular system. That we may be sure,
10 then, not to mistake his meaning in this case, let us recur to the source from which the maxim was
11 drawn.

12 On the slightest view of the British Constitution, we must perceive that the legislative, executive, and
13 judiciary departments are by no means totally separate and distinct from each other. The executive
14 magistrate forms an integral part of the legislative authority. He alone has the prerogative of making
15 treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of
16 legislative acts. All the members of the judiciary department are appointed by him, can be removed by
17 him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of
18 his constitutional councils. One branch of the legislative department forms also a great constitutional
19 council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of
20 impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges,
21 again, are so far connected with the legislative department as often to attend and participate in its
22 deliberations, though not admitted to a legislative vote. From these facts, by which Montesquieu was
23 guided, it may clearly be inferred that, in saying ``There can be no liberty where the legislative and
24 executive powers are united in the same person, or body of magistrates," or, ``if the power of judging
25 be not separated from the legislative and executive powers," he did not mean that these departments

1 ought to have no partial agency in, or no control over, the acts of each other. His meaning, as his own
2 words import, and still more conclusively as illustrated by the example in his eye, can amount to no
3 more than this, that where the whole power of one department is exercised by the same hands which
4 possess the whole power of another department, the fundamental principles of a free constitution are
5 subverted. This would have been the case in the constitution examined by him, if the king, who is the
6 sole executive magistrate, had possessed also the complete legislative power, or the supreme
7 administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the
8 supreme executive authority. This, however, is not among the vices of that constitution. The magistrate
9 in whom the whole executive power resides cannot of himself make a law, though he can put a negative
10 on every law; nor administer justice in person, though he has the appointment of those who do
11 administer it. The judges can exercise no executive prerogative, though they are shoots from the
12 executive stock; nor any legislative function, though they may be advised with by the legislative
13 councils. The entire legislature can perform no judiciary act, though by the joint act of two of its
14 branches the judges may be removed from their offices, and though one of its branches is possessed of
15 the judicial power in the last resort. The entire legislature, again, can exercise no executive
16 prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on
17 the impeachment of a third, can try and condemn all the subordinate officers in the executive
18 department. The reasons on which Montesquieu grounds his maxim are a further demonstration of
19 his meaning. ``When the legislative and executive powers are united in the same person or body," says
20 he, ``there can be no liberty, because apprehensions may arise lest the same monarch or senate
21 should enact tyrannical laws to execute them in a tyrannical manner. " Again: ``Were the power of
22 judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary
23 control, for the judge would then be the legislator. Were it joined to the executive power, the
24 judge might behave with all the violence of an oppressor. " Some of these reasons are more fully
25 explained in other passages; but briefly stated as they are here, they sufficiently establish the

1 meaning which we have put on this celebrated maxim of this celebrated author.

2 If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and,
3 in some instances, the unqualified terms in which this axiom has been laid down, there is not a single
4 instance in which the several departments of power have been kept absolutely separate and distinct.

5 New Hampshire, whose constitution was the last formed, seems to have been fully aware of the
6 impossibility and inexpediency of avoiding any mixture whatever of these departments, and has
7 qualified the doctrine by declaring ``that the legislative, executive, and judiciary powers ought to be
8 kept as separate from, and independent of, each other as the nature of a free government will admit; or
9 as is consistent with that chain of connection that binds the whole fabric of the constitution in one
10 indissoluble bond of unity and amity. " Her constitution accordingly mixes these departments in
11 several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal
12 for the trial of impeachments. The President, who is the head of the executive department, is the
13 presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case
14 of a tie. The executive head is himself eventually elective every year by the legislative department,
15 and his council is every year chosen by and from the members of the same department. Several of the
16 officers of state are also appointed by the legislature. And the members of the judiciary department
17 are appointed by the executive department. The constitution of Massachusetts has observed a
18 sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares
19 "that the legislative department shall never exercise the executive and judicial powers, or either of
20 them; the executive shall never exercise the legislative and judicial powers, or either of them; the
21 judicial shall never exercise the legislative and executive powers, or either of them. " This declaration
22 corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single
23 point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire
24 departments from exercising the powers of another department. In the very Constitution to which it
25 is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified

1 negative on the legislative body, and the Senate, which is a part of the legislature, is a court of
2 impeachment for members both of the executive and judiciary departments. The members of the
3 judiciary department, again, are appointable by the executive department, and removable by the same
4 authority on the address of the two legislative branches. Lastly, a number of the officers of government
5 are annually appointed by the legislative department. As the appointment to offices, particularly
6 executive offices, is in its nature an executive function, the compilers of the Constitution have, in this
7 last point at least, violated the rule established by themselves. I pass over the constitutions of Rhode
8 Island and Connecticut, because they were formed prior to the Revolution, and even before the
9 principle under examination had become an object of political attention. The constitution of New York
10 contains no declaration on this subject; but appears very clearly to have been framed with an eye to
11 the danger of improperly blending the different departments. It gives, nevertheless, to the executive
12 magistrate, a partial control over the legislative department; and, what is more, gives a like control to
13 the judiciary department; and even blends the executive and judiciary departments in the exercise of
14 this control. In its council of appointment members of the legislative are associated with the executive
15 authority, in the appointment of officers, both executive and judiciary. And its court for the trial of
16 impeachments and correction of errors is to consist of one branch of the legislature and the principal
17 members of the judiciary department. The constitution of New Jersey has blended the different
18 powers of government more than any of the preceding. The governor, who is the executive magistrate,
19 is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the
20 Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The
21 same legislative branch acts again as executive council of the governor, and with him constitutes the
22 Court of Appeals. The members of the judiciary department are appointed by the legislative
23 department and removable by one branch of it, on the impeachment of the other. According to the
24 constitution of Pennsylvania, the president, who is the head of the executive department, is annually
25 elected by a vote in which the legislative department predominates. In conjunction with an executive

1 council, he appoints the members of the judiciary department, and forms a court of impeachment for
2 trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the
3 peace seem also to be removable by the legislature; and the executive power of pardoning in certain
4 cases, to be referred to the same department. The members of the executive council are made ex-
5 officio justices of peace throughout the State. In Delaware, the chief executive magistrate is annually
6 elected by the legislative department. The speakers of the two legislative branches are vice-presidents
7 in the executive department. The executive chief, with six others, appointed, three by each of the
8 legislative branches constitutes the Supreme Court of Appeals; he is joined with the legislative,
9 department in the appointment of the other judges. Throughout the States, it appears that the members
10 of the legislature may at the same time be justices of the peace; in this State, the members of one
11 branch of it are ex-officio justices of the peace; as are also the members of the executive council. The
12 principal officers of the executive department are appointed by the legislative; and one branch of the
13 latter forms a court of impeachments. All officers may be removed on address of the legislature.
14 Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative,
15 executive, and judicial powers of government ought to be forever separate and distinct from each
16 other. Her constitution, notwithstanding, makes the executive magistrate appointable by the
17 legislative department; and the members of the judiciary by the executive department. The language
18 of Virginia is still more pointed on this subject. Her constitution declares, ``that the legislative,
19 executive, and judiciary departments shall be separate and distinct; so that neither exercise the
20 powers properly belonging to the other; nor shall any person exercise the powers of more than one of
21 them at the same time, except that the justices of county courts shall be eligible to either House of
22 Assembly. " Yet we find not only this express exception, with respect to the members of the inferior
23 courts, but that the chief magistrate, with his executive council, are appointable by the legislature;
24 that two members of the latter are triennially displaced at the pleasure of the legislature; and that all
25 the principal offices, both executive and judiciary, are filled by the same department. The executive

1 prerogative of pardon, also, is in one case vested in the legislative department. The constitution of
2 North Carolina which declares ``that the legislative, executive, and supreme judicial powers of
3 government ought to be forever separate and distinct from each other," refers, at the same time, to the
4 legislative department, the appointment not only of the executive chief, but all the principal officers
5 within both that and the judiciary department. In South Carolina, the constitution makes the executive
6 magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the
7 members of the judiciary department, including even justices of the peace and sheriffs; and the
8 appointment of officers in the executive department, down to captains in the army and navy of the
9 State. In the constitution of Georgia, where it is declared ``that the legislative, executive, and judiciary
10 departments shall be separate and distinct, so that neither exercise the powers properly belonging to
11 the other," we find that the executive department is to be filled by appointments of the legislature; and
12 the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the
13 peace are to be appointed by the legislature. In citing these cases, in which the legislative, executive,
14 and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded
15 as an advocate for the particular organizations of the several State governments. I am fully aware that
16 among the many excellent principles which they exemplify, they carry strong marks of the haste, and
17 still stronger of the inexperience, under which they were framed. It is but too obvious that in some
18 instances the fundamental principle under consideration has been violated by too great a mixture,
19 and even an actual consolidation, of the different powers; and that in no instance has a competent
20 provision been made for maintaining in practice the separation delineated on paper. What I have
21 wished to evince is, that the charge brought against the proposed Constitution, of violating the sacred
22 maxim of free government, is warranted neither by the real meaning annexed to that maxim by its
23 author, nor by the sense in which it has hitherto been understood in America. This interesting subject
24 will be resumed in the ensuing paper.

25 Publius.

1 The Federalist 48

2 These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each

3 Other

4 Madison From the New York Packet. Friday, February 1, 1788.

5 To the People of the State of New York:

6 IT WAS shown in the last paper that the political apothegm there examined does not require that the
7 legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall
8 undertake, in the next place, to show that unless these departments be so far connected and blended as
9 to give to each a constitutional control over the others, the degree of separation which the maxim
10 requires, as essential to a free government, can never in practice be duly maintained. It is agreed on
11 all sides, that the powers properly belonging to one of the departments ought not to be directly and
12 completely administered by either of the other departments. It is equally evident, that none of them
13 ought to possess, directly or indirectly, an overruling influence over the others, in the administration
14 of their respective powers. It will not be denied, that power is of an encroaching nature, and that it
15 ought to be effectually restrained from passing the limits assigned to it. After discriminating,
16 therefore, in theory, the several classes of power, as they may in their nature be legislative, executive,
17 or judiciary, the next and most difficult task is to provide some practical security for each, against the
18 invasion of the others. What this security ought to be, is the great problem to be solved. Will it be
19 sufficient to mark, with precision, the boundaries of these departments, in the constitution of the
20 government, and to trust to these parchment barriers against the encroaching spirit of power? This is
21 the security which appears to have been principally relied on by the compilers of most of the American
22 constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated;
23 and that some more adequate defense is indispensably necessary for the more feeble, against the more
24 powerful, members of the government. The legislative department is everywhere extending the
25 sphere of its activity, and drawing all power into its impetuous vortex. The founders of our republics

1 have so much merit for the wisdom which they have displayed, that no task can be less pleasing than
2 that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to
3 remark, that they seem never for a moment to have turned their eyes from the danger to liberty from
4 the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an
5 hereditary branch of the legislative authority. They seem never to have recollected the danger from
6 legislative usurpations, which, by assembling all power in the same hands, must lead to the same
7 tyranny as is threatened by executive usurpations. In a government where numerous and extensive
8 prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly
9 regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to
10 inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and
11 are continually exposed, by their incapacity for regular deliberation and concerted measures, to the
12 ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some
13 favorable emergency, to start up in the same quarter. But in a representative republic, where the
14 executive magistracy is carefully limited; both in the extent and the duration of its power; and where
15 the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the
16 people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the
17 passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of
18 its passions, by means which reason prescribes; it is against the enterprising ambition of this
19 department that the people ought to indulge all their jealousy and exhaust all their precautions. The
20 legislative department derives a superiority in our governments from other circumstances. Its
21 constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with
22 the greater facility, mask, under complicated and indirect measures, the encroachments which it
23 makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative
24 bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative
25 sphere. On the other side, the executive power being restrained within a narrower compass, and being

1 more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects
2 of usurpation by either of these departments would immediately betray and defeat themselves. Nor is
3 this all: as the legislative department alone has access to the pockets of the people, and has in some
4 constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who
5 fill the other departments, a dependence is thus created in the latter, which gives still greater facility to
6 encroachments of the former. I have appealed to our own experience for the truth of what I advance on
7 this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied
8 without end. I might find a witness in every citizen who has shared in, or been attentive to, the course
9 of public administrations. I might collect vouchers in abundance from the records and archives of every
10 State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will
11 refer to the example of two States, attested by two unexceptionable authorities. The first example is
12 that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the
13 three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson,
14 who, besides his other advantages for remarking the operation of the government, was himself the
15 chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him
16 on this subject, it will be necessary to quote a passage of some length from his very interesting ``Notes
17 on the State of Virginia," p. 195. ``All the powers of government, legislative, executive, and judiciary,
18 result to the legislative body. The concentrating these in the same hands, is precisely the definition of
19 despotic government. It will be no alleviation, that these powers will be exercised by a plurality of
20 hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive
21 as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that
22 they are chosen by ourselves. An elective despotism was not the government we fought for; but one
23 which should not only be founded on free principles, but in which the powers of government should be
24 so divided and balanced among several bodies of magistracy, as that no one could transcend their legal
25 limits, without being effectually checked and restrained by the others. For this reason, that

1 convention which passed the ordinance of government, laid its foundation on this basis, that the
2 legislative, executive, and judiciary departments should be separate and distinct, so that no person
3 should exercise the powers of more than one of them at the same time. But no barrier was provided
4 between these several powers. The judiciary and the executive members were left dependent on the
5 legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the
6 legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can
7 be effectual; because in that case they may put their proceedings into the form of acts of Assembly,
8 which will render them obligatory on the other branches. They have accordingly, in
9 many instances, decided rights which should have been left to judiciary controversy, and the direction
10 of the executive, during the whole time of their session, is becoming habitual and familiar. "The other
11 State which I shall take for an example is Pennsylvania; and the other authority, the Council of
12 Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out
13 by the constitution, was ``to inquire whether the constitution had been preserved inviolate in every
14 part; and whether the legislative and executive branches of government had performed their duty as
15 guardians of the people, or assumed to themselves, or exercised, other or greater powers than they
16 are entitled to by the constitution. " In the execution of this trust, the council were necessarily led to a
17 comparison of both the legislative and executive proceedings, with the constitutional powers of these
18 departments; and from the facts enumerated, and to the truth of most of which both sides in the
19 council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a
20 variety of important instances. A great number of laws had been passed, violating, without any
21 apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for
22 the consideration of the people; although this is one of the precautions chiefly relied on by the
23 constitution against improper acts of legislature. The constitutional trial by jury had been violated,
24 and powers assumed which had not been delegated by the constitution. Executive powers had been
25 usurped. The salaries of the judges, which the constitution expressly requires to be fixed, had been

1 occasionally varied; and cases belonging to the judiciary department frequently drawn within
2 legislative cognizance and determination. Those who wish to see the several particulars falling under
3 each of these heads, may consult the journals of the council, which are in print. Some of them, it will be
4 found, may be imputable to peculiar circumstances connected with the war; but the greater part of
5 them may be considered as the spontaneous shoots of an ill-constituted government. It appears, also,
6 that the executive department had not been innocent of frequent breaches of the constitution. There
7 are three observations, however, which ought to be made on this head: First, a great proportion of the
8 instances were either immediately produced by the necessities of the war, or recommended by
9 Congress or the commander-in-chief; secondly, in most of the other instances, they conformed either to
10 the declared or the known sentiments of the legislative department; thirdly, the executive department
11 of Pennsylvania is distinguished from that of the other States by the number of members composing it.
12 In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at
13 once exempt from the restraint of an individual responsibility for the acts of the body, and deriving
14 confidence from mutual example and joint influence, unauthorized measures would, of course, be more
15 freely hazarded, than where the executive department is administered by a single hand, or by a few
16 hands. The conclusion which I am warranted in drawing from these observations is, that a mere
17 demarcation on parchment of the constitutional limits of the several departments, is not a sufficient
18 guard against those encroachments which lead to a tyrannical concentration of all the powers of
19 government in the same hands.

