

SECTION FOUR

ON THE DEFECTS IN THE ARTICLES OF CONFEDERATION



While the fears of disunion, particularly for trade and commerce, characterized *Federalist 11* through *Federalist 14*, the nine essays succeeding them all concentrated on the “imbecilities” of the Articles of Confederation in preserving the union. Eighteenth-century Americans defined imbecilities as weakness and incompetence, and many of the Constitution’s supporters used the word to describe the Articles. The straightforward Federalist thesis in this section is this: The Articles of Confederation have failed, and survival of the American union depends upon the adoption of the Constitution. This set of essays explained the theoretical and historical problems of confederations, how the Articles of Confederation’s replication of those issues created the current political crisis, and how the Constitution offered a solution to those problems.

In *Federalist 15* and *Federalist 16*, Publius laments the current state of the American Confederation and its many defects and claims that the “impending anarchy” and the “last stage of national humiliation” of the union drew near. The inability to pay foreign creditors, maintain the geographic integrity of the Northwest from British occupation, or draw upon public credit resulted from the “fundamental errors in the structure” of the Articles of Confederation. The “imbecility of our government” led to foreign governments refusing to treat with the United States, leaving American ambassadors the “mere pageants of mimic sovereignty.”

Publius argues that the problem of all confederations, the American one included, rested on how sovereignty remained solely with each member of the Confederation. As a treaty between sovereign states, and lacking sovereignty of its own, a confederation could not command obedience from its members. Instead, it operated on the assumption that common interests compelled compliance. “The oracle of wisdom: experience,” however, suggested that self-interest of the member states always

overrode any notion of a confederation's common good. This left confederations with two terrible options: coercion, "the violent death of confederacy," or anarchy.

The American Confederation proved no different, argued Publius. Sovereignty, under the Articles of Confederation, remained with the states and received buttressing from Article II. Even when states admitted problems existed, states' sovereignty stymied all efforts to fix the Confederation. Their slavish devotion to their sovereignty and the "political monster of an *imperium in imperio*" (sovereign within a sovereign) led states to view "with an evil eye" all acts of reform as "external attempts to restrain or direct" their affairs. For Publius, then, only one real option existed: states must either surrender some of their sovereignty or face one of the two fates that awaited all confederations. This surrender of sovereignty, Publius argued, empowered the Constitution to exercise real legislative powers that operated directly upon American citizens without interference or obstruction from the states.

In *Federalist 17*, Publius claimed he was "at a loss to discuss what temptation" existed in the new Constitution for someone to become tyrannical. Since the Constitution offered a general government designed for only limited purposes, no real threat to wield tyrannical powers existed. The real threat to the system, Publius warned, stemmed from state encroachments upon the general government's power. As people are more familiar and intimate with their state governments, and civil and criminal justice and guardianship of life and property remained with the states, the states could more easily interfere with the authority of the general government.

The history of the failings of confederations, ancient and modern, illustrated Publius' point, he claimed. *Federalist 18* through *Federalist 20* examine the Greek, Genevan, and Dutch confederations. Each contained weak centers, with each member retaining its sovereignty. The weakness of the central government exposed those confederations to external threats from foreign powers as well as conflicts between the sister states.

Federalist 21 and *Federalist 22* return to the problems of the Articles of Confederation. To Publius, the Confederation's deficiencies were numerous. It lacked real lawmaking authority, with its pronouncements being recommendations the states could follow or ignore as they chose. The Confederation could not guarantee mutual protection and the security of republican governments in the states or regulate how states contributed to the Confederation's treasury. The equality of state suffrage in the unicameral Confederation allowed the smallest states, like Rhode Island, to thwart the common good. The unanimous consent of the state legislatures required to amend the Articles of Confederation meant, in a practical sense, the document would almost certainly never be changed or improved. The Confederation's most severe defect, and the source of the Confederation's most glaring problems, Publius lamented, turned out to be its lack of consent of the governed.

In *Federalist 23*, Publius argues that the preservation of the American union demands an energetic government, and the proposed Constitution creates just such a government. The limited responsibilities of the Constitution—national defense,

domestic peace, and the regulation of foreign and domestic commerce—required the general government to exercise unlimited powers in those distinct areas. Since no one could predict the “extent and variety of national exigencies,” the powers of the general government “ought to exist without limitation.” Publius clarified that the “*means* ought to be proportioned to the end; the person from whose agency the attainment of any *end* is expected, ought to possess the means by which it is to be attained.” The Confederation government, he explains here and in the previous two essays, could not exercise its will in its limited areas of authority to achieve the necessary ends of government.

Publius’ list of the Confederation’s problems and call for a new government with vastly more power and energy did not go unchallenged. Centinel’s scathing sixth essay attacks the “harpies of power” who blame every problem on the supposed “impotency of Congress.” While Centinel agrees that real issues existed, the usurpers of “that inestimable jewel, liberty,” however, deluded people into blaming the Confederation, rather than the real issues derived from the devastations caused by the Revolutionary War: the drain on specie (i.e., metallic coins) and an increase of debt originating from “excessive importation” of foreign luxuries. He even believed that “considerable benefit might be derived from strengthening” Congress’ powers to regulate commerce. Yet, this power was “accompanied” with other “despotic” powers, thereby negating this one benefit.

Centinel devotes the last section of his essay to the nature of this “despotic” power. Although he does not mention Publius by name, Centinel is referring to *Federalist* 23 when he notes that readers of that essay became “sensible that the power [of the Constitution] is thereby granted without limitation or restriction.” Should Americans adopt this Constitution and its unlimited powers, slavery would be the consequence, he claimed. It is important to note that when Centinel refers to slavery, he is not referring to chattel slavery. Instead, he refers to political slavery, wherein people lose their independence and become subjected to the arbitrary will or dominion of government. The people, therefore, must maintain constant vigilance to preserve liberty.

QUESTIONS FOR OUR TIME

1. The Anti-Federalists clearly preferred a decentralized kind of confederation of sovereign states while Publius preferred a more consolidated nation-state. Take some time to think about this debate and consider the positives and negatives of an American Confederation of states and an America as a united single nation-state. What do we give up and what do we gain in each of these structures of government?
2. For Publius, a critical reason the Articles failed was due to their “slavish” devotion to state sovereignty. For the Constitution to succeed, he argued, the states had to surrender elements of their sovereignty to the general government. Since the early 20th century, and accelerating since the 1930s, the scope and power of the federal government has increased dramatically. Is there a danger in having a federal government that flips the problem of the Confederation (i.e., a federal government that wields practically all sovereignty while the states retain only what the federal government does not want to have)?
3. In *Federalist 17*, Publius argues that tyranny under the Constitution proves highly unlikely, with the real threat stemming more from state encroachment upon federal power. In what ways can states today legitimately encroach upon national power? Does federal encroachment upon traditional domains of states occur more than Publius predicted?
4. In what is a common theme of Publius’ essay, he notes that the general government requires energy to operate. As such, in its areas of responsibility, the government’s powers “ought to exist without limitations.” With a federal government of a vastly larger size than anything the Founders could have ever predicted, does Publius’ argument still hold that the government should have any “means” necessary to fulfill its purpose? What are, or should there be, limitations on how the Constitution meets its responsibilities?
5. Take a moment to review the Articles of Confederation. Does it appear to you inadequate to the needs of American government? Could it have been improved with mere tweaks or did it require a total overhaul, as Publius argues?