20 Publius.

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1 The Federalist 49

2 Method of Guarding Against the Encroachments of Any One Department of Government by Appealing
3 to the People Through a Convention

4 Hamilton or Madison From the New York Packet. Tuesday, February 5, 1788.

5 To the People of the State of New York:

6 THE author of the ``Notes on the State of Virginia," quoted in the last paper, has subjoined to that
7 valuable work the draught of a constitution, which had been prepared in order to be laid before a
8 convention, expected to be called in 1783, by the legislature, for the establishment of a constitution for
9 that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking, original,
10 comprehensive, and accurate; and is the more worthy of attention as it equally displays a fervent
11 attachment to republican government and an enlightened view of the dangerous propensities against
12 which it ought to be guarded. One of the precautions which he proposes, and on which he appears
13 ultimately to rely as a palladium to the weaker departments of power against the invasions of the
14 stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present
15 inquiry, ought not to be overlooked. His proposition is, ``that whenever any two of the three branches
16 of government shall concur in opinion, each by the voices of two thirds of their whole number, that a
17 convention is necessary for altering the constitution, or correcting breaches of it, a convention shall be
18 called for the purpose. "As the people are the only legitimate fountain of power, and it is from them
19 that the constitutional charter, under which the several branches of government hold their power, is
20 derived, it seems strictly consonant to the republican theory, to recur to the same original authority,
21 not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the
22 government, but also whenever any one of the departments may commit encroachments on the
23 chartered authorities of the others. The several departments being perfectly co-ordinate by the terms
24 of their common commission, none of them, it is evident, can pretend to an exclusive or superior right
25 of settling the boundaries between their respective powers; and how are the encroachments of the

1 stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people
2 themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce
3 its observance? There is certainly great force in this reasoning, and it must be allowed to prove that a
4 constitutional road to the decision of the people ought to be marked out and kept open, for certain great
5 and extraordinary occasions. But there appear to be insuperable objections against the proposed
6 recurrence to the people, as a provision in all cases for keeping the several departments of power
7 within their constitutional limits. In the first place, the provision does not reach the case of a
8 combination of two of the departments against the third. If the legislative authority, which possesses so
9 many means of operating on the motives of the other departments, should be able to gain to its interest
10 either of the others, or even one third of its members, the remaining department could derive no
11 advantage from its remedial provision. I do not dwell, however, on this objection, because it may be
12 thought to be rather against the modification of the principle, than against the principle itself. In the
13 next place, it may be considered as an objection inherent in the principle, that as every appeal to the
14 people would carry an implication of some defect in the government, frequent appeals would, in a
15 great measure, deprive the government of that veneration which time bestows on every thing, and
16 without which perhaps the wisest and freest governments would not possess the requisite stability. If
17 it be true that all governments rest on opinion, it is no less true that the strength of opinion in each
18 individual, and its practical influence on his conduct, depend much on the number which he supposes
19 to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when
20 left alone, and acquires firmness and confidence in proportion to the number with which it is
21 associated. When the examples which fortify opinion are ancient as well as numerous, they are known
22 to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A
23 reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a
24 nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato.
25 And in every other nation, the most rational government will not find it a superfluous advantage to

1 have the prejudices of the community on its side. The danger of disturbing the public tranquillity by
2 interesting too strongly the public passions, is a still more serious objection against a frequent
3 reference of constitutional questions to the decision of the whole society. Notwithstanding the success
4 which has attended the revisions of our established forms of government, and which does so much
5 honor to the virtue and intelligence of the people of America, it must be confessed that the experiments
6 are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing
7 constitutions were formed in the midst of a danger which repressed the passions most unfriendly to
8 order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled
9 the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite
10 forms, produced by a universal resentment and indignation against the ancient government; and
11 whilst no spirit of party connected with the changes to be made, or the abuses to be reformed, could
12 mingle its leaven in the operation. The future situations in which we must expect to be usually placed,
13 do not present any equivalent security against the danger which is apprehended. But the greatest
14 objection of all is, that the decisions which would probably result from such appeals would not answer
15 the purpose of maintaining the constitutional equilibrium of the government. We have seen that the
16 tendency of republican governments is to an aggrandizement of the legislative at the expense of the
17 other departments. The appeals to the people, therefore, would usually be made by the executive and
18 judiciary departments. But whether made by one side or the other, would each side enjoy equal
19 advantages on the trial? Let us view their different situations. The members of the executive and
20 judiciary departments are few in number, and can be personally known to a small part only of the
21 people. The latter, by the mode of their appointment, as well as by the nature and permanency of it,
22 are too far removed from the people to share much in their prepossessions. The former are generally
23 the objects of jealousy, and their administration is always liable to be discolored and rendered
24 unpopular. The members of the legislative department, on the other hand, are numerous. They are
25 distributed and dwell among the people at large. Their connections of blood, of friendship, and of

1 acquaintance embrace a great proportion of the most influential part of the society. The nature of their
2 public trust implies a personal influence among the people, and that they are more immediately the
3 confidential guardians of the rights and liberties of the people. With these advantages, it can hardly be
4 supposed that the adverse party would have an equal chance for a favorable issue. But the legislative
5 party would not only be able to plead their cause most successfully with the people. They would
6 probably be constituted themselves the judges. The same influence which had gained them an election
7 into the legislature, would gain them a seat in the convention. If this should not be the case with all, it
8 would probably be the case with many, and pretty certainly with those leading characters, on whom
9 every thing depends in such bodies. The convention, in short, would be composed chiefly of men who
10 had been, who actually were, or who expected to be, members of the department whose conduct was
11 arraigned. They would consequently be parties to the very question to be decided by them. It might,
12 however, sometimes happen, that appeals would be made under circumstances less adverse to the
13 executive and judiciary departments. The usurpations of the legislature might be so flagrant and so
14 sudden, as to admit of no specious coloring. A strong party among themselves might take side with the
15 other branches. The executive power might be in the hands of a peculiar favorite of the people. In such
16 a posture of things, the public decision might be less swayed by prepossessions in favor of the
17 legislative party. But still it could never be expected to turn on the true merits of the question. It would
18 inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the
19 question itself. It would be connected with persons of distinguished character and extensive influence
20 in the community. It would be pronounced by the very men who had been agents in, or opponents of,
21 the measures to which the decision would relate. The passions, therefore, not the reason, of the public
22 would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the
23 government. The passions ought to be controlled and regulated by the government. We found in the
24 last paper, that mere declarations in the written constitution are not sufficient to restrain the several
25 departments within their legal rights. It appears in this, that occasional appeals to the people would

1 be neither a proper nor an effectual provision for that purpose. How far the provisions of a different
2 nature contained in the plan above quoted might be adequate, I do not examine. Some of them are
3 unquestionably founded on sound political principles, and all of them are framed with singular
4 ingenuity and precision.

5 Publius.

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1 The Federalist 50

2 Periodical Appeals to the People Considered

3 Hamilton or Madison From the New York Packet. Tuesday, February 5, 1788.

4 To the People of the State of New York:

5 IT MAY be contended, perhaps, that instead of occasional appeals to the people, which are liable to the
6 objections urged against them, periodical appeals are the proper and adequate means of preventing and
7 correcting infractions of the constitution. It will be attended to, that in the examination of these
8 expedients, I confine myself to their aptitude for enforcing the Constitution, by keeping the several
9 departments of power within their due bounds, without particularly considering them as provisions
10 for altering the Constitution itself. In the first view, appeals to the people at fixed periods appear to be
11 nearly as ineligible as appeals on particular occasions as they emerge. If the periods be separated by
12 short intervals, the measures to be reviewed and rectified will have been of recent date, and will be
13 connected with all the circumstances which tend to vitiate and pervert the result of occasional
14 revisions. If the periods be distant from each other, the same remark will be applicable to all recent
15 measures; and in proportion as the remoteness of the others may favor a dispassionate review of
16 them, this advantage is inseparable from inconveniences which seem to counterbalance it. In the first
17 place, a distant prospect of public censure would be a very feeble restraint on power from those
18 excesses to which it might be urged by the force of present motives. Is it to be imagined that a
19 legislative assembly, consisting of a hundred or two hundred members, eagerly bent on some favorite
20 object, and breaking through the restraints of the Constitution in pursuit of it, would be arrested in
21 their career, by considerations drawn from a censorial revision of their conduct at the future distance
22 of ten, fifteen, or twenty years? In the next place, the abuses would often have completed their
23 mischievous effects before the remedial provision would be applied. And in the last place, where this
24 might not be the case, they would be of long standing, would have taken deep root, and would not
25 easily be extirpated. The scheme of revising the constitution, in order to correct recent breaches of it,

1 as well as for other purposes, has been actually tried in one of the States. One of the objects of the
2 Council of Censors which met in Pennsylvania in 1783 and 1784, was, as we have seen, to inquire,
3 ``whether the constitution had been violated, and whether the legislative and executive departments
4 had encroached upon each other. " This important and novel experiment in politics merits, in several
5 points of view, very particular attention. In some of them it may, perhaps, as a single experiment, made
6 under circumstances somewhat peculiar, be thought to be not absolutely conclusive. But as applied to
7 the case under consideration, it involves some facts, which I venture to remark, as a complete and
8 satisfactory illustration of the reasoning which I have employed. First. It appears, from the names of
9 the gentlemen who composed the council, that some, at least, of its most active members had also been
10 active and leading characters in the parties which pre-existed in the State. Secondly. It appears that
11 the same active and leading members of the council had been active and influential members of the
12 legislative and executive branches, within the period to be reviewed; and even patrons or opponents of
13 the very measures to be thus brought to the test of the constitution. Two of the members had been
14 vice-presidents of the State, and several other members of the executive council, within the seven
15 preceding years. One of them had been speaker, and a number of others distinguished members, of the
16 legislative assembly within the same period. Thirdly. Every page of their proceedings witnesses the
17 effect of all these circumstances on the temper of their deliberations. Throughout the continuance of
18 the council, it was split into two fixed and violent parties. The fact is acknowledged and lamented by
19 themselves. Had this not been the case, the face of their proceedings exhibits a proof equally
20 satisfactory. In all questions, however unimportant in themselves, or unconnected with each other,
21 the same names stand invariably contrasted on the opposite columns. Every unbiased observer may
22 infer, without danger of mistake, and at the same time without meaning to reflect on either party, or
23 any individuals of either party, that, unfortunately, PASSION, not REASON, must have presided over
24 their decisions. When men exercise their reason coolly and freely on a variety of distinct questions,
25 they inevitably fall into different opinions on some of them. When they are governed by a common

1 passion, their opinions, if they are so to be called, will be the same. Fourthly. It is at least problematical,
2 whether the decisions of this body do not, in several instances, misconstrue the limits prescribed for
3 the legislative and executive departments, instead of reducing and limiting them within their
4 constitutional places. Fifthly. I have never understood that the decisions of the council on constitutional
5 questions, whether rightly or erroneously formed, have had any effect in varying the practice founded
6 on legislative constructions. It even appears, if I mistake not, that in one instance the contemporary
7 legislature denied the constructions of the council, and actually prevailed in the contest. This censorial
8 body, therefore, proves at the same time, by its researches, the existence of the disease, and by its
9 example, the inefficacy of the remedy. This conclusion cannot be invalidated by alleging that the State
10 in which the experiment was made was at that crisis, and had been for a long time before, violently
11 heated and distracted by the rage of party. Is it to be presumed, that at any future septennial epoch
12 the same State will be free from parties? Is it to be presumed that any other State, at the same or any
13 other given period, will be exempt from them? Such an event ought to be neither presumed nor
14 desired; because an extinction of parties necessarily implies either a universal alarm for the public
15 safety, or an absolute extinction of liberty. Were the precaution taken of excluding from the assemblies
16 elected by the people, to revise the preceding administration of the government, all persons who
17 should have been concerned with the government within the given period, the difficulties would not be
18 obviated. The important task would probably devolve on men, who, with inferior capacities, would in
19 other respects be little better qualified. Although they might not have been personally concerned in
20 the administration, and therefore not immediately agents in the measures to be examined, they would
21 probably have been involved in the parties connected with these measures, and have been elected
22 under their auspices.

23 Publius.

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1 The Federalist 51

2 The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different
3 Departments

4 Hamilton or Madison From the New York Packet. Friday, February 8, 1788.

5 To the People of the State of New York:

6 TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of
7 power among the several departments, as laid down in the Constitution? The only answer that can be
8 given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by
9 so contriving the interior structure of the government as that its several constituent parts may, by
10 their mutual relations, be the means of keeping each other in their proper places. Without presuming
11 to undertake a full development of this important idea, I will hazard a few general observations, which
12 may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles
13 and structure of the government planned by the convention. In order to lay a due foundation for that
14 separate and distinct exercise of the different powers of government, which to a certain extent is
15 admitted on all hands to be essential to the preservation of liberty, it is evident that each department
16 should have a will of its own; and consequently should be so constituted that the members of each
17 should have as little agency as possible in the appointment of the members of the others. Were this
18 principle rigorously adhered to, it would require that all the appointments for the supreme executive,
19 legislative, and judiciary magistracies should be drawn from the same fountain of authority, the
20 people, through channels having no communication whatever with one another. Perhaps such a plan
21 of constructing the several departments would be less difficult in practice than it may in
22 contemplation appear. Some difficulties, however, and some additional expense would attend the
23 execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of
24 the judiciary department in particular, it might be inexpedient to insist rigorously on the principle:
25 first, because peculiar qualifications being essential in the members, the primary consideration ought

1 to be to select that mode of choice which best secures these qualifications; secondly, because the
2 permanent tenure by which the appointments are held in that department, must soon destroy all sense
3 of dependence on the authority conferring them. It is equally evident, that the members of each
4 department should be as little dependent as possible on those of the others, for the emoluments
5 annexed to their offices. Were the executive magistrate, or the judges, not independent of the
6 legislature in this particular, their independence in every other would be merely nominal. But the great
7 security against a gradual concentration of the several powers in the same department, consists in
8 giving to those who administer each department the necessary constitutional means and personal
9 motives to resist encroachments of the others. The provision for defense must in this, as in all other
10 cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.
11 The interest of the man must be connected with the constitutional rights of the place. It may be a
12 reflection on human nature, that such devices should be necessary to control the abuses of
13 government. But what is government itself, but the greatest of all reflections on human nature? If men
14 were angels, no government would be necessary. If angels were to govern men, neither external nor
15 internal controls on government would be necessary. In framing a government which is to be
16 administered by men over men, the great difficulty lies in this: you must first enable the government
17 to control the governed; and in the next place oblige it to control itself. A dependence on the people is,
18 no doubt, the primary control on the government; but experience has taught mankind the necessity of
19 auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better
20 motives, might be traced through the whole system of human affairs, private as well as public. We see
21 it particularly displayed in all the subordinate distributions of power, where the constant aim is to
22 divide and arrange the several offices in such a manner as that each may be a check on the other that
23 the private interest of every individual may be a sentinel over the public rights. These inventions of
24 prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not
25 possible to give to each department an equal power of self-defense. In republican government, the

1 legislative authority necessarily predominates. The remedy for this inconveniency is to divide the
2 legislature into different branches; and to render them, by different modes of election and different
3 principles of action, as little connected with each other as the nature of their common functions and
4 their common dependence on the society will admit. It may even be necessary to guard against
5 dangerous encroachments by still further precautions. As the weight of the legislative authority
6 requires that it should be thus divided, the weakness of the executive may require, on the other hand,
7 that it should be fortified. An absolute negative on the legislature appears, at first view, to be the
8 natural defense with which the executive magistrate should be armed. But perhaps it would be neither
9 altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite
10 firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an
11 absolute negative be supplied by some qualified connection between this weaker department and the
12 weaker branch of the stronger department, by which the latter may be led to support the
13 constitutional rights of the former, without being too much detached from the rights of its own
14 department? If the principles on which these observations are founded be just, as I persuade myself
15 they are, and they be applied as a criterion to the several State constitutions, and to the federal
16 Constitution it will be found that if the latter does not perfectly correspond with them, the former are
17 infinitely less able to bear such a test. There are, moreover, two considerations particularly applicable
18 to the federal system of America, which place that system in a very interesting point of view. First. In
19 a single republic, all the power surrendered by the people is submitted to the administration of a
20 single government; and the usurpations are guarded against by a division of the government into
21 distinct and separate departments. In the compound republic of America, the power surrendered by
22 the people is first divided between two distinct governments, and then the portion allotted to each
23 subdivided among distinct and separate departments. Hence a double security arises to the rights of
24 the people. The different governments will control each other, at the same time that each will be
25 controlled by itself. Second. It is of great importance in a republic not only to guard the society against

1 the oppression of its rulers, but to guard one part of the society against the injustice of the other part.
2 Different interests necessarily exist in different classes of citizens. If a majority be united by a common
3 interest, the rights of the minority will be insecure. There are but two methods of providing against this
4 evil: the one by creating a will in the community independent of the majority that is, of the society
5 itself; the other, by comprehending in the society so many separate descriptions of citizens as will
6 render an unjust combination of a majority of the whole very improbable, if not impracticable. The first
7 method prevails in all governments possessing an hereditary or self-appointed authority. This, at best,
8 is but a precarious security; because a power independent of the society may as well espouse the unjust
9 views of the major, as the rightful interests of the minor party, and may possibly be turned against both
10 parties. The second method will be exemplified in the federal republic of the United States. Whilst all
11 authority in it will be derived from and dependent on the society, the society itself will be broken into
12 so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will
13 be in little danger from interested combinations of the majority. In a free government the security for
14 civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity
15 of interests, and in the other in the multiplicity of sects. The degree of security in both cases will
16 depend on the number of interests and sects; and this may be presumed to depend on the extent of
17 country and number of people comprehended under the same government. This view of the subject
18 must particularly recommend a proper federal system to all the sincere and considerate friends of
19 republican government, since it shows that in exact proportion as the territory of the Union may be
20 formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be
21 facilitated: the best security, under the republican forms, for the rights of every class of citizens, will
22 be diminished: and consequently the stability and independence of some member of the government,
23 the only other security, must be proportionately increased. Justice is the end of government. It is the
24 end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be
25 lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and

1 oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker
2 individual is not secured against the violence of the stronger; and as, in the latter state, even the
3 stronger individuals are prompted, by the uncertainty of their condition, to submit to a government
4 which may protect the weak as well as themselves; so, in the former state, will the more powerful
5 factions or parties be gradually induced, by a like motive, to wish for a government which will protect
6 all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode
7 Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular
8 form of government within such narrow limits would be displayed by such reiterated oppressions of
9 factious majorities that some power altogether independent of the people would soon be called for by
10 the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of
11 the United States, and among the great variety of interests, parties, and sects which it embraces, a
12 coalition of a majority of the whole society could seldom take place on any other principles than those
13 of justice and the general good; whilst there being thus less danger to a minor from the will of a major
14 party, there must be less pretext, also, to provide for the security of the former, by introducing into the
15 government a will not dependent on the latter, or, in other words, a will independent of the society
16 itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been
17 entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable
18 it will be of self-government. And happily for the republican cause, the practicable sphere may be
19 carried to a very great extent, by a judicious modification and mixture of the federal principle.

20 Publius.

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1 The Federalist 52

2 The House of Representatives

3 Hamilton or Madison From the New York Packet. Friday, February 8, 1788.

4 To the People of the State of New York:

5 FROM the more general inquiries pursued in the four last papers, I pass on to a more particular
6 examination of the several parts of the government. I shall begin with the House of Representatives.
7 The first view to be taken of this part of the government relates to the qualifications of the electors and
8 the elected. Those of the former are to be the same with those of the electors of the most numerous
9 branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a
10 fundamental article of republican government. It was incumbent on the convention, therefore, to
11 define and establish this right in the Constitution. To have left it open for the occasional regulation of
12 the Congress, would have been improper for the reason just mentioned. To have submitted it to the
13 legislative discretion of the States, would have been improper for the same reason; and for the
14 additional reason that it would have rendered too dependent on the State governments that branch of
15 the federal government which ought to be dependent on the people alone. To have reduced the
16 different qualifications in the different States to one uniform rule, would probably have been as
17 dissatisfactory to some of the States as it would have been difficult to the convention. The provision
18 made by the convention appears, therefore, to be the best that lay within their option. It must be
19 satisfactory to every State, because it is conformable to the standard already established, or which
20 may be established, by the State itself. It will be safe to the United States, because, being fixed by the
21 State constitutions, it is not alterable by the State governments, and it cannot be feared that the
22 people of the States will alter this part of their constitutions in such a manner as to abridge the rights
23 secured to them by the federal Constitution. The qualifications of the elected, being less carefully and
24 properly defined by the State constitutions, and being at the same time more susceptible of uniformity,
25 have been very properly considered and regulated by the convention.

1 A representative of the United States must be of the age of twenty-five years; must have
2 been seven years a citizen of the United States; must, at the time of his election, be an inhabitant of the
3 State he is to represent; and, during the time of his service, must be in no office under the United States.
4 Under these reasonable limitations, the door of this part of the federal government is open to merit of
5 every description, whether native or adoptive, whether young or old, and without regard to poverty or
6 wealth, or to any particular profession of religious faith. The term for which the representatives are to
7 be elected falls under a second view which may be taken of this branch. In order to decide on the
8 propriety of this article, two questions must be considered: first, whether biennial elections will, in this
9 case, be safe; secondly, whether they be necessary or useful. First. As it is essential to liberty that the
10 government in general should have a common interest with the people, so it is particularly essential
11 that the branch of it under consideration should have an immediate dependence on, and an intimate
12 sympathy with, the people. Frequent elections are unquestionably the only policy by which this
13 dependence and sympathy can be effectually secured. But what particular degree of frequency may be
14 absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and
15 must depend on a variety of circumstances with which it may be connected. Let us consult experience,
16 the guide that ought always to be followed whenever it can be found. The scheme of representation, as
17 a substitute for a meeting of the citizens in person, being at most but very imperfectly known to
18 ancient polity, it is in more modern times only that we are to expect instructive examples. And even
19 here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the
20 few examples which are best known, and which bear the greatest analogy to our particular case. The
21 first to which this character ought to be applied, is the House of Commons in Great Britain. The history
22 of this branch of the English Constitution, anterior to the date of Magna Charta, is too obscure to yield
23 instruction. The very existence of it has been made a question among political antiquaries. The
24 earliest records of subsequent date prove that parliaments were to sit only every year; not that they
25 were to be elected every year. And even these annual sessions were left so much at the discretion of

1 the monarch, that, under various pretexts, very long and dangerous intermissions were often
2 contrived by royal ambition. To remedy this grievance, it was provided by a statute in the reign of
3 Charles II. , that the intermissions should not be protracted beyond a period of three years. On the
4 accession of William III. , when a revolution took place in the government, the subject was still more
5 seriously resumed, and it was declared to be among the fundamental rights of the people that
6 parliaments ought to be held frequently. By another statute, which passed a few years later in the same
7 reign, the term ``frequently," which had alluded to the triennial period settled in the time of Charles II. ,
8 is reduced to a precise meaning, it being expressly enacted that a new parliament shall be called within
9 three years after the termination of the former. The last change, from three to seven years, is well
10 known to have been introduced pretty early in the present century, under on alarm for the
11 Hanoverian succession. From these facts it appears that the greatest frequency of elections which has
12 been deemed necessary in that kingdom, for binding the representatives to their constituents, does
13 not exceed a triennial return of them. And if we may argue from the degree of liberty retained even
14 under septennial elections, and all the other vicious ingredients in the parliamentary constitution, we
15 cannot doubt that a reduction of the period from seven to three years, with the other necessary
16 reforms, would so far extend the influence of the people over their representatives as to satisfy us that
17 biennial elections, under the federal system, cannot possibly be dangerous to the requisite dependence
18 of the House of Representatives on their constituents. Elections in Ireland, till of late, were regulated
19 entirely by the discretion of the crown, and were seldom repeated, except on the accession of a new
20 prince, or some other contingent event. The parliament which commenced with George II. was
21 continued throughout his whole reign, a period of about thirty-five years. The only dependence of the
22 representatives on the people consisted in the right of the latter to supply occasional vacancies by the
23 election of new members, and in the chance of some event which might produce a general new
24 election. The ability also of the Irish parliament to maintain the rights of their constituents, so far as
25 the disposition might exist, was extremely shackled by the control of the crown over the subjects of

1 their deliberation. Of late these shackles, if I mistake not, have been broken; and octennial parliaments
2 have besides been established. What effect may be produced by this partial reform, must be left to
3 further experience. The example of Ireland, from this view of it, can throw but little light on the subject.
4 As far as we can draw any conclusion from it, it must be that if the people of that country have been
5 able under all these disadvantages to retain any liberty whatever, the advantage of biennial elections
6 would secure to them every degree of liberty, which might depend on a due connection between their
7 representatives and themselves. Let us bring our inquiries nearer home. The example of these States,
8 when British colonies, claims particular attention, at the same time that it is so well known as to
9 require little to be said on it. The principle of representation, in one branch of the legislature at least,
10 was established in all of them. But the periods of election were different. They varied from one to
11 seven years. Have we any reason to infer, from the spirit and conduct of the representatives of the
12 people, prior to the Revolution, that biennial elections would have been dangerous to the public
13 liberties? The spirit which everywhere displayed itself at the commencement of the struggle, and
14 which vanquished the obstacles to independence, is the best of proofs that a sufficient portion of
15 liberty had been everywhere enjoyed to inspire both a sense of its worth and a zeal for its proper
16 enlargement This remark holds good, as well with regard to the then colonies whose elections were
17 least frequent, as to those whose elections were most frequent Virginia was the colony which stood
18 first in resisting the parliamentary usurpations of Great Britain; it was the first also in espousing, by
19 public act, the resolution of independence. In Virginia, nevertheless, if I have not been misinformed,
20 elections under the former government were septennial. This particular example is brought into view,
21 not as a proof of any peculiar merit, for the priority in those instances was probably accidental; and
22 still less of any advantage in septennial elections, for when compared with a greater frequency they
23 are inadmissible; but merely as a proof, and I conceive it to be a very substantial proof, that the
24 liberties of the people can be in no danger from biennial elections. The conclusion resulting from these
25 examples will be not a little strengthened by recollecting three circumstances. The first is, that the

1 federal legislature will possess a part only of that supreme legislative authority which is vested
2 completely in the British Parliament; and which, with a few exceptions, was exercised by the colonial
3 assemblies and the Irish legislature. It is a received and well-founded maxim, that where no other
4 circumstances affect the case, the greater the power is, the shorter ought to be its duration; and,
5 conversely, the smaller the power, the more safely may its duration be protracted. In the second place,
6 it has, on another occasion, been shown that the federal legislature will not only be restrained by its
7 dependence on its people, as other legislative bodies are, but that it will be, moreover, watched and
8 controlled by the several collateral legislatures, which other legislative bodies are not. And in the third
9 place, no comparison can be made between the means that will be possessed by the more permanent
10 branches of the federal government for seducing, if they should be disposed to seduce, the House of
11 Representatives from their duty to the people, and the means of influence over the popular branch
12 possessed by the other branches of the government above cited. With less power, therefore, to abuse,
13 the federal representatives can be less tempted on one side, and will be doubly watched on the other.
14 Publius.

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1 The Federalist 53

2 The Same Subject Continued (The House of Representatives)

3 Hamilton or Madison From the New York Packet. Tuesday, February 12, 1788.

4 To the People of the State of New York:

5 I SHALL here, perhaps, be reminded of a current observation, ``that where annual elections end,
6 tyranny begins. " If it be true, as has often been remarked, that sayings which become proverbial are
7 generally founded in reason, it is not less true, that when once established, they are often applied to
8 cases to which the reason of them does not extend. I need not look for a proof beyond the case before us.
9 What is the reason on which this proverbial observation is founded? No man will subject himself to the
10 ridicule of pretending that any natural connection subsists between the sun or the seasons, and the
11 period within which human virtue can bear the temptations of power. Happily for mankind, liberty is
12 not, in this respect, confined to any single point of time; but lies within extremes, which afford
13 sufficient latitude for all the variations which may be required by the various situations and
14 circumstances of civil society. The election of magistrates might be, if it were found expedient, as in
15 some instances it actually has been, daily, weekly, or monthly, as well as annual; and if circumstances
16 may require a deviation from the rule on one side, why not also on the other side? Turning our
17 attention to the periods established among ourselves, for the election of the most numerous branches
18 of the State legislatures, we find them by no means coinciding any more in this instance, than in the
19 elections of other civil magistrates. In Connecticut and Rhode Island, the periods are half-yearly. In
20 the other States, South Carolina excepted, they are annual. In South Carolina they are biennial as is
21 proposed in the federal government. Here is a difference, as four to one, between the longest and
22 shortest periods; and yet it would be not easy to show, that Connecticut or Rhode Island is better
23 governed, or enjoys a greater share of rational liberty, than South Carolina; or that either the one or
24 the other of these States is distinguished in these respects, and by these causes, from the States whose
25 elections are different from both. In searching for the grounds of this doctrine, I can discover but one,

1 and that is wholly inapplicable to our case. The important distinction so well understood in America,
2 between a Constitution established by the people and unalterable by the government, and a law
3 established by the government and alterable by the government, seems to have been little understood
4 and less observed in any other country. Wherever the supreme power of legislation has resided, has
5 been supposed to reside also a full power to change the form of the government. Even in Great Britain,
6 where the principles of political and civil liberty have been most discussed, and where we hear most of
7 the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and
8 uncontrollable, as well with regard to the Constitution, as the ordinary objects of legislative provision.
9 They have accordingly, in several instances, actually changed, by legislative acts, some of the most
10 fundamental articles of the government. They have in particular, on several occasions, changed the
11 period of election; and, on the last occasion, not only introduced septennial in place of triennial
12 elections, but by the same act, continued themselves in place four years beyond the term for which
13 they were elected by the people. An attention to these dangerous practices has produced a very
14 natural alarm in the votaries of free government, of which frequency of elections is the corner-stone;
15 and has led them to seek for some security to liberty, against the danger to which it is exposed. Where
16 no Constitution, paramount to the government, either existed or could be obtained, no constitutional
17 security, similar to that established in the United States, was to be attempted. Some other security,
18 therefore, was to be sought for; and what better security would the case admit, than that of selecting
19 and appealing to some simple and familiar portion of time, as a standard for measuring the danger of
20 innovations, for fixing the national sentiment, and for uniting the patriotic exertions? The most
21 simple and familiar portion of time, applicable to the subject was that of a year; and hence the doctrine
22 has been inculcated by a laudable zeal, to erect some barrier against the gradual innovations of an
23 unlimited government, that the advance towards tyranny was to be calculated by the distance of
24 departure from the fixed point of annual elections. But what necessity can there be of applying this
25 expedient to a government limited, as the federal government will be, by the authority of a paramount

1 Constitution? Or who will pretend that the liberties of the people of America will not be more secure
2 under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would
3 be, where elections were annual, or even more frequent, but subject to alterations by the ordinary
4 power of the government? The second question stated is, whether biennial elections be necessary or
5 useful. The propriety of answering this question in the affirmative will appear from several very
6 obvious considerations.

7 No man can be a competent legislator who does not add to an upright intention and a sound judgment a
8 certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be
9 acquired by means of information which lie within the compass of men in private as well as public
10 stations. Another part can only be attained, or at least thoroughly attained, by actual experience in
11 the station which requires the use of it. The period of service, ought, therefore, in all such cases, to
12 bear some proportion to the extent of practical knowledge requisite to the due performance of the
13 service. The period of legislative service established in most of the States for the more numerous
14 branch is, as we have seen, one year. The question then may be put into this simple form: does the
15 period of two years bear no greater proportion to the knowledge requisite for federal legislation than
16 one year does to the knowledge requisite for State legislation? The very statement of the question, in
17 this form, suggests the answer that ought to be given to it. In a single State, the requisite knowledge
18 relates to the existing laws which are uniform throughout the State, and with which all the citizens
19 are more or less conversant; and to the general affairs of the State, which lie within a small compass,
20 are not very diversified, and occupy much of the attention and conversation of every class of people.
21 The great theatre of the United States presents a very different scene. The laws are so far from being
22 uniform, that they vary in every State; whilst the public affairs of the Union are spread throughout a
23 very extensive region, and are extremely diversified by the local affairs connected with them, and can
24 with difficulty be correctly learnt in any other place than in the central councils to which a knowledge
25 of them will be brought by the representatives of every part of the empire. Yet some knowledge of the

1 affairs, and even of the laws, of all the States, ought to be possessed by the members from each of the
2 States. How can foreign trade be properly regulated by uniform laws, without some acquaintance with
3 the commerce, the ports, the usages, and the regulations of the different States? How can the trade
4 between the different States be duly regulated, without some knowledge of their relative situations in
5 these and other respects? How can taxes be judiciously imposed and effectually collected, if they be not
6 accommodated to the different laws and local circumstances relating to these objects in the different
7 States? How can uniform regulations for the militia be duly provided, without a similar knowledge of
8 many internal circumstances by which the States are distinguished from each other? These are the
9 principal objects of federal legislation, and suggest most forcibly the extensive information which the
10 representatives ought to acquire. The other interior objects will require a proportional degree of
11 information with regard to them. It is true that all these difficulties will, by degrees, be very much
12 diminished. The most laborious task will be the proper inauguration of the government and the
13 primeval formation of a federal code. Improvements on the first draughts will every year become both
14 easier and fewer. Past transactions of the government will be a ready and accurate source of
15 information to new members. The affairs of the Union will become more and more objects of curiosity
16 and conversation among the citizens at large. And the increased intercourse among those of different
17 States will contribute not a little to diffuse a mutual knowledge of their affairs, as this again will
18 contribute to a general assimilation of their manners and laws. But with all these abatements, the
19 business of federal legislation must continue so far to exceed, both in novelty and difficulty, the
20 legislative business of a single State, as to justify the longer period of service assigned to those who
21 are to transact it. A branch of knowledge which belongs to the acquirements of a federal
22 representative, and which has not been mentioned is that of foreign affairs. In regulating our own
23 commerce he ought to be not only acquainted with the treaties between the United States and other
24 nations, but also with the commercial policy and laws of other nations. He ought not to be altogether
25 ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is

1 submitted to the federal government. And although the House of Representatives is not immediately to
2 participate in foreign negotiations and arrangements, yet from the necessary connection between the
3 several branches of public affairs, those particular branches will frequently deserve attention in the
4 ordinary course of legislation, and will sometimes demand particular legislative sanction and co-
5 operation. Some portion of this knowledge may, no doubt, be acquired in a man's closet; but some of it
6 also can only be derived from the public sources of information; and all of it will be acquired to best
7 effect by a practical attention to the subject during the period of actual service in the legislature. There
8 are other considerations, of less importance, perhaps, but which are not unworthy of notice.

9 The distance which many of the representatives will be obliged to travel, and the arrangements
10 rendered necessary by that circumstance, might be much more serious objections with fit men to this
11 service, if limited to a single year, than if extended to two years. No argument can be drawn on this
12 subject, from the case of the delegates to the existing Congress. They are elected annually, it is true;
13 but their re-election is considered by the legislative assemblies almost as a matter of course. The
14 election of the representatives by the people would not be governed by the same principle. A few of the
15 members, as happens in all such assemblies, will possess superior talents; will, by frequent
16 reelections, become members of long standing; will be thoroughly masters of the public business, and
17 perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new
18 members, and the less the information of the bulk of the members the more apt will they be to fall into
19 the snares that may be laid for them. This remark is no less applicable to the relation which will
20 subsist between the House of Representatives and the Senate. It is an inconvenience mingled with the
21 advantages of our frequent elections even in single States, where they are large, and hold but one
22 legislative session in a year, that spurious elections cannot be investigated and annulled in time for
23 the decision to have its due effect. If a return can be obtained, no matter by what unlawful means, the
24 irregular member, who takes his seat of course, is sure of holding it a sufficient time to answer his
25 purposes. Hence, a very pernicious encouragement is given to the use of unlawful means, for obtaining

1 irregular returns. Were elections for the federal legislature to be annual, this practice might become a
2 very serious abuse, particularly in the more distant States. Each house is, as it necessarily must be, the
3 judge of the elections, qualifications, and returns of its members; and whatever improvements may be
4 suggested by experience, for simplifying and accelerating the process in disputed cases, so great a
5 portion of a year would unavoidably elapse, before an illegitimate member could be dispossessed of his
6 seat, that the prospect of such an event would be little check to unfair and illicit means of obtaining a
7 seat. All these considerations taken together warrant us in affirming, that biennial elections will be as
8 useful to the affairs of the public as we have seen that they will be safe to the liberty of the people.
9 Publius.