FEDERALIST NO. 15

CONCERNING THE DEFECTS OF THE PRESENT CONFEDERATION, IN RELATION TO THE PRINCIPLE OF LEGISLATION FOR THE STATES IN THEIR COLLECTIVE CAPACITIES

In the course of the preceding papers, I have endeavoured, my fellow citizens, to place before you, in a clear and convincing light, the importance of union to your political safety and happiness. I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot, which binds the people of America together, to be severed or dissolved by ambition or by avarice, by jealousy or by misrepresentation. In the sequel of the inquiry, through which I propose to accompany you, the truths intended to be inculcated will receive further confirmation from facts and arguments hitherto unnoticed. If the road, over which you will still have to pass, should in some places appear to you tedious or irksome, you will recollect, that you are in quest of information on a subject the most momentous, which can engage the attention of a free people; that the field through which you have to travel is in

itself spacious, and that the difficulties of the journey have been unnecessarily increased by the mazes with which sophistry has beset the way. It will be my aim to remove the obstacles to your progress, in as compendious a manner as it can be done, without sacrificing utility to despatch.

In pursuance of the plan, which I have laid down for the discussion of the subject, the point next in order to be examined, is the “insufficiency of the present confederation to the preservation of the union.”

It may perhaps be asked, what need there is of reasoning or proof to illustrate a position, which is neither controverted nor doubted; to which the understandings and feelings of all classes of men assent; and which in substance is admitted by the opponents as well as by the friends of the new constitution? It must in truth be acknowledged, that however these may differ in other respects, they in general

appear to harmonize in the opinion, that there are material imperfections in our national system, and that something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion, are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted from those, whose mistaken policy has had the principal share in precipitating the extremity at which we are arrived, a reluctant confession of the reality of many of those defects in the scheme of our federal government, which have been long pointed out and regretted by the intelligent friends of the union.

We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character, of an independent people, which we do not experience. Are there engagements, to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which, by express stipulations, ought long since to have been surrendered? These are

still retained, to the prejudice of our interests not less than of our rights. Are we in a condition to resent, or to repel the aggression? We have neither troops, nor treasury, nor government.²¹ Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled, by nature and compact, to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers, a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us: our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land, a symptom of national distress? The price of improved land, in most parts of the country, is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending, is reduced within the narrowest limits,

21 I mean for the union.

and this still more from an opinion of insecurity than from a scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

This is the melancholy situation to which we have been brought by those very maxims and counsels, which would now deter us from adopting the proposed constitution; and which, not content with having conducted us to the brink of a precipice, seem resolved to plunge us into the abyss that awaits us below. Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity.

It is true, as has been before observed, that facts too stubborn to be resisted, have produced a species of general assent to the abstract proposition, that there exist material defects in our national system; but the usefulness of the concession, on the part of the old adversaries of federal measures, is destroyed by a strenuous opposition to a remedy, upon the only principles that can give it a chance of success. While they admit that the government of the United States is destitute of energy,

they contend against conferring upon it those powers which are requisite to supply that energy. They seem still to aim at things repugnant and irreconcilable; at an augmentation of federal authority, without a diminution of state authority; at sovereignty in the union, and complete independence in the members. They still, in fine, seem to cherish with blind devotion the political monster of an *imperium in imperio*. This renders a full display of the principal defects of the confederation necessary, in order to show, that the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended, otherwise than by an alteration in the very elements and main pillars of the fabric.

The great and radical vice, in the construction of the existing confederation, is in the principle of LEGISLATION FOR STATES OR GOVERNMENTS, in their CORPORATE OR COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist. Though this principle does not run through all the powers delegated to the union; yet it pervades and governs those on which the efficacy of the rest depends: except, as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that, though in theory, their resolutions concerning those objects,

are laws, constitutionally binding on the members of the union; yet, in practice, they are mere recommendations, which the states observe or disregard at their option.

It is a singular instance of the capriciousness of the human mind, that, after all the admonitions we have had from experience on this head, there should still be found men, who object to the new constitution, for deviating from a principle which has been found the bane of the old; and which is, in itself, evidently incompatible with the idea of a GOVERNMENT; a principle, in short, which, if it is to be executed at all, must substitute the violent and sanguinary agency of the sword, to the mild influence of the magistracy.

There is nothing absurd or impracticable, in the idea of a league or alliance between independent nations, for certain defined purposes precisely stated in a treaty; regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind, exist among all civilized nations, subject to the usual vicissitudes of peace and war; of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century, there was an epidemical rage in Europe for this species of compacts; from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power, and the peace of

that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive, but afflicting, lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith; and which oppose general considerations of peace and justice, to the impulse of any immediate interest or passion.

If the particular states in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance, offensive and defensive; and would place us in a situation to be alternately friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients, which may be considered as forming the characteristic difference between a league and a government; we

must extend the authority of the union to the persons of the citizens . . . the only proper objects of government.

Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws, will in fact amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways; by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men: the last kind must of necessity be employed against bodies politic, or communities or states. It is evident, that there is no process of a court by which their observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association, where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war, and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

There was a time when we were told that breaches, by the states, of the regulations of the federal authority

were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation, has a less active influence, when the infamy of a bad action is to be divided among a number, than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons, of whom they are composed, into improprieties and excesses, for which they would blush in a private capacity.

In addition to all this, there is, in the nature of sovereign power, an impatience of control, which disposes those who are invested with the exercise of it, to look with an evil eye upon all

external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controled or abridged is almost always the rival and enemy of that power by which it is controled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons entrusted with the administration of the affairs of the particular members of a confederacy, will at all times be ready, with perfect good humour, and an unbiassed regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of man.

If, therefore, the measures of the confederacy cannot be executed, without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and

in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favour of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies; who have seen how difficult it often is, when there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times, and under different impressions, long to co-operate in the same views and pursuits.