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1 The Federalist 54

2 The Apportionment of Members Among the States

3 Hamilton or Madison From the New York Packet. Tuesday, February 12, 1788.

4 To the People of the State of New York:

5 THE next view which I shall take of the House of Representatives relates to the appointment of its
6 members to the several States which is to be determined by the same rule with that of direct taxes.
7 It is not contended that the number of people in each State ought not to be the standard for regulating
8 the proportion of those who are to represent the people of each State. The establishment of the same
9 rule for the appointment of taxes, will probably be as little contested; though the rule itself in this case,
10 is by no means founded on the same principle. In the former case, the rule is understood to refer to the
11 personal rights of the people, with which it has a natural and universal connection. In the latter, it has
12 reference to the proportion of wealth, of which it is in no case a precise measure, and in ordinary cases
13 a very unfit one. But notwithstanding the imperfection of the rule as applied to the relative wealth and
14 contributions of the States, it is evidently the least objectionable among the practicable rules, and had
15 too recently obtained the general sanction of America, not to have found a ready preference with the
16 convention. All this is admitted, it will perhaps be said; but does it follow, from an admission of
17 numbers for the measure of representation, or of slaves combined with free citizens as a ratio of
18 taxation, that slaves ought to be included in the numerical rule of representation? Slaves are
19 considered as property, not as persons. They ought therefore to be comprehended in estimates of
20 taxation which are founded on property, and to be excluded from representation which is regulated by
21 a census of persons. This is the objection, as I understand it, stated in its full force. I shall be equally
22 candid in stating the reasoning which may be offered on the opposite side. ``We subscribe to the
23 doctrine," might one of our Southern brethren observe, ``that representation relates more
24 immediately to persons, and taxation more immediately to property, and we join in the application of
25 this distinction to the case of our slaves. But we must deny the fact, that slaves are considered merely

1 as property, and in no respect whatever as persons. The true state of the case is, that they partake of
2 both these qualities: being considered by our laws, in some respects, as persons, and in other respects
3 as property. In being compelled to labor, not for himself, but for a master; in being vendible by one
4 master to another master; and in being subject at all times to be restrained in his liberty and chastised
5 in his body, by the capricious will of another, the slave may appear to be degraded from the human
6 rank, and classed with those irrational animals which fall under the legal denomination of property. In
7 being protected, on the other hand, in his life and in his limbs, against the violence of all others, even
8 the master of his labor and his liberty; and in being punishable himself for all violence committed
9 against others, the slave is no less evidently regarded by the law as a member of the society, not as a
10 part of the irrational creation; as a moral person, not as a mere article of property. The federal
11 Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in
12 the mixed character of persons and of property. This is in fact their true character. It is the character
13 bestowed on them by the laws under which they live; and it will not be denied, that these are the
14 proper criterion; because it is only under the pretext that the laws have transformed the negroes into
15 subjects of property, that a place is disputed them in the computation of numbers; and it is admitted,
16 that if the laws were to restore the rights which have been taken away, the negroes could no longer be
17 refused an equal share of representation with the other inhabitants. ``This question may be placed in
18 another light. It is agreed on all sides, that numbers are the best scale of wealth and taxation, as they
19 are the only proper scale of representation. Would the convention have been impartial or consistent, if
20 they had rejected the slaves from the list of inhabitants, when the shares of representation were to be
21 calculated, and inserted them on the lists when the tariff of contributions was to be adjusted? Could it
22 be reasonably expected, that the Southern States would concur in a system, which considered their
23 slaves in some degree as men, when burdens were to be imposed, but refused to consider them in the
24 same light, when advantages were to be conferred? Might not some surprise also be expressed, that
25 those who reproach the Southern States with the barbarous policy of considering as property a part of

1 their human brethren, should themselves contend, that the government to which all the States are to
2 be parties, ought to consider this unfortunate race more completely in the unnatural light of property,
3 than the very laws of which they complain? ``It may be replied, perhaps, that slaves are not included in
4 the estimate of representatives in any of the States possessing them. They neither vote themselves nor
5 increase the votes of their masters. Upon what principle, then, ought they to be taken into the federal
6 estimate of representation? In rejecting them altogether, the Constitution would, in this respect, have
7 followed the very laws which have been appealed to as the proper guide. ``This objection is repelled by
8 a single observation. It is a fundamental principle of the proposed Constitution, that as the aggregate
9 number of representatives allotted to the several States is to be determined by a federal rule, founded
10 on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is
11 to be exercised by such part of the inhabitants as the State itself may designate. The qualifications on
12 which the right of suffrage depend are not, perhaps, the same in any two States. In some of the States
13 the difference is very material. In every State, a certain proportion of inhabitants are deprived of this
14 right by the constitution of the State, who will be included in the census by which the federal
15 Constitution apportions the representatives. In this point of view the Southern States might retort the
16 complaint, by insisting that the principle laid down by the convention required that no regard should
17 be had to the policy of particular States towards their own inhabitants; and consequently, that the
18 slaves, as inhabitants, should have been admitted into the census according to their full number, in
19 like manner with other inhabitants, who, by the policy of other States, are not admitted to all the
20 rights of citizens. A rigorous adherence, however, to this principle, is waived by those who would be
21 gainers by it. All that they ask is that equal moderation be shown on the other side. Let the case of the
22 slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the
23 Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude
24 below the equal level of free inhabitants, which regards the slave as divested of two fifths of the man.
25 ``After all, may not another ground be taken on which this article of the Constitution will admit of a

1 still more ready defense? We have hitherto proceeded on the idea that representation related to
2 persons only, and not at all to property. But is it a just idea? Government is instituted no less for
3 protection of the property, than of the persons, of individuals. The one as well as the other, therefore,
4 may be considered as represented by those who are charged with the government. Upon this principle it
5 is, that in several of the States, and particularly in the State of New York, one branch of the government
6 is intended more especially to be the guardian of property, and is accordingly elected by that part of the
7 society which is most interested in this object of government. In the federal Constitution, this policy
8 does not prevail. The rights of property are committed into the same hands with the personal rights.
9 Some attention ought, therefore, to be paid to property in the choice of those hands. `` For another
10 reason, the votes allowed in the federal legislature to the people of each State, ought to bear some
11 proportion to the comparative wealth of the States. States have not, like individuals, an influence over
12 each other, arising from superior advantages of fortune. If the law allows an opulent citizen but a
13 single vote in the choice of his representative, the respect and consequence which he derives from his
14 fortunate situation very frequently guide the votes of others to the objects of his choice; and through
15 this imperceptible channel the rights of property are conveyed into the public representation. A State
16 possesses no such influence over other States. It is not probable that the richest State in the
17 Confederacy will ever influence the choice of a single representative in any other State. Nor will the
18 representatives of the larger and richer States possess any other advantage in the federal legislature,
19 over the representatives of other States, than what may result from their superior number alone. As
20 far, therefore, as their superior wealth and weight may justly entitle them to any advantage, it ought
21 to be secured to them by a superior share of representation. The new Constitution is, in this respect,
22 materially different from the existing Confederation, as well as from that of the United Netherlands,
23 and other similar confederacies. In each of the latter, the efficacy of the federal resolutions depends on
24 the subsequent and voluntary resolutions of the states composing the union. Hence the states, though
25 possessing an equal vote in the public councils, have an unequal influence, corresponding with the

1 unequal importance of these subsequent and voluntary resolutions. Under the proposed Constitution,
2 the federal acts will take effect without the necessary intervention of the individual States. They will
3 depend merely on the majority of votes in the federal legislature, and consequently each vote, whether
4 proceeding from a larger or smaller State, or a State more or less wealthy or powerful, will have an
5 equal weight and efficacy: in the same manner as the votes individually given in a State legislature, by
6 the representatives of unequal counties or other districts, have each a precise equality of value and
7 effect; or if there be any difference in the case, it proceeds from the difference in the personal character
8 of the individual representative, rather than from any regard to the extent of the district from which he
9 comes. "Such is the reasoning which an advocate for the Southern interests might employ on this
10 subject; and although it may appear to be a little strained in some points, yet, on the whole, I must
11 confess that it fully reconciles me to the scale of representation which the convention have
12 established. In one respect, the establishment of a common measure for representation and taxation
13 will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will
14 necessarily depend, in a considerable degree on the disposition, if not on the co-operation, of the
15 States, it is of great importance that the States should feel as little bias as possible, to swell or to
16 reduce the amount of their numbers. Were their share of representation alone to be governed by this
17 rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share
18 of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the
19 States will have opposite interests, which will control and balance each other, and produce the
20 requisite impartiality.

21 Publius.

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1 The Federalist 55

2 The Total Number of the House of Representatives

3 Hamilton or Madison From the New York Packet. Friday, February 15, 1788.

4 To the People of the State of New York:

5 THE number of which the House of Representatives is to consist, forms another and a very interesting
6 point of view, under which this branch of the federal legislature may be contemplated. Scarce any
7 article, indeed, in the whole Constitution seems to be rendered more worthy of attention, by the weight
8 of character and the apparent force of argument with which it has been assailed. The charges exhibited
9 against it are, first, that so small a number of representatives will be an unsafe depositary of the public
10 interests; secondly, that they will not possess a proper knowledge of the local circumstances of their
11 numerous constituents; thirdly, that they will be taken from that class of citizens which will
12 sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent
13 elevation of the few on the depression of the many; fourthly, that defective as the number will be in the
14 first instance, it will be more and more disproportionate, by the increase of the people, and the
15 obstacles which will prevent a correspondent increase of the representatives. In general it may be
16 remarked on this subject, that no political problem is less susceptible of a precise solution than that
17 which relates to the number most convenient for a representative legislature; nor is there any point on
18 which the policy of the several States is more at variance, whether we compare their legislative
19 assemblies directly with each other, or consider the proportions which they respectively bear to the
20 number of their constituents. Passing over the difference between the smallest and largest States, as
21 Delaware, whose most numerous branch consists of twenty-one representatives, and Massachusetts,
22 where it amounts to between three and four hundred, a very considerable difference is observable
23 among States nearly equal in population. The number of representatives in Pennsylvania is not more
24 than one fifth of that in the State last mentioned. New York, whose population is to that of South
25 Carolina as six to five, has little more than one third of the number of representatives. As great a

1 disparity prevails between the States of Georgia and Delaware or Rhode Island. In Pennsylvania, the
2 representatives do not bear a greater proportion to their constituents than of one for every four or five
3 thousand. In Rhode Island, they bear a proportion of at least one for every thousand. And according to
4 the constitution of Georgia, the proportion may be carried to one to every ten electors; and must
5 unavoidably far exceed the proportion in any of the other States. Another general remark to be made is,
6 that the ratio between the representatives and the people ought not to be the same where the latter are
7 very numerous as where they are very few. Were the representatives in Virginia to be regulated by the
8 standard in Rhode Island, they would, at this time, amount to between four and five hundred; and
9 twenty or thirty years hence, to a thousand. On the other hand, the ratio of Pennsylvania, if applied to
10 the State of Delaware, would reduce the representative assembly of the latter to seven or eight
11 members. Nothing can be more fallacious than to found our political calculations on arithmetical
12 principles. Sixty or seventy men may be more properly trusted with a given degree of power than six
13 or seven. But it does not follow that six or seven hundred would be proportionably a better depository.
14 And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed.
15 The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of
16 free consultation and discussion, and to guard against too easy a combination for improper purposes;
17 as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the
18 confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character
19 composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a
20 Socrates, every Athenian assembly would still have been a mob.

21 It is necessary also to recollect here the observations which were applied to the case of biennial
22 elections. For the same reason that the limited powers of the Congress, and the control of the State
23 legislatures, justify less frequent elections than the public safely might otherwise require, the
24 members of the Congress need be less numerous than if they possessed the whole power of legislation,
25 and were under no other than the ordinary restraints of other legislative bodies. With these general

1 ideas in our mind, let us weigh the objections which have been stated against the number of members
2 proposed for the House of Representatives. It is said, in the first place, that so small a number cannot be
3 safely trusted with so much power. The number of which this branch of the legislature is to consist, at
4 the outset of the government, will be sixtyfive. Within three years a census is to be taken, when the
5 number may be augmented to one for every thirty thousand inhabitants; and within every successive
6 period of ten years the census is to be renewed, and augmentations may continue to be made under the
7 above limitation. It will not be thought an extravagant conjecture that the first census will, at the rate
8 of one for every thirty thousand, raise the number of representatives to at least one hundred.

9 Estimating the negroes in the proportion of three fifths, it can scarcely be doubted that the population
10 of the United States will by that time, if it does not already, amount to three millions. At the expiration
11 of twenty-five years, according to the computed rate of increase, the number of representatives will
12 amount to two hundred, and of fifty years, to four hundred. This is a number which, I presume, will put
13 an end to all fears arising from the smallness of the body. I take for granted here what I shall, in
14 answering the fourth objection, hereafter show, that the number of representatives will be augmented
15 from time to time in the manner provided by the Constitution. On a contrary supposition, I should
16 admit the objection to have very great weight indeed. The true question to be decided then is, whether
17 the smallness of the number, as a temporary regulation, be dangerous to the public liberty? Whether
18 sixty-five members for a few years, and a hundred or two hundred for a few more, be a safe depositary
19 for a limited and well-guarded power of legislating for the United States? I must own that I could not
20 give a negative answer to this question, without first obliterating every impression which I have
21 received with regard to the present genius of the people of America, the spirit which actuates the State
22 legislatures, and the principles which are incorporated with the political character of every class of
23 citizens I am unable to conceive that the people of America, in their present temper, or under any
24 circumstances which can speedily happen, will choose, and every second year repeat the choice of,
25 sixty-five or a hundred men who would be disposed to form and pursue a scheme of tyranny or

1 treachery. I am unable to conceive that the State legislatures, which must feel so many motives to
2 watch, and which possess so many means of counteracting, the federal legislature, would fail either to
3 detect or to defeat a conspiracy of the latter against the liberties of their common constituents. I am
4 equally unable to conceive that there are at this time, or can be in any short time, in the United States,
5 any sixty-five or a hundred men capable of recommending themselves to the choice of the people at
6 large, who would either desire or dare, within the short space of two years, to betray the solemn trust
7 committed to them. What change of circumstances, time, and a fuller population of our country may
8 produce, requires a prophetic spirit to declare, which makes no part of my pretensions. But judging
9 from the circumstances now before us, and from the probable state of them within a moderate period of
10 time, I must pronounce that the liberties of America cannot be unsafe in the number of hands
11 proposed by the federal Constitution. From what quarter can the danger proceed? Are we afraid of
12 foreign gold? If foreign gold could so easily corrupt our federal rulers and enable them to ensnare and
13 betray their constituents, how has it happened that we are at this time a free and independent nation?
14 The Congress which conducted us through the Revolution was a less numerous body than their
15 successors will be; they were not chosen by, nor responsible to, their fellowcitizens at large; though
16 appointed from year to year, and recallable at pleasure, they were generally continued for three years,
17 and prior to the ratification of the federal articles, for a still longer term. They held their consultations
18 always under the veil of secrecy; they had the sole transaction of our affairs with foreign nations;
19 through the whole course of the war they had the fate of their country more in their hands than it is to
20 be hoped will ever be the case with our future representatives; and from the greatness of the prize at
21 stake, and the eagerness of the party which lost it, it may well be supposed that the use of other means
22 than force would not have been scrupled. Yet we know by happy experience that the public trust was
23 not betrayed; nor has the purity of our public councils in this particular ever suffered, even from the
24 whispers of calumny. Is the danger apprehended from the other branches of the federal government?
25 But where are the means to be found by the President, or the Senate, or both? Their emoluments of

1 office, it is to be presumed, will not, and without a previous corruption of the House of Representatives
2 cannot, more than suffice for very different purposes; their private fortunes, as they must all be
3 American citizens, cannot possibly be sources of danger. The only means, then, which they can possess,
4 will be in the dispensation of appointments. Is it here that suspicion rests her charge? Sometimes we
5 are told that this fund of corruption is to be exhausted by the President in subduing the virtue of the
6 Senate. Now, the fidelity of the other House is to be the victim. The improbability of such a mercenary
7 and perfidious combination of the several members of government, standing on as different foundations
8 as republican principles will well admit, and at the same time accountable to the society over which
9 they are placed, ought alone to quiet this apprehension. But, fortunately, the Constitution has provided
10 a still further safeguard. The members of the Congress are rendered ineligible to any civil offices that
11 may be created, or of which the emoluments may be increased, during the term of their election. No
12 offices therefore can be dealt out to the existing members but such as may become vacant by ordinary
13 casualties: and to suppose that these would be sufficient to purchase the guardians of the people,
14 selected by the people themselves, is to renounce every rule by which events ought to be calculated,
15 and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain.
16 The sincere friends of liberty, who give themselves up to the extravagancies of this passion, are not
17 aware of the injury they do their own cause. As there is a degree of depravity in mankind which
18 requires a certain degree of circumspection and distrust, so there are other qualities in human nature
19 which justify a certain portion of esteem and confidence. Republican government presupposes the
20 existence of these qualities in a higher degree than any other form. Were the pictures which have been
21 drawn by the political jealousy of some among us faithful likenesses of the human character, the
22 inference would be, that there is not sufficient virtue among men for self-government; and that
23 nothing less than the chains of despotism can restrain them from destroying and devouring one
24 another.

25 Publius.

1 The Federalist 56

2 The Same Subject Continued(The Total Number of the House of Representatives)

3 Hamilton or Madison From the New York Packet. Tuesday, February 19, 1788.

4 To the People of the State of New York:

5 THE SECOND charge against the House of Representatives is, that it will be too small to possess a due
6 knowledge of the interests of its constituents. As this objection evidently proceeds from a comparison of
7 the proposed number of representatives with the great extent of the United States, the number of their
8 inhabitants, and the diversity of their interests, without taking into view at the same time the
9 circumstances which will distinguish the Congress from other legislative bodies, the best answer that
10 can be given to it will be a brief explanation of these peculiarities. It is a sound and important principle
11 that the representative ought to be acquainted with the interests and circumstances of his
12 constituents. But this principle can extend no further than to those circumstances and interests to
13 which the authority and care of the representative relate. An ignorance of a variety of minute and
14 particular objects, which do not lie within the compass of legislation, is consistent with every attribute
15 necessary to a due performance of the legislative trust. In determining the extent of information
16 required in the exercise of a particular authority, recourse then must be had to the objects within the
17 purview of that authority. What are to be the objects of federal legislation? Those which are of most
18 importance, and which seem most to require local knowledge, are commerce, taxation, and the militia.
19 A proper regulation of commerce requires much information, as has been elsewhere remarked; but as
20 far as this information relates to the laws and local situation of each individual State, a very few
21 representatives would be very sufficient vehicles of it to the federal councils. Taxation will consist, in a
22 great measure, of duties which will be involved in the regulation of commerce. So far the preceding
23 remark is applicable to this object. As far as it may consist of internal collections, a more diffusive
24 knowledge of the circumstances of the State may be necessary. But will not this also be possessed in
25 sufficient degree by a very few intelligent men, diffusively elected within the State? Divide the largest

1 State into ten or twelve districts, and it will be found that there will be no peculiar local interests in
2 either, which will not be within the knowledge of the representative of the district. Besides this source
3 of information, the laws of the State, framed by representatives from every part of it, will be almost of
4 themselves a sufficient guide. In every State there have been made, and must continue to be made,
5 regulations on this subject which will, in many cases, leave little more to be done by the federal
6 legislature, than to review the different laws, and reduce them in one general act. A skillful individual
7 in his closet with all the local codes before him, might compile a law on some subjects of taxation for the
8 whole union, without any aid from oral information, and it may be expected that whenever internal
9 taxes may be necessary, and particularly in cases requiring uniformity throughout the States, the more
10 simple objects will be preferred. To be fully sensible of the facility which will be given to this branch of
11 federal legislation by the assistance of the State codes, we need only suppose for a moment that this or
12 any other State were divided into a number of parts, each having and exercising within itself a power
13 of local legislation. Is it not evident that a degree of local information and preparatory labor would be
14 found in the several volumes of their proceedings, which would very much shorten the labors of the
15 general legislature, and render a much smaller number of members sufficient for it? The federal
16 councils will derive great advantage from another circumstance. The representatives of each State
17 will not only bring with them a considerable knowledge of its laws, and a local knowledge of their
18 respective districts, but will probably in all cases have been members, and may even at the very time
19 be members, of the State legislature, where all the local information and interests of the State are
20 assembled, and from whence they may easily be conveyed by a very few hands into the legislature of
21 the United States. The observations made on the subject of taxation apply with greater force to the
22 case of the militia. For however different the rules of discipline may be in different States, they are the
23 same throughout each particular State; and depend on circumstances which can differ but little in
24 different parts of the same State. The attentive reader will discern that the reasoning here used, to
25 prove the sufficiency of a moderate number of representatives, does not in any respect contradict

1 what was urged on another occasion with regard to the extensive information which the
2 representatives ought to possess, and the time that might be necessary for acquiring it. This
3 information, so far as it may relate to local objects, is rendered necessary and difficult, not by a
4 difference of laws and local circumstances within a single State, but of those among different States.
5 Taking each State by itself, its laws are the same, and its interests but little diversified. A few men,
6 therefore, will possess all the knowledge requisite for a proper representation of them. Were the
7 interests and affairs of each individual State perfectly simple and uniform, a knowledge of them in one
8 part would involve a knowledge of them in every other, and the whole State might be competently
9 represented by a single member taken from any part of it. On a comparison of the different States
10 together, we find a great dissimilarity in their laws, and in many other circumstances connected with
11 the objects of federal legislation, with all of which the federal representatives ought to have some
12 acquaintance. Whilst a few representatives, therefore, from each State, may bring with them a due
13 knowledge of their own State, every representative will have much information to acquire concerning
14 all the other States. The changes of time, as was formerly remarked, on the comparative situation of
15 the different States, will have an assimilating effect. The effect of time on the internal affairs of the
16 States, taken singly, will be just the contrary. At present some of the States are little more than a
17 society of husbandmen. Few of them have made much progress in those branches of industry which
18 give a variety and complexity to the affairs of a nation. These, however, will in all of them be the fruits
19 of a more advanced population, and will require, on the part of each State, a fuller representation. The
20 foresight of the convention has accordingly taken care that the progress of population may be
21 accompanied with a proper increase of the representative branch of the government. The experience
22 of Great Britain, which presents to mankind so many political lessons, both of the monitory and
23 exemplary kind, and which has been frequently consulted in the course of these inquiries,
24 corroborates the result of the reflections which we have just made. The number of inhabitants in the
25 two kingdoms of England and Scotland cannot be stated at less than eight millions. The

1 representatives of these eight millions in the House of Commons amount to five hundred and fifty-eight.
2 Of this number, one ninth are elected by three hundred and sixty-four persons, and one half, by five
3 thousand seven hundred and twenty-three persons. [1] It cannot be supposed that the half thus
4 elected, and who do not even reside among the people at large, can add any thing either to the security
5 of the people against the government, or to the knowledge of their circumstances and interests in the
6 legislative councils. On the contrary, it is notorious, that they are more frequently the representatives
7 and instruments of the executive magistrate, than the guardians and advocates of the popular rights.
8 They might therefore, with great propriety, be considered as something more than a mere deduction
9 from the real representatives of the nation. We will, however, consider them in this light alone, and will
10 not extend the deduction to a considerable number of others, who do not reside among their
11 constituents, are very faintly connected with them, and have very little particular knowledge of their
12 affairs. With all these concessions, two hundred and seventy-nine persons only will be the depository
13 of the safety, interest, and happiness of eight millions that is to say, there will be one representative
14 only to maintain the rights and explain the situation of twenty-eight thousand six hundred and
15 seventy constituents, in an assembly exposed to the whole force of executive influence, and extending
16 its authority to every object of legislation within a nation whose affairs are in the highest degree
17 diversified and complicated. Yet it is very certain, not only that a valuable portion of freedom has been
18 preserved under all these circumstances, but that the defects in the British code are chargeable, in a
19 very small proportion, on the ignorance of the legislature concerning the circumstances of the people.
20 Allowing to this case the weight which is due to it, and comparing it with that of the House of
21 Representatives as above explained it seems to give the fullest assurance, that a representative for
22 every thirty thousand inhabitants will render the latter both a safe and competent guardian of the
23 interests which will be confided to it.

24 Publius.

25

1 The Federalist 57

2 The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in
3 Connection with Representation

4 Hamilton or Madison From the New York Packet. Tuesday, February 19, 1788.

5 To the People of the State of New York:

6 THE THIRD charge against the House of Representatives is, that it will be taken from that class of
7 citizens which will have least sympathy with the mass of the people, and be most likely to aim at an
8 ambitious sacrifice of the many to the aggrandizement of the few. Of all the objections which have been
9 framed against the federal Constitution, this is perhaps the most extraordinary. Whilst the objection
10 itself is levelled against a pretended oligarchy, the principle of it strikes at the very root of republican
11 government. The aim of every political constitution is, or ought to be, first to obtain for rulers men
12 who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and
13 in the next place, to take the most effectual precautions for keeping them virtuous whilst they
14 continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of
15 republican government. The means relied on in this form of government for preventing their
16 degeneracy are numerous and various. The most effectual one, is such a limitation of the term of
17 appointments as will maintain a proper responsibility to the people. Let me now ask what
18 circumstance there is in the constitution of the House of Representatives that violates the principles
19 of republican government, or favors the elevation of the few on the ruins of the many? Let me ask
20 whether every circumstance is not, on the contrary, strictly conformable to these principles, and
21 scrupulously impartial to the rights and pretensions of every class and description of citizens? Who
22 are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned,
23 more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of
24 obscurity and unpropitious fortune. The electors are to be the great body of the people of the United
25 States. They are to be the same who exercise the right in every State of electing the corresponding

1 branch of the legislature of the State. Who are to be the objects of popular choice? Every citizen whose
2 merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of
3 birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the
4 inclination of the people. If we consider the situation of the men on whom the free suffrages of their
5 fellow-citizens may confer the representative trust, we shall find it involving every security which can
6 be devised or desired for their fidelity to their constituents. In the first place, as they will have been
7 distinguished by the preference of their fellow-citizens, we are to presume that in general they will be
8 somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere
9 and scrupulous regard to the nature of their engagements. In the second place, they will enter into the
10 public service under circumstances which cannot fail to produce a temporary affection at least to their
11 constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of
12 confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent
13 returns. Ingratitude is a common topic of declamation against human nature; and it must be confessed
14 that instances of it are but too frequent and flagrant, both in public and in private life. But the
15 universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of
16 the contrary sentiment. In the third place, those ties which bind the representative to his constituents
17 are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of
18 government which favors his pretensions and gives him a share in its honors and distinctions.
19 Whatever hopes or projects might be entertained by a few aspiring characters, it must generally
20 happen that a great proportion of the men deriving their advancement from their influence with the
21 people, would have more to hope from a preservation of the favor, than from innovations in the
22 government subversive of the authority of the people. All these securities, however, would be found
23 very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of
24 Representatives is so constituted as to support in the members an habitual recollection of their
25 dependence on the people. Before the sentiments impressed on their minds by the mode of their

1 elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when
2 their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the
3 level from which they were raised; there forever to remain unless a faithful discharge of their trust
4 shall have established their title to a renewal of it. I will add, as a fifth circumstance in the situation of
5 the House of Representatives, restraining them from oppressive measures, that they can make no law
6 which will not have its full operation on themselves and their friends, as well as on the great mass of
7 the society. This has always been deemed one of the strongest bonds by which human policy can
8 connect the rulers and the people together. It creates between them that communion of interests and
9 sympathy of sentiments, of which few governments have furnished examples; but without which every
10 government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives
11 from making legal discriminations in favor of themselves and a particular class of the society? I
12 answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the
13 vigilant and manly spirit which actuates the people of America, a spirit which nourishes freedom, and
14 in return is nourished by it. If this spirit shall ever be so far debased as to tolerate a law not obligatory
15 on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty.
16 Such will be the relation between the House of Representatives and their constituents. Duty, gratitude,
17 interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the
18 great mass of the people. It is possible that these may all be insufficient to control the caprice and
19 wickedness of man. But are they not all that government will admit, and that human prudence can
20 devise? Are they not the genuine and the characteristic means by which republican government
21 provides for the liberty and happiness of the people? Are they not the identical means on which every
22 State government in the Union relies for the attainment of these important ends? What then are we to
23 understand by the objection which this paper has combated? What are we to say to the men who
24 profess the most flaming zeal for republican government, yet boldly impeach the fundamental
25 principle of it; who pretend to be champions for the right and the capacity of the people to choose their

1 own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the
2 trust committed to them? Were the objection to be read by one who had not seen the mode prescribed
3 by the Constitution for the choice of representatives, he could suppose nothing less than that some
4 unreasonable qualification of property was annexed to the right of suffrage; or that the right of
5 eligibility was limited to persons of particular families or fortunes; or at least that the mode prescribed
6 by the State constitutions was in some respect or other, very grossly departed from. We have seen how
7 far such a supposition would err, as to the two first points. Nor would it, in fact, be less erroneous as to
8 the last. The only difference discoverable between the two cases is, that each representative of the
9 United States will be elected by five or six thousand citizens; whilst in the individual States, the election
10 of a representative is left to about as many hundreds. Will it be pretended that this difference is
11 sufficient to justify an attachment to the State governments, and an abhorrence to the federal
12 government? If this be the point on which the objection turns, it deserves to be examined. Is it
13 supported by reason? This cannot be said, without maintaining that five or six thousand citizens are
14 less capable of choosing a fit representative, or more liable to be corrupted by an unfit one, than five or
15 six hundred. Reason, on the contrary, assures us, that as in so great a number a fit representative
16 would be most likely to be found, so the choice would be less likely to be diverted from him by the
17 intrigues of the ambitious or the ambitious or the bribes of the rich. Is the consequence from this
18 doctrine admissible? If we say that five or six hundred citizens are as many as can jointly exercise
19 their right of suffrage, must we not deprive the people of the immediate choice of their public servants,
20 in every instance where the administration of the government does not require as many of them as
21 will amount to one for that number of citizens? Is the doctrine warranted by facts? It was shown in
22 the last paper, that the real representation in the British House of Commons very little exceeds the
23 proportion of one for every thirty thousand inhabitants. Besides a variety of powerful causes not
24 existing here, and which favor in that country the pretensions of rank and wealth, no person is eligible
25 as a representative of a county, unless he possess real estate of the clear value of six hundred pounds

1 sterling per year; nor of a city or borough, unless he possess a like estate of half that annual value. To
2 this qualification on the part of the county representatives is added another on the part of the county
3 electors, which restrains the right of suffrage to persons having a freehold estate of the annual value of
4 more than twenty pounds sterling, according to the present rate of money. Notwithstanding these
5 unfavorable circumstances, and notwithstanding some very unequal laws in the British code, it cannot
6 be said that the representatives of the nation have elevated the few on the ruins of the many. But we
7 need not resort to foreign experience on this subject. Our own is explicit and decisive. The districts in
8 New Hampshire in which the senators are chosen immediately by the people, are nearly as large as will
9 be necessary for her representatives in the Congress. Those of Massachusetts are larger than will be
10 necessary for that purpose; and those of New York still more so. In the last State the members of
11 Assembly for the cities and counties of New York and Albany are elected by very nearly as many
12 voters as will be entitled to a representative in the Congress, calculating on the number of sixty-five
13 representatives only. It makes no difference that in these senatorial districts and counties a number of
14 representatives are voted for by each elector at the same time. If the same electors at the same time
15 are capable of choosing four or five representatives, they cannot be incapable of choosing one.
16 Pennsylvania is an additional example. Some of her counties, which elect her State representatives,
17 are almost as large as her districts will be by which her federal representatives will be elected. The city
18 of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form
19 nearly two districts for the choice of federal representatives. It forms, however, but one county, in
20 which every elector votes for each of its representatives in the State legislature. And what may appear
21 to be still more directly to our purpose, the whole city actually elects a single member for the
22 executive council. This is the case in all the other counties of the State. Are not these facts the most
23 satisfactory proofs of the fallacy which has been employed against the branch of the federal
24 government under consideration? Has it appeared on trial that the senators of New Hampshire,
25 Massachusetts, and New York, or the executive council of Pennsylvania, or the members of the

1 Assembly in the two last States, have betrayed any peculiar disposition to sacrifice the many to the few,
2 or are in any respect less worthy of their places than the representatives and magistrates appointed in
3 other States by very small divisions of the people? But there are cases of a stronger complexion than
4 any which I have yet quoted. One branch of the legislature of Connecticut is so constituted that each
5 member of it is elected by the whole State. So is the governor of that State, of Massachusetts, and of this
6 State, and the president of New Hampshire. I leave every man to decide whether the result of any one of
7 these experiments can be said to countenance a suspicion, that a diffusive mode of choosing
8 representatives of the people tends to elevate traitors and to undermine the public liberty.
9 Publius.

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1 The Federalist 58

2 Objection That The Number of Members Will Not Be Augmented as the Progress of Population Demands

3 Considered

4 Madison

5 To the People of the State of New York:

6 THE remaining charge against the House of Representatives, which I am to examine, is grounded on a
7 supposition that the number of members will not be augmented from time to time, as the progress of
8 population may demand. It has been admitted, that this objection, if well supported, would have great
9 weight. The following observations will show that, like most other objections against the Constitution, it
10 can only proceed from a partial view of the subject, or from a jealousy which discolours and disfigures
11 every object which is beheld. 1. Those who urge the objection seem not to have recollected that the
12 federal Constitution will not suffer by a comparison with the State constitutions, in the security
13 provided for a gradual augmentation of the number of representatives. The number which is to prevail
14 in the first instance is declared to be temporary. Its duration is limited to the short term of three
15 years. Within every successive term of ten years a census of inhabitants is to be repeated. The
16 unequivocal objects of these regulations are, first, to readjust, from time to time, the apportionment of
17 representatives to the number of inhabitants, under the single exception that each State shall have
18 one representative at least; secondly, to augment the number of representatives at the same periods,
19 under the sole limitation that the whole number shall not exceed one for every thirty thousand
20 inhabitants. If we review the constitutions of the several States, we shall find that some of them
21 contain no determinate regulations on this subject, that others correspond pretty much on this point
22 with the federal Constitution, and that the most effectual security in any of them is resolvable into a
23 mere directory provision. 2. As far as experience has taken place on this subject, a gradual increase of
24 representatives under the State constitutions has at least kept pace with that of the constituents, and
25 it appears that the former have been as ready to concur in such measures as the latter

1 have been to call for them. 3. There is a peculiarity in the federal Constitution which insures a watchful
2 attention in a majority both of the people and of their representatives to a constitutional augmentation
3 of the latter. The peculiarity lies in this, that one branch of the legislature is a representation of
4 citizens, the other of the States: in the former, consequently, the larger States will have most weight; in
5 the latter, the advantage will be in favor of the smaller States. From this circumstance it may with
6 certainty be inferred that the larger States will be strenuous advocates for increasing the number and
7 weight of that part of the legislature in which their influence predominates. And it so happens that four
8 only of the largest will have a majority of the whole votes in the House of Representatives. Should the
9 representatives or people, therefore, of the smaller States oppose at any time a reasonable addition of
10 members, a coalition of a very few States will be sufficient to overrule the opposition; a coalition which,
11 notwithstanding the rivalry and local prejudices which might prevent it on ordinary occasions,
12 would not fail to take place, when not merely prompted by common interest, but justified by equity and
13 the principles of the Constitution. It may be alleged, perhaps, that the Senate would be prompted by
14 like motives to an adverse coalition; and as their concurrence would be indispensable, the just and
15 constitutional views of the other branch might be defeated. This is the difficulty which has probably
16 created the most serious apprehensions in the jealous friends of a numerous representation.
17 Fortunately it is among the difficulties which, existing only in appearance, vanish on a close and
18 accurate inspection. The following reflections will, if I mistake not, be admitted to be conclusive and
19 satisfactory on this point. Notwithstanding the equal authority which will subsist between the two
20 houses on all legislative subjects, except the originating of money bills, it cannot be doubted that the
21 House, composed of the greater number of members, when supported by the more powerful States,
22 and speaking the known and determined sense of a majority of the people, will have no small
23 advantage in a question depending on the comparative firmness of the two houses. This advantage
24 must be increased by the consciousness, felt by the same side of being supported in its demands by
25 right, by reason, and by the Constitution; and the consciousness, on the opposite side, of contending

1 against the force of all these solemn considerations. It is farther to be considered, that in the gradation
2 between the smallest and largest States, there are several, which, though most likely in general to
3 arrange themselves among the former are too little removed in extent and population from the latter, to
4 second an opposition to their just and legitimate pretensions. Hence it is by no means certain that a
5 majority of votes, even in the Senate, would be unfriendly to proper augmentations in the number of
6 representatives. It will not be looking too far to add, that the senators from all the new States may be
7 gained over to the just views of the House of Representatives, by an expedient too obvious to be
8 overlooked. As these States will, for a great length of time, advance in population with peculiar rapidity,
9 they will be interested in frequent reapportionments of the representatives to the number of
10 inhabitants. The large States, therefore, who will prevail in the House of Representatives, will have
11 nothing to do but to make reapportionments and augmentations mutually conditions of each other;
12 and the senators from all the most growing States will be bound to contend for the latter, by the
13 interest which their States will feel in the former. These considerations seem to afford ample security
14 on this subject, and ought alone to satisfy all the doubts and fears which have been indulged with
15 regard to it. Admitting, however, that they should all be insufficient to subdue the unjust policy of the
16 smaller States, or their predominant influence in the councils of the Senate, a constitutional and
17 infallible resource still remains with the larger States, by which they will be able at all times to
18 accomplish their just purposes. The House of Representatives cannot only refuse, but they alone can
19 propose, the supplies requisite for the support of government. They, in a word, hold the purse that
20 powerful instrument by which we behold, in the history of the British Constitution, an infant and
21 humble representation of the people gradually enlarging the sphere of its activity and importance, and
22 finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other
23 branches of the government. This power over the purse may, in fact, be regarded as the most complete
24 and effectual weapon with which any constitution can arm the immediate representatives of the
25 people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary

1 measure. But will not the House of Representatives be as much interested as the Senate in maintaining
2 the government in its proper functions, and will they not therefore be unwilling to stake its existence or
3 its reputation on the pliancy of the Senate? Or, if such a trial of firmness between the two branches
4 were hazarded, would not the one be as likely first to yield as the other? These questions will create no
5 difficulty with those who reflect that in all cases the smaller the number, and the more permanent and
6 conspicuous the station, of men in power, the stronger must be the interest which they will individually
7 feel in whatever concerns the government. Those who represent the dignity of their country in the eyes
8 of other nations, will be particularly sensible to every prospect of public danger, or of dishonorable
9 stagnation in public affairs. To those causes we are to ascribe the continual triumph of the British
10 House of Commons over the other branches of the government, whenever the engine of a money bill
11 has been employed. An absolute inflexibility on the side of the latter, although it could not have failed
12 to involve every department of the state in the general confusion, has neither been apprehended nor
13 experienced. The utmost degree of firmness that can be displayed by the federal Senate or President,
14 will not be more than equal to a resistance in which they will be supported by constitutional and
15 patriotic principles. In this review of the Constitution of the House of Representatives, I have passed
16 over the circumstances of economy, which, in the present state of affairs, might have had some effect
17 in lessening the temporary number of representatives, and a disregard of which would probably have
18 been as rich a theme of declamation against the Constitution as has been shown by the smallness of
19 the number proposed. I omit also any remarks on the difficulty which might be found, under present
20 circumstances, in engaging in the federal service a large number of such characters as the people will
21 probably elect. One observation, however, I must be permitted to add on this subject as claiming, in my
22 judgment, a very serious attention. It is, that in all legislative assemblies the greater the number
23 composing them may be, the fewer will be the men who will in fact direct their proceedings. In the first
24 place, the more numerous an assembly may be, of whatever characters composed, the greater is
25 known to be the ascendancy of passion over reason. In the next place, the larger the number, the

1 greater will be the proportion of members of limited information and of weak capacities. Now, it is
2 precisely on characters of this description that the eloquence and address of the few are known to act
3 with all their force. In the ancient republics, where the whole body of the people assembled in person, a
4 single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre
5 had been placed in his single hand. On the same principle, the more multitudinous a representative
6 assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of
7 the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation.
8 The people can never err more than in supposing that by multiplying their representatives beyond a
9 certain limit, they strengthen the barrier against the government of a few. Experience will forever
10 admonish them that, on the contrary, after securing a sufficient number for the purposes of safety, of
11 local information, and of diffusive sympathy with the whole society, they will counteract their own
12 views by every addition to their representatives. The countenance of the government may become
13 more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged,
14 but the fewer, and often the more secret, will be the springs by which its motions are directed. As
15 connected with the objection against the number of representatives, may properly be here noticed,
16 that which has been suggested against the number made competent for legislative business. It has
17 been said that more than a majority ought to have been required for a quorum; and in particular cases,
18 if not in all, more than a majority of a quorum for a decision. That some advantages might have
19 resulted from such a precaution, cannot be denied. It might have been an additional shield to some
20 particular interests, and another obstacle generally to hasty and partial measures. But these
21 considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice
22 or the general good might require new laws to be passed, or active measures to be pursued, the
23 fundamental principle of free government would be reversed. It would be no longer the majority that
24 would rule: the power would be transferred to the minority. Were the defensive privilege limited to
25 particular cases, an interested minority might take advantage of it to screen themselves from

1 equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable
2 indulgences. Lastly, it would facilitate and foster the baneful practice of secessions; a practice which has
3 shown itself even in States where a majority only is required; a practice subversive of all the principles
4 of order and regular government; a practice which leads more directly to public convulsions, and the
5 ruin of popular governments, than any other which has yet been displayed among us.

6 Publius.

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1 The Federalist 59

2 Concerning the Power of Congress to Regulate the Election of Members

3 Hamilton From the New York Packet. Friday, February 22, 1788.

4 To the People of the State of New York:

5 THE natural order of the subject leads us to consider, in this place, that provision of the Constitution
6 which authorizes the national legislature to regulate, in the last resort, the election of its own members.
7 It is in these words: ``The times, places, and manner of holding elections for senators and
8 representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at
9 any time, by law, make or alter such regulations, except as to the places of choosing senators. "[1] This
10 provision has not only been declaimed against by those who condemn the Constitution in the gross,
11 but it has been censured by those who have objected with less latitude and greater moderation; and, in
12 one instance it has been thought exceptionable by a gentleman who has declared himself the advocate
13 of every other part of the system. I am greatly mistaken, notwithstanding, if there be any article in the
14 whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain
15 proposition, that every government ought to contain in itself the means of its own preservation. Every
16 just reasoner will, at first sight, approve an adherence to this rule, in the work of the convention; and
17 will disapprove every deviation from it which may not appear to have been dictated by the necessity of
18 incorporating into the work some particular ingredient, with which a rigid conformity to the rule was
19 incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to
20 regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the
21 system which may prove the seed of future weakness, and perhaps anarchy. It will not be alleged, that
22 an election law could have been framed and inserted in the Constitution, which would have been
23 always applicable to every probable change in the situation of the country; and it will therefore not be
24 denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as
25 readily conceded, that there were only three ways in which this power could have been reasonably

1 modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly
2 in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with
3 reason, been preferred by the convention. They have submitted the regulation of elections for the
4 federal government, in the first instance, to the local administrations; which, in ordinary cases, and
5 when no improper views prevail, may be both more convenient and more satisfactory; but they have
6 reserved to the national authority a right to interpose, whenever extraordinary circumstances might
7 render that interposition necessary to its safety. Nothing can be more evident, than that an exclusive
8 power of regulating elections for the national government, in the hands of the State legislatures, would
9 leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by
10 neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say,
11 that a neglect or omission of this kind would not be likely to take place. The constitutional possibility
12 of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory
13 reason been yet assigned for incurring that risk. The extravagant surmises of a distempered jealousy
14 can never be dignified with that character. If we are in a humor to presume abuses of power, it is as fair
15 to presume them on the part of the State governments as on the part of the general government. And
16 as it is more consonant to the rules of a just theory, to trust the Union with the care of its own
17 existence, than to transfer that care to any other hands, if abuses of power are to be hazarded on the
18 one side or on the other, it is more rational to hazard them where the power would naturally be placed,
19 than where it would unnaturally be placed. Suppose an article had been introduced into the
20 Constitution, empowering the United States to regulate the elections for the particular States, would
21 any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a
22 premeditated engine for the destruction of the State governments? The violation of principle, in this
23 case, would have required no comment; and, to an unbiased observer, it will not be less apparent in the
24 project of subjecting the existence of the national government, in a similar respect, to the pleasure of
25 the State governments. An impartial view of the matter cannot fail to result in a conviction, that each,

1 as far as possible, ought to depend on itself for its own preservation. As an objection to this position, it
2 may be remarked that the constitution of the national Senate would involve, in its full extent, the
3 danger which it is suggested might flow from an exclusive power in the State legislatures to regulate the
4 federal elections. It may be alleged, that by declining the appointment of Senators, they might at any
5 time give a fatal blow to the Union; and from this it may be inferred, that as its existence would be thus
6 rendered dependent upon them in so essential a point, there can be no objection to intrusting them with
7 it in the particular case under consideration. The interest of each State, it may be added, to maintain its
8 representation in the national councils, would be a complete security against an abuse of the trust. This
9 argument, though specious, will not, upon examination, be found solid. It is certainly true that the State
10 legislatures, by forbearing the appointment of senators, may destroy the national government. But it
11 will not follow that, because they have a power to do this in one instance, they ought to have it in every
12 other. There are cases in which the pernicious tendency of such a power may be far more decisive,
13 without any motive equally cogent with that which must have regulated the conduct of the convention
14 in respect to the formation of the Senate, to recommend their admission into the system. So far as that
15 construction may expose the Union to the possibility of injury from the State legislatures, it is an evil;
16 but it is an evil which could not have been avoided without excluding the States, in their political
17 capacities, wholly from a place in the organization of the national government. If this had been done, it
18 would doubtless have been interpreted into an entire dereliction of the federal principle; and would
19 certainly have deprived the State governments of that absolute safeguard which they will enjoy under
20 this provision. But however wise it may have been to have submitted in this instance to an
21 inconvenience, for the attainment of a necessary advantage or a greater good, no inference can be
22 drawn from thence to favor an accumulation of the evil, where no necessity urges, nor any greater
23 good invites. It may be easily discerned also that the national government would run a much greater
24 risk from a power in the State legislatures over the elections of its House of Representatives, than
25 from their power of appointing the members of its Senate. The senators are to be chosen for the period

1 of six years; there is to be a rotation, by which the seats of a third part of them are to be vacated and
2 replenished every two years; and no State is to be entitled to more than two senators; a quorum of the
3 body is to consist of sixteen members. The joint result of these circumstances would be, that a
4 temporary combination of a few States to intermit the appointment of senators, could neither annul the
5 existence nor impair the activity of the body; and it is not from a general and permanent combination of
6 the States that we can have any thing to fear. The first might proceed from sinister designs in the
7 leading members of a few of the State legislatures; the last would suppose a fixed and rooted
8 disaffection in the great body of the people, which will either never exist at all, or will, in all probability,
9 proceed from an experience of the inaptitude of the general government to the advancement of their
10 happiness in which event no good citizen could desire its continuance. But with regard to the federal
11 House of Representatives, there is intended to be a general election of members once in two years. If
12 the State legislatures were to be invested with an exclusive power of regulating these elections, every
13 period of making them would be a delicate crisis in the national situation, which might issue in a
14 dissolution of the Union, if the leaders of a few of the most important States should have entered into a
15 previous conspiracy to prevent an election. I shall not deny, that there is a degree of weight in the
16 observation, that the interests of each State, to be represented in the federal councils, will be a
17 security against the abuse of a power over its elections in the hands of the State legislatures. But the
18 security will not be considered as complete, by those who attend to the force of an obvious distinction
19 between the interest of the people in the public felicity, and the interest of their local rulers in the
20 power and consequence of their offices. The people of America may be warmly attached to the
21 government of the Union, at times when the particular rulers of particular States, stimulated by the
22 natural rivalship of power, and by the hopes of personal aggrandizement, and supported by a strong
23 faction in each of those States, may be in a very opposite temper. This diversity of sentiment between
24 a majority of the people, and the individuals who have the greatest credit in their councils, is
25 exemplified in some of the States at the present moment, on the present question. The scheme of

1 separate confederacies, which will always multiply the chances of ambition, will be a never failing bait to
2 all such influential characters in the State administrations as are capable of preferring their own
3 emolument and advancement to the public weal. With so effectual a weapon in their hands as the
4 exclusive power of regulating elections for the national government, a combination of a few such men,
5 in a few of the most considerable States, where the temptation will always be the strongest, might
6 accomplish the destruction of the Union, by seizing the opportunity of some casual dissatisfaction
7 among the people (and which perhaps they may themselves have excited), to discontinue the choice of
8 members for the federal House of Representatives. It ought never to be forgotten, that a firm union of
9 this country, under an efficient government, will probably be an increasing object of jealousy to more
10 than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues
11 of foreign powers, and will seldom fail to be patronized and abetted by some of them. Its preservation,
12 therefore ought in no case that can be avoided, to be committed to the guardianship of any but those
13 whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of
14 the trust.

15 Publius.

16 1st clause, 4th section, of the 1st article.

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1 The Federalist 60

2 The Same Subject Continued

3 (Concerning the Power of Congress to Regulate the Election of Members)

4 Hamilton From the New York Packet. Tuesday, February 26, 1788.

5 To the People of the State of New York:

6 WE HAVE seen, that an uncontrollable power over the elections to the federal government could not,
7 without hazard, be committed to the State legislatures. Let us now see, what would be the danger on the
8 other side; that is, from confiding the ultimate right of regulating its own elections to the Union itself. It
9 is not pretended, that this right would ever be used for the exclusion of any State from its share in the
10 representation. The interest of all would, in this respect at least, be the security of all. But it is alleged,
11 that it might be employed in such a manner as to promote the election of some favorite class of men in
12 exclusion of others, by confining the places of election to particular districts, and rendering it
13 impracticable to the citizens at large to partake in the choice. Of all chimerical suppositions, this
14 seems to be the most chimerical. On the one hand, no rational calculation of probabilities would lead us
15 to imagine that the disposition which a conduct so violent and extraordinary would imply, could ever
16 find its way into the national councils; and on the other, it may be concluded with certainty, that if so
17 improper a spirit should ever gain admittance into them, it would display itself in a form altogether
18 different and far more decisive.

19 The improbability of the attempt may be satisfactorily inferred from this single reflection, that it could
20 never be made without causing an immediate revolt of the great body of the people, headed and
21 directed by the State governments. It is not difficult to conceive that this characteristic right of
22 freedom may, in certain turbulent and factious seasons, be violated, in respect to a particular class of
23 citizens, by a victorious and overbearing majority; but that so fundamental a privilege, in a country so
24 situated and enlightened, should be invaded to the prejudice of the great mass of the people, by the
25 deliberate policy of the government, without occasioning a popular revolution, is altogether

1 inconceivable and incredible. In addition to this general reflection, there are considerations of a more
2 precise nature, which forbid all apprehension on the subject. The dissimilarity in the ingredients which
3 will compose the national government, and still more in the manner in which they will be brought into
4 action in its various branches, must form a powerful obstacle to a concert of views in any partial
5 scheme of elections. There is sufficient diversity in the state of property, in the genius, manners, and
6 habits of the people of the different parts of the Union, to occasion a material diversity of disposition in
7 their representatives towards the different ranks and conditions in society. And though an intimate
8 intercourse under the same government will promote a gradual assimilation in some of these respects,
9 yet there are causes, as well physical as moral, which may, in a greater or less degree, permanently
10 nourish different propensities and inclinations in this respect. But the circumstance which will be
11 likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the
12 several component parts of the government. The House of Representatives being to be elected
13 immediately by the people, the Senate by the State legislatures, the President by electors chosen for
14 that purpose by the people, there would be little probability of a common interest to cement these
15 different branches in a predilection for any particular class of electors.

16 As to the Senate, it is impossible that any regulation of ``time and manner," which is all that is
17 proposed to be submitted to the national government in respect to that body, can affect the spirit
18 which will direct the choice of its members. The collective sense of the State legislatures can never be
19 influenced by extraneous circumstances of that sort; a consideration which alone ought to satisfy us
20 that the discrimination apprehended would never be attempted. For what inducement could the
21 Senate have to concur in a preference in which itself would not be included? Or to what purpose would
22 it be established, in reference to one branch of the legislature, if it could not be extended to the other?
23 The composition of the one would in this case counteract that of the other. And we can never suppose
24 that it would embrace the appointments to the Senate, unless we can at the same time suppose the
25 voluntary co-operation of the State legislatures. If we make the latter supposition, it then becomes

1 immaterial where the power in question is placed whether in their hands or in those of the Union.

2 But what is to be the object of this capricious partiality in the national councils? Is it to be exercised in

3 a discrimination between the different departments of industry, or between the different kinds of

4 property, or between the different degrees of property? Will it lean in favor of the landed interest, or

5 the moneyed interest, or the mercantile interest, or the manufacturing interest? Or, to speak in the

6 fashionable language of the adversaries to the Constitution, will it court the elevation of ``the wealthy

7 and the well-born," to the exclusion and debasement of all the rest of the society?

8 If this partiality is to be exerted in favor of those who are concerned in any particular description of

9 industry or property, I presume it will readily be admitted, that the competition for it will lie between

10 landed men and merchants. And I scruple not to affirm, that it is infinitely less likely that either of

11 them should gain an ascendant in the national councils, than that the one or the other of them should

12 predominate in all the local councils. The inference will be, that a conduct tending to give an undue

13 preference to either is much less to be dreaded from the former than from the latter.

14 The several States are in various degrees addicted to agriculture and commerce. In most, if not all of

15 them, agriculture is predominant. In a few of them, however, commerce nearly divides its empire, and

16 in most of them has a considerable share of influence. In proportion as either prevails, it will be

17 conveyed into the national representation; and for the very reason, that this will be an emanation

18 from a greater variety of interests, and in much more various proportions, than are to be found in any

19 single State, it will be much less apt to espouse either of them with a decided partiality, than the

20 representation of any single State. In a country consisting chiefly of the cultivators of land, where the

21 rules of an equal representation obtain, the landed interest must, upon the whole, preponderate in the

22 government. As long as this interest prevails in most of the State legislatures, so long it must maintain

23 a correspondent superiority in the national Senate, which will generally be a faithful copy of the

24 majorities of those assemblies. It cannot therefore be presumed, that a sacrifice of the landed to the

25 mercantile class will ever be a favorite object of this branch of the federal legislature. In applying thus

1 particularly to the Senate a general observation suggested by the situation of the country, I am
2 governed by the consideration, that the credulous votaries of State power cannot, upon their own
3 principles, suspect, that the State legislatures would be warped from their duty by any external
4 influence. But in reality the same situation must have the same effect, in the primitive composition at
5 least of the federal House of Representatives: an improper bias towards the mercantile class is as little
6 to be expected from this quarter as from the other.

7 In order, perhaps, to give countenance to the objection at any rate, it may be asked, is there not danger
8 of an opposite bias in the national government, which may dispose it to endeavor to secure a monopoly
9 of the federal administration to the landed class? As there is little likelihood that the supposition of
10 such a bias will have any terrors for those who would be immediately injured by it, a labored answer to
11 this question will be dispensed with. It will be sufficient to remark, first, that for the reasons elsewhere
12 assigned, it is less likely that any decided partiality should prevail in the councils of the Union than in
13 those of any of its members. Secondly, that there would be no temptation to violate the Constitution in
14 favor of the landed class, because that class would, in the natural course of things, enjoy as great a
15 preponderancy as itself could desire. And thirdly, that men accustomed to investigate the sources of
16 public prosperity upon a large scale, must be too well convinced of the utility of commerce, to be
17 inclined to inflict upon it so deep a wound as would result from the entire exclusion of those who would
18 best understand its interest from a share in the management of them. The importance of commerce, in
19 the view of revenue alone, must effectually guard it against the enmity of a body which would be
20 continually importuned in its favor, by the urgent calls of public necessity.

21 I the rather consult brevity in discussing the probability of a preference founded upon a
22 discrimination between the different kinds of industry and property, because, as far as I understand
23 the meaning of the objectors, they contemplate a discrimination of another kind. They appear to have
24 in view, as the objects of the preference with which they endeavor to alarm us, those whom they
25 designate by the description of ``the wealthy and the well-born." These, it seems, are to be exalted to

1 an odious pre-eminence over the rest of their fellow-citizens. At one time, however, their elevation is to
2 be a necessary consequence of the smallness of the representative body; at another time it is to be
3 effected by depriving the people at large of the opportunity of exercising their right of suffrage in the
4 choice of that body.