In our case, the concurrence of thirteen distinct sovereign wills is requisite under the confederation, to the complete execution of every important measure, that proceeds from the union. It has happened, as was to have been foreseen. The measures of the union have not been executed; the delinquencies of the states have, step by step, matured themselves to an extreme, which has at length arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possess

the means of keeping up the forms of administration, till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified, produced at first only unequal and disproportionate degrees of compliance with the requisitions of the union. The greater deficiencies of some states furnished the pretext of example, and the temptation of interest to the complying, or at least delinquent states. Why should we do more in proportion than those who are

embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burthen? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not without hesitation combat. Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins.

PUBLIUS

FEDERALIST NO. 16

THE SAME SUBJECT CONTINUED, IN RELATION TO THE SAME PRINCIPLES

The tendency of the principle of legislation for states or communities in their political capacities, as it has been exemplified by the experiment we have made of it, is equally attested by the events which have befallen all other governments of the confederate kind, of which we have any account, in exact proportion to its prevalence in those systems. The confirmations of this fact will be worthy of a distinct and particular examination. I shall content myself with barely observing here, that of all the confederacies of antiquity which history has handed down to us, the Lycian and Achaean leagues, as far as there remain vestiges of them, appear to have been most free from the fetters of that mistaken principle, and were accordingly those which have best deserved, and have most liberally received, the applauding suffrages of political writers.

This exceptionable principle may, as truly as emphatically, be styled the parent of anarchy: it has been seen that

delinquencies in the members of the union are its natural and necessary offspring; and that whenever they happen, the only constitutional remedy is force, and the immediate effect of the use of it, civil war.

It remains to inquire how far so odious an engine of government, in its application to us, would even be capable of answering its end. If there should not be a large army, constantly at the disposal of the national government, it would either not be able to employ force at all, or when this could be done, it would amount to a war between different parts of the confederacy, concerning the infractions of a league; in which the strongest combination would be most likely to prevail, whether it consisted of those who supported, or of those who resisted, the general authority. It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one, who had neglected their duty, similarity of situation would induce them to unite for common

defence. Independent of this motive of sympathy, if a large and influential state should happen to be the aggressing member, it would commonly have weight enough with its neighbours, to win over some of them as associates to its cause. Specious arguments of danger to the general liberty could easily be contrived; plausible excuses for the deficiencies of the party, could, without difficulty, be invented, to alarm the apprehensions, inflame the passions, and conciliate the good will even of those states which were not chargeable with any violation, or omission of duty. This would be the more likely to take place, as the delinquencies of the larger members might be expected sometimes to proceed from an ambitious premeditation in their rulers, with a view to getting rid of all external control upon their designs of personal aggrandizement; the better to effect which, it is presumable they would tamper beforehand with leading individuals in the adjacent states. If associates could not be found at home, recourse would be had to the aid of foreign powers, who would seldom be disinclined to encouraging the dissensions of a confederacy, from the firm union of which they had so much to fear. When the sword is once drawn, the passions of men observe no bounds of moderation. The suggestions of wounded pride, the instigations of irritated resentment, would be apt to carry the states, against which the arms of the union were exerted, to any extremes necessary to avenge the affront, or to avoid the disgrace of submission. The first war of this kind would probably terminate in a dissolution of the union.

This may be considered as the violent

death of the confederacy. Its more natural death is what we now seem to be on the point of experiencing, if the federal system be not speedily renovated in a more substantial form. It is not probable, considering the genius of this country, that the complying states would often be inclined to support the authority of the union, by engaging in a war against the non-complying states. They would always be more ready to pursue the milder course of putting themselves upon an equal footing with the delinquent members, by an imitation of their example. And the guilt of all would thus become the security of all. Our past experience has exhibited the operation of this spirit in its full light. There would in fact be an insuperable difficulty in ascertaining when force could with propriety be employed. In the article of pecuniary contribution, which would be the most usual source of delinquency, it would often be impossible to decide whether it had proceeded from disinclination, or inability. The pretence of the latter would always be at hand. And the case must be very flagrant in which its fallacy could be detected with sufficient certainty to justify the harsh expedient of compulsion. It is easy to see that this problem alone, as often as it should occur, would open a wide field to the majority that happened to prevail in the national council, for the exercise of factious views, of partiality, and of oppression.

It seems to require no pains to prove that the states ought not to prefer a national constitution, which could only be kept in motion by the instrumentality of a large army, continually on foot to execute the ordinary requisitions or decrees of the government.

And yet this is the plain alternative involved by those who wish to deny it the power of extending its operations to individuals. Such a scheme, if practicable at all, would instantly degenerate into a military despotism; but it will be found in every light impracticable. The resources of the union would not be equal to the maintenance of an army considerable enough to confine the larger states within the limits of their duty; nor would the means ever be furnished of forming such an army in the first instance. Whoever considers the populousness and strength of several of these states singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme, which aims at regulating their movements by laws, to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit, attributed to the fabulous heroes and demi-gods of antiquity.

Even in those confederacies, which have been composed of members smaller than many of our counties, the principle of legislation for sovereign states, supported by military coercion, has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient, have been the signals of bloody wars; in which one half of the confederacy has displayed its banners against the other.

The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating

the common concerns, and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the union, like that of each state, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support, those passions, which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers with which it is entrusted, that are possessed and exercised by the governments of the particular states.

To this reasoning it may perhaps be objected, that if any state should be disaffected to the authority of the union, it could at any time obstruct the execution of its laws, and bring the matter to the same issue of force, with the necessity of which the opposite scheme is reproached.

The plausibility of this objection will vanish the moment we advert to the essential difference between a mere NON-COMPLIANCE and a DIRECT and ACTIVE RESISTANCE. If the interposition of the state legislatures be necessary to give effect to a measure of the union, they have only NOT TO ACT, or TO ACT EVASIVELY, and the measure is defeated. This neglect of duty may be disguised under

affected but unsubstantial provisions so as not to appear, and of course not to excite any alarm in the people for the safety of the constitution. The state leaders may even make a merit of their surreptitious invasions of it, on the ground of some temporary convenience, exemption, or advantage.

But if the execution of the laws of the national government should not require the intervention of the state legislatures; if they were to pass into immediate operation upon the citizens themselves, the particular governments could not interrupt their progress without an open and violent exertion of an unconstitutional power. No omission, nor evasions, would answer the end. They would be obliged to act, and in such a manner, as would leave no doubt that they had encroached on the national rights. An experiment of this nature would always be hazardous in the face of a constitution in any degree competent to its own defence, and of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority. The success of it would require not merely a factious majority in the legislature, but the concurrence of the courts of justice, and of the body of the people. If the judges were not embarked in a conspiracy with the legislature, they would pronounce the resolutions of such a majority to be contrary to the supreme law of the land, unconstitutional and void. If the people were not tainted with the spirit of their state representatives, they, as the natural guardians of the constitution, would throw their weight into the national scale, and give it a decided preponderancy in the contest. Attempts of this kind would not often be made with levity or rashness; because they

could seldom be made without danger to the authors: unless in cases of tyrannical exercise of the federal authority.

If opposition to the national government should arise from the disorderly conduct of refractory, or seditious individuals, it could be overcome by the same means which are daily employed against the same evil, under the state governments. The magistracy, being equally the ministers of the law of the land, from whatever source it might emanate, would, doubtless, be as ready to guard the national as the local regulations, from the inroads of private licentiousness. As to those partial commotions and insurrections, which sometimes disquiet society, from the intrigues of an inconsiderable faction, or from sudden or occasional ill humours, that do not infect the great body of the community, the general government could command more extensive resources, for the suppression of disturbances of that kind, than would be in the power of any single member. And as to those mortal feuds, which, in certain conjunctures, spread a conflagration through a whole nation, or through a very large proportion of it, proceeding either from weighty causes of discontent, given by the government, or from the contagion of some violent popular paroxysm, they do not fall within any ordinary rules of calculation. When they happen, they commonly amount to revolutions, and dismemberments of empire. No form of government can always either avoid or control them. It is in vain to hope to guard against events too mighty for human foresight or precaution; and it would be idle to object to a government, because it could not perform impossibilities.

PUBLIUS

FEDERALIST NO. 17

**THE SUBJECT CONTINUED, AND ILLUSTRATED
BY EXAMPLES, TO SHOW THE TENDENCY OF
FEDERAL GOVERNMENTS, RATHER TO ANARCHY
AMONG THE MEMBERS, THAN TYRANNY IN THE HEAD**

An objection, of a nature different from that which has been stated and answered in my last address, may, perhaps, be urged against the principle of legislation for the individual citizens of America. It may be said, that it would tend to render the government of the union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the states for local purposes. Allowing the utmost latitude to the love of power, which any reasonable man can require, I confess I am at a loss to discover what temptation the persons entrusted with the administration of the general government, could ever feel to divest the states of the authorities of that description. The regulation of the mere domestic police of a state, appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war, seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects, ought, in the first instance,

to be lodged in the national depository. The administration of private justice between the citizens of the same state; the supervision of agriculture, and of other concerns of a similar nature; all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable, that there should exist a disposition in the federal councils, to usurp the powers with which they are connected; because the attempt to exercise them, would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendour, of the national government.

But let it be admitted, for argument sake, that mere wantonness, and lust of domination, would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the national representatives, or, in other words, of the people of the several

states, would control the indulgence of so extravagant an appetite. It will always be far more easy for the state governments to encroach upon the national authorities, than for the national government to encroach upon the state authorities. The proof of this proposition turns upon the greater degree of influence which the state governments, if they administer their affairs with uprightness and prudence, will generally possess over the people; a circumstance which at the same time teaches us, that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty.

The superiority of influence in favour of the particular governments, would result partly from the diffusive construction of the national government; but chiefly from the nature of the objects to which the attention of the state administrations would be directed.

It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighbourhood, to his neighbourhood than to the community at large, the people of each state would be apt to feel a stronger bias towards their local governments, than towards the government of the union, unless the force of that principle should be destroyed by a much better administration of the latter.

This strong propensity of the human heart, would find powerful auxiliaries in the objects of state regulation.

The variety of more minute interests, which will necessarily fall under the superintendence of the local administrations, and which will form so many rivulets of influence, running through every part of the society, cannot be particularized, without involving a detail too tedious and uninteresting, to compensate for the instruction it might afford.

There is one transcendent advantage belonging to the province of state governments, which alone suffices to place the matter in a clear and satisfactory light . . . I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is this, which, being the immediate and visible guardian of life and property; having its benefits and its terrors in constant activity before the public eye; regulating all those personal interests, and familiar concerns, to which the sensibility of individuals is more immediately awake; contributes, more than any other circumstance, to impress upon the minds of the people affection, esteem, and reverence towards the government. This great cement of society, which will diffuse itself almost wholly through the channels of the particular governments, independent of all other causes of influence, would ensure them so decided an empire over their respective citizens, as to render them at all times a complete counterpoise, and not unfrequently dangerous rivals to the power of the union.

The operations of the national government, on the other hand, falling less

immediately under the observation of the mass of the citizens, the benefits derived from it will chiefly be perceived, and attended to by speculative men. Relating to more general interests, they will be less apt to come home to the feelings of the people; and, in proportion, less likely to inspire a habitual sense of obligation, and an active sentiment of attachment.

The reasoning on this head has been abundantly exemplified by the experience of all federal constitutions, with which we are acquainted, and of all others which have borne the least analogy to them.

Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of *inferior* vassals or retainers, who occupied and cultivated that land upon the tenure of fealty, or obedience to the persons of whom they held it. Each principal vassal was a kind of sovereign within his particular demesnes. The consequences of this situation were a continual opposition to the authority of the sovereign, and frequent wars between the great barons, or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal anarchy.

When the sovereign happened to be a

man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered for the time the purposes of a more regular authority. But in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or states. In those instances in which the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common people, were dreaded and detested by both; till mutual danger and mutual interest effected an union between them fatal to the power of the aristocracy. Had the nobles, by a conduct of clemency and justice, preserved the fidelity and devotion of their retainers and followers, the contests between them and the prince must almost always have ended in their favour, and in the abridgment or subversion of the royal authority.

This is not an assertion founded merely in speculation or conjecture. Among other illustrations of its truth which might be cited, Scotland will furnish a cogent example. The spirit of clanship which was at an early day introduced into that kingdom, uniting the nobles and their dependants by ties equivalent to those of kindred, rendered the aristocracy a constant overmatch for the power of the monarch, till the incorporation with England subdued its fierce and ungovernable spirit, and reduced it within those rules of subordination, which a

more rational and a more energetic system of civil polity had previously established in the latter kingdom.

The separate governments in a confederacy may aptly be compared with the feudal baronies; with this advantage in their favour, that from the reasons already explained, they will generally possess the confidence and good will of the people; and with so important a support, will be able effectually to oppose all encroachments of the national government. It will be well if they are not able to counteract its legitimate and necessary authority. The points of similitude consist in the rivalry

of power, applicable to both, and in the CONCENTRATION of large portions of the strength of the community into particular DEPOSITORIES, in one case at the disposal of individuals, in the other case at the disposal of political bodies.