5 But upon what principle is the discrimination of the places of election to be made, in order to answer
6 the purpose of the meditated preference? Are ``the wealthy and the well-born," as they are called,
7 confined to particular spots in the several States? Have they, by some miraculous instinct or foresight,
8 set apart in each of them a common place of residence? Are they only to be met with in the towns or
9 cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may
10 have happened to cast their own lot or that of their predecessors? If the latter is the case, (as every
11 intelligent man knows it to be [1]) is it not evident that the policy of confining the places of election to
12 particular districts would be as subversive of its own aim as it would be exceptionable on every other
13 account? The truth is, that there is no method of securing to the rich the preference apprehended, but
14 by prescribing qualifications of property either for those who may elect or be elected. But this forms no
15 part of the power to be conferred upon the national government. Its authority would be expressly
16 restricted to the regulation of the times, the places, the manner of elections. The qualifications of the
17 persons who may choose or be chosen, as has been remarked upon other occasions, are defined and
18 fixed in the Constitution, and are unalterable by the legislature.

19 Let it, however, be admitted, for argument sake, that the expedient suggested might be successful; and
20 let it at the same time be equally taken for granted that all the scruples which a sense of duty or an
21 apprehension of the danger of the experiment might inspire, were overcome in the breasts of the
22 national rulers, still I imagine it will hardly be pretended that they could ever hope to carry such an
23 enterprise into execution without the aid of a military force sufficient to subdue the resistance of the
24 great body of the people. The improbability of the existence of a force equal to that object has been
25 discussed and demonstrated in different parts of these papers; but that the futility of the objection

1 under consideration may appear in the strongest light, it shall be conceded for a moment that such a
2 force might exist, and the national government shall be supposed to be in the actual possession of it.
3 What will be the conclusion? With a disposition to invade the essential rights of the community, and
4 with the means of gratifying that disposition, is it presumable that the persons who were actuated by it
5 would amuse themselves in the ridiculous task of fabricating election laws for securing a preference to a
6 favorite class of men? Would they not be likely to prefer a conduct better adapted to their own
7 immediate aggrandizement? Would they not rather boldly resolve to perpetuate themselves in office by
8 one decisive act of usurpation, than to trust to precarious expedients which, in spite of all the
9 precautions that might accompany them, might terminate in the dismissal, disgrace, and ruin of their
10 authors? Would they not fear that citizens, not less tenacious than conscious of their rights, would
11 flock from the remote extremes of their respective States to the places of election, to overthrow their
12 tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?

13 Publius.

14 Particularly in the Southern States and in this State.

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1 The Federalist 61

2 The Same Subject Continued

3 (Concerning the Power of Congress to Regulate the Election of Members)

4 Hamilton From the New York Packet. Tuesday, February 26, 1788.

5 To the People of the State of New York:

6 THE more candid opposers of the provision respecting elections, contained in the plan of the
7 convention, when pressed in argument, will sometimes concede the propriety of that provision; with
8 this qualification, however, that it ought to have been accompanied with a declaration, that all elections
9 should be had in the counties where the electors resided. This, say they, was a necessary precaution
10 against an abuse of the power. A declaration of this nature would certainly have been harmless; so far
11 as it would have had the effect of quieting apprehensions, it might not have been undesirable. But it
12 would, in fact, have afforded little or no additional security against the danger apprehended; and the
13 want of it will never be considered, by an impartial and judicious examiner, as a serious, still less as an
14 insuperable, objection to the plan. The different views taken of the subject in the two preceding papers
15 must be sufficient to satisfy all dispassionate and discerning men, that if the public liberty should ever
16 be the victim of the ambition of the national rulers, the power under examination, at least, will be
17 guiltless of the sacrifice.

18 If those who are inclined to consult their jealousy only, would exercise it in a careful inspection of the
19 several State constitutions, they would find little less room for disquietude and alarm, from the
20 latitude which most of them allow in respect to elections, than from the latitude which is proposed to
21 be allowed to the national government in the same respect. A review of their situation, in this
22 particular, would tend greatly to remove any ill impressions which may remain in regard to this
23 matter. But as that view would lead into long and tedious details, I shall content myself with the single
24 example of the State in which I write. The constitution of New York makes no other provision
25 for locality of elections, than that the members of the Assembly shall be elected in the counties; those

1 of the Senate, in the great districts into which the State is or may be divided: these at present are four
2 in number, and comprehend each from two to six counties. It may readily be perceived that it would not
3 be more difficult to the legislature of New York to defeat the suffrages of the citizens of New York, by
4 confining elections to particular places, than for the legislature of the United States to defeat the
5 suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany
6 was to be appointed the sole place of election for the county and district of which it is a part, would not
7 the inhabitants of that city speedily become the only electors of the members both of the Senate and
8 Assembly for that county and district? Can we imagine that the electors who reside in the remote
9 subdivisions of the counties of Albany, Saratoga, Cambridge, etc., or in any part of the county of
10 Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of
11 the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the
12 choice of the members of the federal House of Representatives? The alarming indifference
13 discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every
14 facility to it, furnishes a ready answer to this question. And, abstracted from any experience on the
15 subject, we can be at no loss to determine, that when the place of election is at an inconvenient
16 distance from the elector, the effect upon his conduct will be the same whether that distance be twenty
17 miles or twenty thousand miles. Hence it must appear, that objections to the particular modification of
18 the federal power of regulating elections will, in substance, apply with equal force to the modification
19 of the like power in the constitution of this State; and for this reason it will be impossible to acquit the
20 one, and to condemn the other. A similar comparison would lead to the same conclusion in respect to
21 the constitutions of most of the other States.

22 If it should be said that defects in the State constitutions furnish no apology for those which are to be
23 found in the plan proposed, I answer, that as the former have never been thought chargeable with
24 inattention to the security of liberty, where the imputations thrown on the latter can be shown to be
25 applicable to them also, the presumption is that they are rather the cavilling refinements of a

1 predetermined opposition, than the well-founded inferences of a candid research after truth. To those
2 who are disposed to consider, as innocent omissions in the State constitutions, what they regard as
3 unpardonable blemishes in the plan of the convention, nothing can be said; or at most, they can only be
4 asked to assign some substantial reason why the representatives of the people in a single State should
5 be more impregnable to the lust of power, or other sinister motives, than the representatives of the
6 people of the United States? If they cannot do this, they ought at least to prove to us that it is easier to
7 subvert the liberties of three millions of people, with the advantage of local governments to head their
8 opposition, than of two hundred thousand people who are destitute of that advantage. And in relation to
9 the point immediately under consideration, they ought to convince us that it is less probable that a
10 predominant faction in a single State should, in order to maintain its superiority, incline to a
11 preference of a particular class of electors, than that a similar spirit should take possession of the
12 representatives of thirteen States, spread over a vast region, and in several respects distinguishable
13 from each other by a diversity of local circumstances, prejudices, and interests.

14 Hitherto my observations have only aimed at a vindication of the provision in question, on the ground
15 of theoretic propriety, on that of the danger of placing the power elsewhere, and on that of the safety of
16 placing it in the manner proposed. But there remains to be mentioned a positive advantage which will
17 result from this disposition, and which could not as well have been obtained from any other: I allude to
18 the circumstance of uniformity in the time of elections for the federal House of Representatives. It is
19 more than possible that this uniformity may be found by experience to be of great importance to the
20 public welfare, both as a security against the perpetuation of the same spirit in the body, and as a cure
21 for the diseases of faction. If each State may choose its own time of election, it is possible there may be
22 at least as many different periods as there are months in the year. The times of election in the several
23 States, as they are now established for local purposes, vary between extremes as wide as March and
24 November. The consequence of this diversity would be that there could never happen a total
25 dissolution or renovation of the body at one time. If an improper spirit of any kind should happen to

1 prevail in it, that spirit would be apt to infuse itself into the new members, as they come forward in
2 succession. The mass would be likely to remain nearly the same, assimilating constantly to itself its
3 gradual accretions. There is a contagion in example which few men have sufficient force of mind to
4 resist. I am inclined to think that treble the duration in office, with the condition of a total dissolution of
5 the body at the same time, might be less formidable to liberty than one third of that duration subject to
6 gradual and successive alterations.

7 Uniformity in the time of elections seems not less requisite for executing the idea of a regular rotation
8 in the Senate, and for conveniently assembling the legislature at a stated period in each year.

9 It may be asked, Why, then, could not a time have been fixed in the Constitution? As the most zealous
10 adversaries of the plan of the convention in this State are, in general, not less zealous admirers of the
11 constitution of the State, the question may be retorted, and it may be asked, Why was not a time for
12 the like purpose fixed in the constitution of this State? No better answer can be given than that it was
13 a matter which might safely be entrusted to legislative discretion; and that if a time had been
14 appointed, it might, upon experiment, have been found less convenient than some other time. The
15 same answer may be given to the question put on the other side. And it may be added that the
16 supposed danger of a gradual change being merely speculative, it would have been hardly advisable
17 upon that speculation to establish, as a fundamental point, what would deprive several States of the
18 convenience of having the elections for their own governments and for the national government at the
19 same epochs.

20 Publius.

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1 The Federalist 62

2 The Senate

3 Hamilton or Madison For the Independent Journal.

4 To the People of the State of New York:

5 HAVING examined the constitution of the House of Representatives, and answered such of the

6 objections against it as seemed to merit notice, I enter next on the examination of the Senate.

7 The heads into which this member of the government may be considered are: I. The qualification of

8 senators; II. The appointment of them by the State legislatures; III. The equality of representation in the

9 Senate; IV. The number of senators, and the term for which they are to be elected; V. The powers vested

10 in the Senate.

11 I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a

12 more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as

13 a representative must be twenty-five. And the former must have been a citizen nine years; as seven

14 years are required for the latter. The propriety of these distinctions is explained by the nature of the

15 senatorial trust, which, requiring greater extent of information and tability of character, requires at

16 the same time that the senator should have reached a period of life most likely to supply these

17 advantages; and which, participating immediately in transactions with foreign nations, ought to be

18 exercised by none who are not thoroughly weaned from the prepossessions and habits incident to

19 foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total

20 exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence,

21 and an indiscriminate and hasty admission of them, which might create a channel for foreign

22 influence on the national councils.

23 II. It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among

24 the various modes which might have been devised for constituting this branch of the government, that

25 which has been proposed by the convention is probably the most congenial with the public opinion. It

1 is recommended by the double advantage of favoring a select appointment, and of giving to the State
2 governments such an agency in the formation of the federal government as must secure the authority
3 of the former, and may form a convenient link between the two systems.

4 III. The equality of representation in the Senate is another point, which, being evidently the result of
5 compromise between the opposite pretensions of the large and the small States, does not call for much
6 discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every
7 district ought to have a proportional share in the government, and that among independent and
8 sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have
9 an EQUAL share in the common councils, it does not appear to be without some reason that in a
10 compound republic, partaking both of the national and federal character, the government ought to be
11 founded on a mixture of the principles of proportional and equal representation. But it is superfluous
12 to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the
13 result, not of theory, but of a spirit of amity, and that mutual deference and concession which the
14 peculiarity of our political situation rendered indispensable." A common government, with powers
15 equal to its objects, is called for by the voice, and still more loudly by the political situation, of America.
16 A government founded on principles more consonant to the wishes of the larger States, is not likely to
17 be obtained from the smaller States. The only option, then, for the former, lies between the proposed
18 government and a government still more objectionable. Under this alternative, the advice of prudence
19 must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible
20 mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify
21 the sacrifice.

22 In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional
23 recognition of the portion of sovereignty remaining in the individual States, and an instrument for
24 preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large
25 than to the small States; since they are not less solicitous to guard, by every possible expedient,

1 against an improper consolidation of the States into one simple republic.
2 Another advantage accruing from this ingredient in the constitution of the Senate is, the additional
3 impediment it must prove against improper acts of legislation. No law or resolution can now be passed
4 without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must
5 be acknowledged that this complicated check on legislation may in some instances be injurious as well
6 as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be
7 more rational, if any interests common to them, and distinct from those of the other States, would
8 otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power
9 over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the
10 faculty and excess of law-making seem to be the diseases to which our governments are most liable, it
11 is not impossible that this part of the Constitution may be more convenient in practice than it appears
12 to many in contemplation.

13 IV. The number of senators, and the duration of their appointment, come next to be considered. In
14 order to form an accurate judgment on both of these points, it will be proper to inquire into the
15 purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to
16 review the inconveniences which a republic must suffer from the want of such an institution.
17 First. It is a misfortune incident to republican government, though in a less degree than to other
18 governments, that those who administer it may forget their obligations to their constituents, and
19 prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the
20 legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary
21 check on the government. It doubles the security to the people, by requiring the concurrence of two
22 distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would
23 otherwise be sufficient. This is a precaution founded on such clear principles, and now so well
24 understood in the United States, that it would be more than superfluous to enlarge on it. I will barely
25 remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in

1 the genius of the two bodies, it must be politic to distinguish them from each other by every
2 circumstance which will consist with a due harmony in all proper measures, and with the genuine
3 principles of republican government.

4 Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous
5 assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders
6 into intemperate and pernicious resolutions. Examples on this subject might be cited without number;
7 and from proceedings within the United States, as well as from the history of other nations. But a
8 position that will not be contradicted, need not be proved. All that need be remarked is, that a body
9 which is to correct this infirmity ought itself to be free from it, and consequently ought to be less
10 numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority
11 by a tenure of considerable duration.

12 Thirdly. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects
13 and principles of legislation. It is not possible that an assembly of men called for the most part from
14 pursuits of a private nature, continued in appointment for a short time, and led by no permanent
15 motive to devote the intervals of public occupation to a study of the laws, the affairs, and the
16 comprehensive interests of their country, should, if left wholly to themselves, escape a variety of
17 important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that
18 no small share of the present embarrassments of America is to be charged on the blunders of our
19 governments; and that these have proceeded from the heads rather than the hearts of most of the
20 authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and
21 disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments
22 exhibited by each succeeding against each preceding session; so many admonitions to the people, of
23 the value of those aids which may be expected from a well-constituted senate?

24 A good government implies two things: first, fidelity to the object of government, which is the
25 happiness of the people; secondly, a knowledge of the means by which that object can be best attained.

1 Some governments are deficient in both these qualities; most governments are deficient in the first. I
2 scruple not to assert, that in American governments too little attention has been paid to the last. The
3 federal Constitution avoids this error; and what merits particular notice, it provides for the last in a
4 mode which increases the security for the first.

5 Fourthly. The mutability in the public councils arising from a rapid succession of new members,
6 however qualified they may be, points out, in the strongest manner, the necessity of some stable
7 institution in the government. Every new election in the States is found to change one half of the
8 representatives. From this change of men must proceed a change of opinions; and from a change of
9 opinions, a change of measures. But a continual change even of good measures is inconsistent with
10 every rule of prudence and every prospect of success. The remark is verified in private life, and
11 becomes more just, as well as more important, in national transactions.

12 To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only,
13 each of which will be perceived to be a source of innumerable others.

14 In the first place, it forfeits the respect and confidence of other nations, and all the advantages
15 connected with national character. An individual who is observed to be inconstant to his plans, or
16 perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a
17 speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will
18 decline to connect their fortunes with his; and not a few will seize the opportunity of making their
19 fortunes out of his. One nation is to another what one individual is to another; with this melancholy
20 distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under
21 fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation,
22 consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which
23 can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on
24 this subject is unhappily conveyed to America by the example of her own situation. She finds that she
25 is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to

1 every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.
2 The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself.
3 It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so
4 voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be
5 repealed or revised before they are promulgated, or undergo such incessant changes that no man, who
6 knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action;
7 but how can that be a rule, which is little known, and less fixed?

8 Another effect of public instability is the unreasonable advantage it gives to the sagacious, the
9 enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new
10 regulation concerning commerce or revenue, or in any way affecting the value of the different species
11 of property, presents a new harvest to those who watch the change, and can trace its consequences; a
12 harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens.
13 This is a state of things in which it may be said with some truth that laws are made for the few, not for
14 the many.

15 In another point of view, great injury results from an unstable government. The want of confidence in
16 the public councils damps every useful undertaking, the success and profit of which may depend on a
17 continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new
18 branch of commerce when he knows not but that his plans may be rendered unlawful before they can
19 be executed? What farmer or manufacturer will lay himself out for the encouragement given to any
20 particular cultivation or establishment, when he can have no assurance that his preparatory labors
21 and advances will not render him a victim to an inconstant government? In a word, no great
22 improvement or laudable enterprise can go forward which requires the auspices of a steady system of
23 national policy.

24 But the most deplorable effect of all is that diminution of attachment and reverence which steals into
25 the hearts of the people, towards a political system which betrays so many marks of infirmity, and

1 disappoints so many of their flattering hopes. No government, any more than an individual, will long be
2 respected without being truly respectable; nor be truly respectable, without possessing a certain
3 portion of order and stability.

4 Publius.

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1 The Federalist 63

2 The Senate Continued

3 Hamilton or Madison For the Independent Journal.

4 To the People of the State of New York:

5 A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national
6 character. Without a select and stable member of the government, the esteem of foreign powers will not
7 only be forfeited by an unenlightened and variable policy, proceeding from the causes already
8 mentioned, but the national councils will not possess that sensibility to the opinion of the world, which
9 is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.

10 An attention to the judgment of other nations is important to every government for two reasons: the
11 one is, that, independently of the merits of any particular plan or measure, it is desirable, on various
12 accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the
13 second is, that in doubtful cases, particularly where the national councils may be warped by some
14 strong passion or momentary interest, the presumed or known opinion of the impartial world may be
15 the best guide that can be followed. What has not America lost by her want of character with foreign
16 nations; and how many errors and follies would she not have avoided, if the justice and propriety of
17 her measures had, in every instance, been previously tried by the light in which they would probably
18 appear to the unbiased part of mankind?

19 Yet however requisite a sense of national character may be, it is evident that it can never be
20 sufficiently possessed by a numerous and changeable body. It can only be found in a number so small
21 that a sensible degree of the praise and blame of public measures may be the portion of each
22 individual; or in an assembly so durably invested with public trust, that the pride and consequence of
23 its members may be sensibly incorporated with the reputation and prosperity of the community. The
24 half-yearly representatives of Rhode Island would probably have been little affected in their
25 deliberations on the iniquitous measures of that State, by arguments drawn from the light in which

1 such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be
2 doubted that if the concurrence of a select and stable body had been necessary, a regard to national
3 character alone would have prevented the calamities under which that misguided people is now
4 laboring.

5 I add, as a sixth defect the want, in some important cases, of a due responsibility in the government to
6 the people, arising from that frequency of elections which in other cases produces this responsibility.