A concise review of the events that have attended confederate governments, will further illustrate this important doctrine; an inattention to which has been the great source of our political mistakes, and has given our jealousy a direction to the wrong side. This review shall form the subject of some ensuing papers.

PUBLIUS

FEDERALIST NO. 18

THE SUBJECT CONTINUED, WITH FURTHER EXAMPLES

Among the confederacies of antiquity, the most considerable was that of the Grecian republics, associated under the Amphyctionic council. From the best accounts transmitted of this celebrated institution, it bore a very instructive analogy to the present confederation of the American states.

The members retained the character of independent and sovereign states, and had equal votes in the federal council. This council had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide, in the last resort, all controversies between the members; to fine the aggressing party; to employ the whole force of the confederacy against the disobedient; to admit new members. The Amphyctions were the guardians of religion, and of the immense riches belonging to the temple of Delphos, where they had the right of jurisdiction in controversies between the inhabitants and those who came to consult the oracle.

As a further provision for the efficacy of the federal powers, they took an oath mutually to defend and protect the united cities, to punish the violators of this oath, and to inflict vengeance on sacrilegious despoilers of the temple.

In theory, and upon paper, this apparatus of powers, seems amply sufficient for all general purposes. In several material instances, they exceed the powers enumerated in the articles of confederation. The Amphyctions had in their hands the superstition of the times, one of the principal engines by which government was then maintained; they had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions.

Very different, nevertheless, was the experiment from the theory. The powers, like those of the present congress, were administered by deputies appointed wholly by the cities in their political capacities; and exercised over them in

the same capacities. Hence the weakness, the disorders, and finally the destruction of the confederacy. The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest. Athens, as we learn from Demosthenes, was the arbiter of Greece seventy-three years. The Lacedemonians next governed it twenty-nine years. At a subsequent period, after the battle of Leuctra, the Thebans had their turn of domination.

It happened but too often, according to Plutarch, that the deputies of the strongest cities, awed and corrupted those of the weaker; and that judgment went in favour of the most powerful party.

Even in the midst of defensive and dangerous wars with Persia and Macedon, the members never acted in concert, and were more or fewer of them, eternally the dupes, or the hirelings, of the common enemy. The intervals of foreign war, were filled up by domestic vicissitudes, convulsions, and carnage.

After the conclusion of the war with Xerxes, it appears that the Lacedemonians required that a number of the cities should be turned out of the confederacy for the unfaithful part they had acted. The Athenians, finding that the Lacedemonians would lose fewer partisans by such a measure than themselves, and would become masters of the public deliberations, vigorously opposed and defeated the attempt. This piece of history proves at once the inefficiency of the union; the ambition and jealousy of its most powerful members; and the dependent and degraded condition of the rest. The smaller members, though entitled by the

theory of their system, to revolve in equal pride and majesty around the common centre, had become in fact satellites of the orbs of primary magnitude.

Had the Greeks, says the abbe Milot, been as wise as they were courageous, they would have been admonished by experience of the necessity of a closer union, and would have availed themselves of the peace which followed their success against the Persian arms, to establish such a reformation. Instead of this obvious policy, Athens and Sparta, inflated with the victories and the glory they had acquired, became first rivals, and then enemies; and did each other infinitely more mischief than they had suffered from Xerxes. Their mutual jealousies, fears, hatreds, and injuries, ended in the celebrated Peloponnesian war; which itself ended in the ruin and slavery of the Athenians, who had begun it.

As a weak government, when not at war, is ever agitated by internal dissensions; so these never fail to bring on fresh calamities from abroad. The Phocians having ploughed up some consecrated ground belonging to the temple of Apollo, the Amphyctionic council, according to the superstition of the age, imposed a fine on the sacrilegious offenders. The Phocians, being abetted by Athens and Sparta, refused to submit to the decree. The Thebans, with others of the cities, undertook to maintain the authority of the Amphyctions, and to avenge the violated god. The latter being the weaker party, invited the assistance of Philip of Macedon, who had secretly fostered the contest. Philip gladly seized the opportunity of executing the designs

he had long planned against the liberties of Greece. By his intrigues and bribes, he won over to his interests the popular leaders of several cities; by their influence and votes, gained admission into the Amphyctionic council; and by his arts and his arms, made himself master of the confederacy.

Such were the consequences of the fallacious principle, on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and persevered in her union, she would never have worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome.

The Achaean league, as it is called, was another society of Grecian republics, which supplies us with valuable instruction.

The union here was far more intimate, and its organization much wiser, than in the preceding instance. It will accordingly appear, that though not exempt from a similar catastrophe, it by no means equally deserved it.

The cities composing this league, retained their municipal jurisdiction, appointed their own officers, and enjoyed a perfect equality. The senate in which they were represented, had the sole and exclusive right of peace and war; of sending and receiving ambassadors; of entering into treaties and alliances; of appointing a chief magistrate or pretor, as he was called; who commanded their armies; and who, with the advice and consent of ten of the senators, not only administered the government in the recess of the senate, but had a great share

in its deliberation, when assembled. According to the primitive constitution, there were two pretors associated in the administration; but on trial a single one was preferred.

It appears that the cities had all the same laws and customs, the same weights and measures, and the same money. But how far this effect proceeded from the authority of the federal council, is left in uncertainty. It is said only, that the cities were in a manner compelled to receive the same laws and usages. When Lacedemon was brought into the league by Philopoemen, it was attended with an abolition of the institutions and laws of Lycurgus, and an adoption of those of the Achaeans. The Amphyctionic confederacy, of which she had been a member, left her in the full exercise of her government and her legislation. This circumstance alone proves a very material difference in the genius of the two systems.

It is much to be regretted that such imperfect monuments remain of this curious political fabric. Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of federal government, than by any of the like experiments with which we are acquainted.

One important fact seems to be witnessed by all the historians who take notice of Achaean affairs. It is, that as well after the renovation of the league by Aratus, as before its dissolution by the arts of Macedon, there was infinitely more of moderation and justice in the administration of its government, and

less of violence and sedition in the people, than were to be found in any of the cities exercising *singly* all the prerogatives of sovereignty. The abbe Mably, in his observations on Greece, says, that the popular government, which was so tempestuous elsewhere, caused no disorders in the members of the Achaean republic, *because it was there tempered by the general authority and laws of the confederacy.*

We are not to conclude too hastily, however, that faction did not in a certain degree agitate the particular cities; much less, that a due subordination and harmony reigned in the general system. The contrary is sufficiently displayed in the vicissitudes and fate of the republic.

Whilst the Amphyctionic confederacy remained, that of the Achaeans, which comprehended the less important cities only, made little figure on the theatre of Greece. When the former became a victim to Macedon, the latter was spared by the policy of Philip and Alexander. Under the successors of these princes, however, a different policy prevailed. The arts of division were practised among the Achaeans; each city was seduced into a separate interest; the union was dissolved. Some of the cities fell under the tyranny of Macedonian garrisons: others under that of usurpers springing out of their own confusions. Shame and oppression ere long awakened their love of liberty. A few cities re-united. Their example was followed by others, as opportunities were found of cutting off their tyrants. The league soon embraced almost the whole Peloponnesus. Macedon saw its progress; but was hindered by internal dissensions

from stopping it. All Greece caught the enthusiasm, and seemed ready to unite in one confederacy, when the jealousy and envy in Sparta and Athens, of the rising glory of the Achaeans, threw a fatal damp on the enterprise. The dread of the Macedonian power induced the league to court the alliance of the kings of Egypt and Syria; who, as successors of Alexander, were rivals of the king of Macedon. This policy was defeated by Cleomenes, king of Sparta, who was led by his ambition to make an unprovoked attack on his neighbours, the Achaeans; and who, as an enemy to Macedon, had interest enough with the Egyptian and Syrian princes, to effect a breach of their engagements with the league. The Achaeans were now reduced to the dilemma of submitting to Cleomenes, or of supplicating the aid of Macedon, its former oppressor. The latter expedient was adopted. The contest of the Greeks always afforded a pleasing opportunity to that powerful neighbour, of intermeddling in their affairs. A Macedonian army quickly appeared: Cleomenes was vanquished. The Achaeans soon experienced, as often happens, that a victorious and powerful ally, is but another name for a master. All that their most abject compliances could obtain from him, was a toleration of the exercise of their laws. Philip, who was now on the throne of Macedon, soon provoked, by his tyrannies, fresh combinations among the Greeks. The Achaeans, though weakened by internal dissensions, and by the revolt of Messene, one of its members, being joined by the Etolians and Athenians, erected the standard of opposition. Finding themselves, though thus

supported, unequal to the undertaking, they once more had recourse to the dangerous expedient of introducing the succour of foreign arms. The Romans, to whom the invitation was made, eagerly embraced it. Philip was conquered: Macedon subdued. A new crisis ensued to the league. Dissentions broke out among its members. These the Romans fostered. Callicrates, and other popular leaders, became mercenary instruments for inveigling their countrymen. The more effectually to nourish discord and disorder, the Romans had, to the astonishment of those who confided in their sincerity, already proclaimed universal liberty²² throughout Greece. With the same insidious views, they now seduced the members from the league, by representing to their pride, the violation it

committed on their sovereignty. By these arts, this union, the last hope of Greece . . . the last hope of ancient liberty, was torn into pieces; and such imbecility and distraction introduced, that the arms of Rome found little difficulty in completing the ruin which their arts had commenced. The Achaeans were cut to pieces; and Achaia loaded with chains, under which it is groaning at this hour.

I have thought it not superfluous to give the outlines of this important portion of history; both because it teaches more than one lesson; and because, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies, rather to anarchy among the members, than to tyranny in the head.

PUBLIUS

22 This was but another name more specious for the independence of the members on the federal head.

FEDERALIST NO. 19

THE SUBJECT CONTINUED, WITH FURTHER EXAMPLES

The examples of ancient confederacies, cited in my last paper, have not exhausted the source of experimental instruction on this subject. There are existing institutions, founded on a similar principle, which merit particular consideration. The first which presents itself is the Germanic body.

In the early ages of christianity, Germany was occupied by seven distinct nations, who had no common chief. The Franks, one of the number, having conquered the Gauls, established the kingdom which has taken its name from them. In the ninth century, Charlemagne, its warlike monarch, carried his victorious arms in every direction; and Germany became a part of his vast dominions. On the dismemberment, which took place under his sons, this part was erected into a separate and independent empire. Charlemagne and his immediate descendants possessed the reality, as well as the ensigns and dignity of imperial power. But the principal vassals, whose fiefs had

become hereditary, and who composed the national diets, which Charlemagne had not abolished, gradually threw off the yoke, and advanced to sovereign jurisdiction and independence. The force of imperial sovereignty was insufficient to restrain such powerful dependants; or to preserve the unity and tranquillity of the empire. The most furious private wars, accompanied with every species of calamity, were carried on between the different princes and states. The imperial authority, unable to maintain the public order, declined by degrees, till it was almost extinct in the anarchy, which agitated the long interval between the death of the last emperor of the Suabian, and the accession of the first emperor of the Austrian lines. In the eleventh century, the emperors enjoyed full sovereignty: in the fifteenth, they had little more than the symbols and decorations of power.

Out of this feudal system, which has itself many of the important features of a confederacy, has grown the federal

system, which constitutes the Germanic empire. Its powers are vested in a diet representing the component members of the confederacy; in the emperor who is the executive magistrate, with a negative on the decrees of the diet; and in the imperial chamber and aulic council, two judiciary tribunals having supreme jurisdiction in controversies which concern the empire, or which happen among its members.

The diet possesses the general power of legislating for the empire; of making war and peace; contracting alliances; assessing quotas of troops and money; constructing fortresses; regulating coin; admitting new members; and subjecting disobedient members to the ban of the empire, by which the party is degraded from his sovereign rights, and his possessions forfeited. The members of the confederacy are expressly restricted from entering into compacts, prejudicial to the empire; from imposing tolls and duties on their mutual intercourse, without the consent of the emperor and diet; from altering the value of money; from doing injustice to one another; or from affording assistance or retreat to disturbers of the public peace. And the ban is denounced against such as shall violate any of these restrictions. The members of the diet, as such, are subject in all cases to be judged by the emperor and diet, and in their private capacities by the aulic council and imperial chamber.

The prerogatives of the emperor are numerous. The most important of them are, his exclusive right to make propositions to the diet; to negative its resolutions; to name ambassadors; to confer dignities and titles; to fill vacant electorates; to found universities; to grant

privileges not injurious to the states of the empire; to receive and apply the public revenues; and generally to watch over the public safety. In certain cases, the electors form a council to him. In quality of emperor, he possesses no territory within the empire; nor receives any revenue for his support. But his revenue and dominions, in other qualities, constitute him one of the most powerful princes in Europe.

From such a parade of constitutional powers, in the representatives and head of this confederacy, the natural supposition would be, that it must form an exception to the general character which belongs to its kindred systems. Nothing would be further from the reality. The fundamental principle, on which it rests, that the empire is a community of sovereigns; that the diet is a representation of sovereigns; and that the laws are addressed to sovereigns; render the empire a nerveless body, incapable of regulating its own members, insecure against external dangers, and agitated with unceasing fermentations in its own bowels.