7 This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be
8 acknowledged, when explained, to be as undeniable as it is important.

9 Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible
10 party, and in order to be effectual, must relate to operations of that power, of which a ready and proper
11 judgment can be formed by the constituents. The objects of government may be divided into two
12 general classes: the one depending on measures which have singly an immediate and sensible
13 operation; the other depending on a succession of well-chosen and well-connected measures, which
14 have a gradual and perhaps unobserved operation. The importance of the latter description to the
15 collective and permanent welfare of every country, needs no explanation. And yet it is evident that an
16 assembly elected for so short a term as to be unable to provide more than one or two links in a chain of
17 measures, on which the general welfare may essentially depend, ought not to be answerable for the
18 final result, any more than a steward or tenant, engaged for one year, could be justly made to answer
19 for places or improvements which could not be accomplished in less than half a dozen years. Nor is it
20 possible for the people to estimate the share of influence which their annual assemblies may
21 respectively have on events resulting from the mixed transactions of several years. It is sufficiently
22 difficult to preserve a personal responsibility in the members of a numerous body, for such acts of the
23 body as have an immediate, detached, and palpable operation on its constituents.

24 The proper remedy for this defect must be an additional body in the legislative department, which,
25 having sufficient permanency to provide for such objects as require a continued attention, and a train

1 of measures, may be justly and effectually answerable for the attainment of those objects.

2 Thus far I have considered the circumstances which point out the necessity of a well-constructed

3 Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice

4 or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution

5 may be sometimes necessary as a defense to the people against their own temporary errors and

6 delusions. As the cool and deliberate sense of the community ought, in all governments, and actually

7 will, in all free governments, ultimately prevail over the views of its rulers; so there are particular

8 moments in public affairs when the people, stimulated by some irregular passion, or some illicit

9 advantage, or misled by the artful misrepresentations of interested men, may call for measures which

10 they themselves will afterwards be the most ready to lament and condemn. In these critical moments,

11 how salutary will be the interference of some temperate and respectable body of citizens, in order to

12 check the misguided career, and to suspend the blow meditated by the people against themselves, until

13 reason, justice, and truth can regain their authority over the public mind? What bitter anguish would

14 not the people of Athens have often escaped if their government had contained so provident a

15 safeguard against the tyranny of their own passions? Popular liberty might then have escaped the

16 indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

17 It may be suggested, that a people spread over an extensive region cannot, like the crowded

18 inhabitants of a small district, be subject to the infection of violent passions, or to the danger of

19 combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar

20 importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the

21 principal recommendations of a confederated republic. At the same time, this advantage ought not to

22 be considered as superseding the use of auxiliary precautions. It may even be remarked, that the

23 same extended situation, which will exempt the people of America from some of the dangers incident

24 to lesser republics, will expose them to the inconveniency of remaining for a longer time under the

25 influence of those misrepresentations which the combined industry of interested men may succeed in

1 distributing among them.

2 It adds no small weight to all these considerations, to recollect that history informs us of no long-lived
3 republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that
4 character can be applied. In each of the two first there was a senate for life. The constitution of the
5 senate in the last is less known. Circumstantial evidence makes it probable that it was not different in
6 this particular from the two others. It is at least certain, that it had some quality or other which
7 rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate,
8 was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the
9 imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with
10 the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity
11 of some institution that will blend stability with liberty. I am not unaware of the circumstances which
12 distinguish the American from other popular governments, as well ancient as modern; and which
13 render extreme circumspection necessary, in reasoning from the one case to the other. But after
14 allowing due weight to this consideration, it may still be maintained, that there are many points of
15 similitude which render these examples not unworthy of our attention. Many of the defects, as we
16 have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly
17 frequently elected by the people, and to the people themselves. There are others peculiar to the former,
18 which require the control of such an institution. The people can never wilfully betray their own
19 interests; but they may possibly be betrayed by the representatives of the people; and the danger will
20 be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than
21 where the concurrence of separate and dissimilar bodies is required in every public act.

22 The difference most relied on, between the American and other republics, consists in the principle of
23 representation; which is the pivot on which the former move, and which is supposed to have been
24 unknown to the latter, or at least to the ancient part of them. The use which has been made of this
25 difference, in reasonings contained in former papers, will have shown that I am disposed neither to

1 deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing,
2 that the position concerning the ignorance of the ancient governments on the subject of representation,
3 is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition
4 which here would be misplaced, I will refer to a few known facts, in support of what I advance.
5 In the most pure democracies of Greece, many of the executive functions were performed, not by the
6 people themselves, but by officers elected by the people, and representing the people in
7 their executive capacity.

8 Prior to the reform of Solon, Athens was governed by nine Archons, annually elected by the people at
9 large. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that
10 period, we find an assembly, first of four, and afterwards of six hundred members, annually elected by
11 the people; and partially representing them in their legislative capacity, since they were not only
12 associated with the people in the function of making laws, but had the exclusive right of originating
13 legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the
14 duration of its appointment, appears to have been elective by the suffrages of the people. Similar
15 instances might be traced in most, if not all the popular governments of antiquity.

16 Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in
17 numbers, but annually elected by the whole body of the people, and considered as
18 the representatives of the people, almost in their plenipotentiary capacity. The Cosmi of Crete were
19 also annually elected by the people, and have been considered by some authors as an institution
20 analogous to those of Sparta and Rome, with this difference only, that in the election of that
21 representative body the right of suffrage was communicated to a part only of the people.

22 From these facts, to which many others might be added, it is clear that the principle of representation
23 was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true
24 distinction between these and the American governments, lies in the total exclusion of the people, in
25 their collective capacity, from any share in the latter, and not in the total exclusion of the

1 representatives of the people from the administration of the former. The distinction, however, thus
2 qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But
3 to insure to this advantage its full effect, we must be careful not to separate it from the other
4 advantage, of an extensive territory. For it cannot be believed, that any form of representative
5 government could have succeeded within the narrow limits occupied by the democracies of Greece.
6 In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our
7 own experience, the jealous adversary of the Constitution will probably content himself with repeating,
8 that a senate appointed not immediately by the people, and for the term of six years, must gradually
9 acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical
10 aristocracy.

11 To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the
12 abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as
13 well as of the latter; and that the former, rather than the latter, are apparently most to be
14 apprehended by the United States. But a more particular reply may be given.

15 Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt
16 itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and
17 must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it
18 can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot
19 prosecute the attempt, because the periodical change of members would otherwise regenerate the
20 whole body. Without exerting the means of corruption with equal success on the House of
21 Representatives, the opposition of that coequal branch of the government would inevitably defeat the
22 attempt; and without corrupting the people themselves, a succession of new representatives would
23 speedily restore all things to their pristine order. Is there any man who can seriously persuade himself
24 that the proposed Senate can, by any possible means within the compass of human address, arrive at
25 the object of a lawless ambition, through all these obstructions?

1 If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of
2 Maryland furnishes the most apposite example. The Senate of that State is elected, as the federal
3 Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It
4 is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of
5 its appointment, and, at the same time, is not under the control of any such rotation as is provided for
6 the federal Senate. There are some other lesser distinctions, which would expose the former to
7 colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained
8 the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this
9 time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the
10 contrary, the jealousies at first entertained by men of the same description with those who view with
11 terror the correspondent part of the federal Constitution, have been gradually extinguished by the
12 progress of the experiment; and the Maryland constitution is daily deriving, from the salutary
13 operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in
14 the Union.

15 But if any thing could silence the jealousies on this subject, it ought to be the British example. The
16 Senate there instead of being elected for a term of six years, and of being unconfined to particular
17 families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives,
18 instead of being elected for two years, and by the whole body of the people, is elected for seven years,
19 and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to
20 be seen in full display the aristocratic usurpations and tyranny which are at some future period to be
21 exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British
22 history informs us that this hereditary assembly has not been able to defend itself against the
23 continual encroachments of the House of Representatives; and that it no sooner lost the support of the
24 monarch, than it was actually crushed by the weight of the popular branch.

25 As far as antiquity can instruct us on this subject, its examples support the reasoning which we have

1 employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for
2 the senate for life, continually gained on its authority and finally drew all power into their own hands.
3 The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost
4 every contest with the senate for life, and in the end gained the most complete triumph over it. The fact
5 is the more remarkable, as unanimity was required in every act of the Tribunes, even after their
6 number was augmented to ten. It proves the irresistible force possessed by that branch of a free
7 government, which has the people on its side. To these examples might be added that of Carthage,
8 whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had,
9 at the commencement of the second Punic War, lost almost the whole of its original portion.
10 Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will
11 never be able to transform itself, by gradual usurpations, into an independent and aristocratic body,
12 we are warranted in believing, that if such a revolution should ever happen from causes which the
13 foresight of man cannot guard against, the House of Representatives, with the people on their side, will
14 at all times be able to bring back the Constitution to its primitive form and principles. Against the force
15 of the immediate representatives of the people, nothing will be able to maintain even the
16 constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the
17 public good, as will divide with that branch of the legislature the affections and support of the entire
18 body of the people themselves.

19 Publius.

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1 The Federalist 64

2 The Powers of the Senate

3 Jay From the New York Packet. Friday, March 7, 1788.

4 To the People of the State of New York:

5 IT IS a just and not a new observation, that enemies to particular persons, and opponents to particular
6 measures, seldom confine their censures to such things only in either as are worthy of blame. Unless on
7 this principle, it is difficult to explain the motives of their conduct, who condemn the proposed
8 Constitution in the aggregate, and treat with severity some of the most unexceptionable articles in it.
9 The second section gives power to the President, ``by and with the advice and consent of the senate, to
10 make treaties, provided two thirds of the senators present concur."

11 The power of making treaties is an important one, especially as it relates to war, peace, and commerce;
12 and it should not be delegated but in such a mode, and with such precautions, as will afford the highest
13 security that it will be exercised by men the best qualified for the purpose, and in the manner most
14 conducive to the public good. The convention appears to have been attentive to both these points: they
15 have directed the President to be chosen by select bodies of electors, to be deputed by the people for
16 that express purpose; and they have committed the appointment of senators to the State legislatures.
17 This mode has, in such cases, vastly the advantage of elections by the people in their collective
18 capacity, where the activity of party zeal, taking the advantage of the supineness, the ignorance, and
19 the hopes and fears of the unwary and interested, often places men in office by the votes of a small
20 proportion of the electors.

21 As the select assemblies for choosing the President, as well as the State legislatures who appoint the
22 senators, will in general be composed of the most enlightened and respectable citizens, there is reason
23 to presume that their attention and their votes will be directed to those men only who have become
24 the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for
25 confidence. The Constitution manifests very particular attention to this object. By excluding men

1 under thirty-five from the first office, and those under thirty from the second, it confines the electors to
2 men of whom the people have had time to form a judgment, and with respect to whom they will not be
3 liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient
4 meteors, sometimes mislead as well as dazzle. If the observation be well founded, that wise kings will
5 always be served by able ministers, it is fair to argue, that as an assembly of select electors possess, in a
6 greater degree than kings, the means of extensive and accurate information relative to men and
7 characters, so will their appointments bear at least equal marks of discretion and discernment. The
8 inference which naturally results from these considerations is this, that the President and senators so
9 chosen will always be of the number of those who best understand our national interests, whether
10 considered in relation to the several States or to foreign nations, who are best able to promote those
11 interests, and whose reputation for integrity inspires and merits confidence. With such men the power
12 of making treaties may be safely lodged.

13 Although the absolute necessity of system, in the conduct of any business, is universally known and
14 acknowledged, yet the high importance of it in national affairs has not yet become sufficiently
15 impressed on the public mind. They who wish to commit the power under consideration to a popular
16 assembly, composed of members constantly coming and going in quick succession, seem not to
17 recollect that such a body must necessarily be inadequate to the attainment of those great objects,
18 which require to be steadily contemplated in all their relations and circumstances, and which can only
19 be approached and achieved by measures which not only talents, but also exact information, and often
20 much time, are necessary to concert and to execute. It was wise, therefore, in the convention to
21 provide, not only that the power of making treaties should be committed to able and honest men, but
22 also that they should continue in place a sufficient time to become perfectly acquainted with our
23 national concerns, and to form and introduce a a system for the management of them. The duration
24 prescribed is such as will give them an opportunity of greatly extending their political information,
25 and of rendering their accumulating experience more and more beneficial to their country. Nor has

1 the convention discovered less prudence in providing for the frequent elections of senators in such a
2 way as to obviate the inconvenience of periodically transferring those great affairs entirely to new men;
3 for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant
4 succession of official information will be preserved.

5 There are a few who will not admit that the affairs of trade and navigation should be regulated by a
6 system cautiously formed and steadily pursued; and that both our treaties and our laws should
7 correspond with and be made to promote it. It is of much consequence that this correspondence and
8 conformity be carefully maintained; and they who assent to the truth of this position will see and
9 confess that it is well provided for by making concurrence of the Senate necessary both to treaties and
10 to laws.

11 It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and
12 immediate despatch are sometimes requisite. These are cases where the most useful intelligence may
13 be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those
14 apprehensions will operate on those persons whether they are actuated by mercenary or friendly
15 motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the
16 President, but who would not confide in that of the Senate, and still less in that of a large popular
17 Assembly. The convention have done well, therefore, in so disposing of the power of making treaties,
18 that although the President must, in forming them, act by the advice and consent of the Senate, yet he
19 will be able to manage the business of intelligence in such a manner as prudence may suggest.

20 They who have turned their attention to the affairs of men, must have perceived that there are tides
21 in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice
22 exactly in the same manner or measure. To discern and to profit by these tides in national affairs is
23 the business of those who preside over them; and they who have had much experience on this head
24 inform us, that there frequently are occasions when days, nay, even when hours, are precious. The
25 loss of a battle, the death of a prince, the removal of a minister, or other circumstances intervening to

1 change the present posture and aspect of affairs, may turn the most favorable tide into a course
2 opposite to our wishes. As in the field, so in the cabinet, there are moments to be seized as they pass,
3 and they who preside in either should be left in capacity to improve them. So often and so essentially
4 have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have
5 been inexcusably defective, if no attention had been paid to those objects. Those matters which in
6 negotiations usually require the most secrecy and the most despatch, are those preparatory and
7 auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate
8 the attainment of the objects of the negotiation. For these, the President will find no difficulty to
9 provide; and should any circumstance occur which requires the advice and consent of the Senate, he
10 may at any time convene them. Thus we see that the Constitution provides that our negotiations for
11 treaties shall have every advantage which can be derived from talents, information, integrity, and
12 deliberate investigations, on the one hand, and from secrecy and despatch on the other.

13 But to this plan, as to most others that have ever appeared, objections are contrived and urged.
14 Some are displeased with it, not on account of any errors or defects in it, but because, as the treaties,
15 when made, are to have the force of laws, they should be made only by men invested with legislative
16 authority. These gentlemen seem not to consider that the judgments of our courts, and the
17 commissions constitutionally given by our governor, are as valid and as binding on all persons whom
18 they concern, as the laws passed by our legislature. All constitutional acts of power, whether in the
19 executive or in the judicial department, have as much legal validity and obligation as if they proceeded
20 from the legislature; and therefore, whatever name be given to the power of making treaties, or
21 however obligatory they may be when made, certain it is, that the people may, with much propriety,
22 commit the power to a distinct body from the legislature, the executive, or the judicial. It surely does
23 not follow, that because they have given the power of making laws to the legislature, that therefore
24 they should likewise give them the power to do every other act of sovereignty by which the citizens
25 are to be bound and affected.

1 Others, though content that treaties should be made in the mode proposed, are averse to their being
2 the supreme laws of the land. They insist, and profess to believe, that treaties like acts of assembly,
3 should be repealable at pleasure. This idea seems to be new and peculiar to this country, but new
4 errors, as well as new truths, often appear. These gentlemen would do well to reflect that a treaty is
5 only another name for a bargain, and that it would be impossible to find a nation who would make any
6 bargain with us, which should be binding on them absolutely, but on us only so long and so far as we
7 may think proper to be bound by it. They who make laws may, without doubt, amend or repeal them;
8 and it will not be disputed that they who make treaties may alter or cancel them;
9 but still let us not forget that treaties are made, not by only one of the contracting parties, but by both;
10 and consequently, that as the consent of both was essential to their formation at first, so must it ever
11 afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least
12 extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of
13 legislative acts now, as they will be at any future period, or under any form of government.

14 However useful jealousy may be in republics, yet when like bile in the natural, it abounds too much in
15 the body politic, the eyes of both become very liable to be deceived by the delusive appearances which
16 that malady casts on surrounding objects. From this cause, probably, proceed the fears and
17 apprehensions of some, that the President and Senate may make treaties without an equal eye to the
18 interests of all the States. Others suspect that two thirds will oppress the remaining third, and ask
19 whether those gentlemen are made sufficiently responsible for their conduct; whether, if they act
20 corruptly, they can be punished; and if they make disadvantageous treaties, how are we to get rid of
21 those treaties?

22 As all the States are equally represented in the Senate, and by men the most able and the most willing
23 to promote the interests of their constituents, they will all have an equal degree of influence in that
24 body, especially while they continue to be careful in appointing proper persons, and to insist on their
25 punctual attendance. In proportion as the United States assume a national form and a national

1 character, so will the good of the whole be more and more an object of attention, and the government
2 must be a weak one indeed, if it should forget that the good of the whole can only be promoted by
3 advancing the good of each of the parts or members which compose the whole. It will not be in the
4 power of the President and Senate to make any treaties by which they and their families and estates
5 will not be equally bound and affected with the rest of the community; and, having no private interests
6 distinct from that of the nation, they will be under no temptations to neglect the latter.

7 As to corruption, the case is not supposable. He must either have been very unfortunate in his
8 intercourse with the world, or possess a heart very susceptible of such impressions, who can think it
9 probable that the President and two thirds of the Senate will ever be capable of such unworthy conduct.
10 The idea is too gross and too invidious to be entertained. But in such a case, if it should ever happen,
11 the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the law of
12 nations.

13 With respect to their responsibility, it is difficult to conceive how it could be increased. Every
14 consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the
15 love of country, and family affections and attachments, afford security for their fidelity. In short, as
16 the Constitution has taken the utmost care that they shall be men of talents and integrity, we have
17 reason to be persuaded that the treaties they make will be as advantageous as, all circumstances
18 considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive
19 to good behavior is amply afforded by the article on the subject of impeachments.

20 Publius.

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