The history of Germany, is a history of wars between the emperor and the princes and states; of wars among the princes and states themselves; of the licentiousness of the strong, and the oppression of the weak; of foreign intrusions, and foreign intrigues; of requisitions of men and money disregarded, or partially complied with; of attempts to enforce them, altogether abortive, or attended with slaughter and desolation, involving the innocent with the guilty; of general imbecility, confusion, and misery.

In the sixteenth century, the emperor,

with one part of the empire on his side, was seen engaged against the other princes and states. In one of the conflicts, the emperor himself was put to flight, and very near being made prisoner by the elector of Saxony. The late king of Prussia was more than once pitted against his imperial sovereign; and commonly proved an overmatch for him. Controversies and wars among the members themselves, have been so common, that the German annals are crowded with the bloody pages which describe them. Previous to the peace of Westphalia, Germany was desolated by a war of thirty years, in which the emperor, with one half of the empire, was on one side; and Sweden, with the other half, on the opposite side. Peace was at length negotiated, and dictated by foreign powers; and the articles of it, to which foreign powers are parties, made a fundamental part of the Germanic constitution.

If the nation happens, on any emergency, to be more united by the necessity of self-defence, its situation is still deplorable. Military preparations must be preceded by so many tedious discussions, arising from the jealousies, pride, separate views, and clashing pretensions, of sovereign bodies, that before the diet can settle the arrangements, the enemy are in the field; and before the federal troops are ready to take it, are retiring into winter quarters.

The small body of national troops, which has been judged necessary in time of peace, is defectively kept up, badly paid, infected with local prejudices, and supported by irregular and

disproportionate contributions to the treasury.

The impossibility of maintaining order, and dispensing justice among these sovereign subjects, produced the experiment of dividing the empire into nine or ten circles or districts; of giving them an interior organization, and of charging them with the military execution of the laws against delinquent and contumacious members. This experiment has only served to demonstrate more fully, the radical vice of the constitution. Each circle is the miniature picture of the deformities of this political monster. They either fail to execute their commissions, or they do it with all the devastation and carnage of civil war. Sometimes whole circles are defaulters; and then they increase the mischief which they were instituted to remedy.

We may form some judgment of this scheme of military coercion, from a sample given by Thuanus. In Donawerth, a free and imperial city of the circle of Suabia, the abbe de St. Croix enjoyed certain immunities which had been reserved to him. In the exercise of these, on some public occasion, outrages were committed on him, by the people of the city. The consequence was, that the city was put under the ban of the empire; and the duke of Bavaria, though director of another circle, obtained an appointment to enforce it. He soon appeared before the city, with a corps of ten thousand troops; and finding it a fit occasion, as he had secretly intended from the beginning, to revive an antiquated claim, on the pretext that his ancestors had suffered the place

to be dismembered from his territory;²³ he took possession of it in his own name; disarmed and punished the inhabitants, and re-annexed the city to his domains.

It may be asked, perhaps, what has so long kept this disjointed machine from falling entirely to pieces? The answer is obvious. The weakness of most of the members, who are unwilling to expose themselves to the mercy of foreign powers; the weakness of most of the principal members, compared with the formidable powers all around them; the vast weight and influence which the emperor derives from his separate and hereditary dominions; and the interest he feels in preserving a system with which his family pride is connected, and which constitutes him the first prince in Europe: these causes support a feeble and precarious union; whilst the repellent quality, incident to the nature of sovereignty, and which time continually strengthens, prevents any reform whatever, founded on a proper consolidation. Nor is it to be imagined, if this obstacle could be surmounted, that the neighbouring powers would suffer a revolution to take place, which would give to the empire the force and pre-eminence to which it is entitled. Foreign nations have long considered themselves as interested in the changes made by events in this constitution; and have, on various occasions, betrayed their policy of perpetuating its anarchy and weakness.

If more direct examples were wanting, Poland, as a government over local sovereigns, might not improperly be

taken notice of. Nor could any proof, more striking, be given of the calamities flowing from such institutions. Equally unfit for self-government, and self-defence, it has long been at the mercy of its powerful neighbours; who have lately had the mercy to disburden it of one third of its people and territories.

The connexion among the Swiss cantons, scarcely amounts to a confederacy; though it is sometimes cited as an instance of the stability of such institutions.

They have no common treasury; no common troops even in war; no common coin; no common judicatory, nor any other common mark of sovereignty.

They are kept together by the peculiarity of their topographical position; by their individual weakness and insignificance; by the fear of powerful neighbours, to one of which they were formerly subject; by the few sources of contention among a people of such simple and homogeneous manners; by their joint interest in their dependent possessions; by the mutual aid they stand in need of, for suppressing insurrections and rebellions; an aid expressly stipulated, and often required and afforded; and by the necessity of some regular and permanent provision for accommodating disputes among the cantons. The provision is, that the parties at variance shall each choose four judges out of the neutral cantons, who, in case of disagreement, choose an umpire. This tribunal, under an oath of impartiality, pronounces definitive sentence, which

23 Pfeffel, *Nouvel abreg. chronol. de l'hist. etc. d'Allemagne*, says, the pretext was to indemnify himself for the expense of the expedition.

all the cantons are bound to enforce. The competency of this regulation may be estimated by a clause in their treaty of 1683, with Victor Amadeus of Savoy; in which he obliges himself to interpose as mediator in disputes between the cantons; and to employ force, if necessary, against the contumacious party.

So far as the peculiarity of their case will admit of comparison with that of the United States, it serves to confirm the principle intended to be established. Whatever efficacy the union may have had in ordinary cases, it appears that the moment a cause of difference sprang up, capable of trying its strength, it failed. The controversies on the subject of religion,

which in three instances have kindled violent and bloody contests, may be said in fact to have severed the league. The Protestant and Catholic cantons, have since had their separate diets; where all the most important concerns are adjusted, and which have left the general diet little other business than to take care of the common bailages.

That separation had another consequence, which merits attention. It produced opposite alliances with foreign powers: of Bern, as the head of the Protestant association, with the United Provinces; and of Luzerne, as the head of the Catholic association, with France.

PUBLIUS

FEDERALIST NO. 20

THE SUBJECT CONTINUED, WITH FURTHER EXAMPLES

The United Netherlands are a confederacy of republics, or rather of aristocracies, of a very remarkable texture; yet confirming all the lessons derived from those which we have already reviewed.

The union is composed of seven co-equal and sovereign states, and each state or province is a composition of equal and independent cities. In all important cases, not only the provinces, but the cities, must be unanimous.

The sovereignty of the union is represented by the states-general, consisting usually of about fifty deputies appointed by the provinces. They hold their seats, some for life, some for six, three, and one years. From two provinces they continue in appointment during pleasure.

The states-general have authority to enter into treaties and alliances; to make war and peace; to raise armies and equip fleets; to ascertain quotas and demand contributions. In all these cases, however, unanimity and the sanction of their constituents are requisite. They

have authority to appoint and receive ambassadors; to execute treaties and alliances already formed; to provide for the collection of duties on imports and exports; to regulate the mint, with a saving to the provincial rights; to govern as sovereigns the dependent territories. The provinces are restrained, unless with the general consent, from entering into foreign treaties; from establishing imposts injurious to others, or charging their neighbours with higher duties than their own subjects. A council of state, a chamber of accounts, with five colleges of admiralty, aid and fortify the federal administration.

The executive magistrate of the union is the stadtholder, who is now an hereditary prince. His principal weight and influence in the republic are derived from his independent title; from his great patrimonial estates; from his family connexions with some of the chief potentates of Europe; and more than all, perhaps, from his being stadtholder in the

several provinces, as well as for the union; in which provincial quality, he has the appointment of town magistrates under certain regulations, executes provincial decrees, presides when he pleases in the provincial tribunals; and has throughout the power of pardon.

As stadtholder of the union, he has, however, considerable prerogatives.

In his political capacity, he has authority to settle disputes between the provinces, when other methods fail; to assist at the deliberations of the states-general, and at their particular conferences; to give audiences to foreign ambassadors, and to keep agents for his particular affairs at foreign courts.

In his military capacity, he commands the federal troops; provides for garrisons, and in general regulates military affairs; disposes of all appointments from colonels to ensigns, and of the governments and posts of fortified towns.

In his marine capacity, he is admiral general, and superintends and directs every thing relative to naval forces, and other naval affairs; presides in the admiralties in person or by proxy; appoints lieutenant admirals and other officers; and establishes councils of war, whose sentences are not executed till he approves them.

His revenue, exclusive of his private income, amounts to 300,000 florins. The standing army which he commands consists of about 40,000 men.

Such is the nature of the celebrated Belgic confederacy, as delineated on parchment. What are the characters which practice has stampt upon it? Imbecility in the government; discord

among the provinces; foreign influence and indignities; a precarious existence in peace, and peculiar calamities from war.

It was long ago remarked by Grotius, that nothing but the hatred of his countrymen to the house of Austria, kept them from being ruined by the vices of their constitution.

The union of Utrecht, says another respectable writer, reposes an authority in the states-general, seemingly sufficient to secure harmony; but the jealousy in each province renders the practice very different from the theory.

The same instrument, says another, obliges each province to levy certain contributions; but this article never could, and probably never will, be executed; because the inland provinces, who have little commerce, cannot pay an equal quota.

In matters of contribution, it is the practice to waive the articles of the constitution. The danger of delay obliges the consenting provinces to furnish their quotas, without waiting for the others; and then to obtain reimbursement from the others, by deputations, which are frequent, or otherwise, as they can. The great wealth and influence of the province of Holland, enable her to effect both these purposes.

It has more than once happened that the deficiencies have been ultimately to be collected at the point of the bayonet; a thing practicable, though dreadful, in a confederacy, where one of the members exceeds in force all the rest; and where several of them are too small to meditate resistance: but utterly impracticable in one composed of members, several of which

are equal to each other in strength and resources, and equal singly to a vigorous and persevering defence.

Foreign ministers, says Sir William Temple, who was himself a foreign minister, elude matters taken *ad referendum*, by tampering with the provinces and cities. In 1726, the treaty of Hanover was delayed by these means a whole year. Instances of a like nature are numerous and notorious.

In critical emergencies, the states-general are often compelled to overleap their constitutional bounds. In 1688, they concluded a treaty of themselves, at the risk of their heads. The treaty of Westphalia in 1648, by which their independence was formally and finally recognized, was concluded without the consent of Zealand. Even as recently as the last treaty of peace with Great Britain, the constitutional principle of unanimity was departed from. A weak constitution must necessarily terminate in dissolution, for want of proper powers, or the usurpation of powers requisite for the public safety. Whether the usurpation, when once begun, will stop at the salutary point, or go forward to the dangerous extreme, must depend on the contingencies of the moment. Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities.

Notwithstanding the calamities produced by the stadtholdership, it has been supposed, that without his influence in the individual provinces, the causes of anarchy manifest in the confederacy, would long

ago have dissolved it. "Under such a government," says the abbe Mably, "the union could never have subsisted, if the provinces had not a spring within themselves, capable of quickening their tardiness, and compelling them to the same way of thinking. This spring is the stadtholder." It is remarked by Sir William Temple, that "in the intermissions of the stadtholdership, Holland, by her riches and her authority, which drew the others into a sort of dependence, supplied the place."

These are not the only circumstances which have controled the tendency to anarchy and dissolution. The surrounding powers impose an absolute necessity of union to a certain degree, at the same time that they nourish, by their intrigues, the constitutional vices, which keep the republic in some degree always at their mercy.

The true patriots have long bewailed the fatal tendency of these vices, and have made no less than four regular experiments by *extraordinary assemblies*, convened for the special purpose, to apply a remedy. As many times, has their laudable zeal found it impossible to *unite the public councils* in reforming the known, the acknowledged, the fatal evils of the existing constitution. Let us pause, my fellow citizens, for one moment, over this melancholy and monitory lesson of history; and with the tear that drops for the calamities brought on mankind by their adverse opinions and selfish passions, let our gratitude mingle an ejaculation to Heaven, for the propitious concord which has distinguished the consultations for our political happiness.

A design was also conceived, of estab-

lishing a general tax to be administered by the federal authority. This also had its adversaries and failed.

This unhappy people seem to be now suffering, from popular convulsions, from dissensions among the states, and from the actual invasion of foreign arms, the crisis of their destiny. All nations have their eyes fixed on the awful spectacle. The first wish prompted by humanity is, that this severe trial may issue in such a revolution of their government, as will establish their union, and render it the parent of tranquillity, freedom, and happiness: the next, that the asylum under which, we trust, the enjoyment of these blessings will speedily be secured in this country, may receive and console them for the catastrophe of their own.

I make no apology for having dwelt so long on the contemplation of these federal precedents. Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth, which it unequivocally pronounces in the present case, is, that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals; as it is a solecism in theory, so in practice, it is subversive of the order and ends of civil polity, by substituting *violence* in place of *law*, or the destructive *coercion* of the *sword*, in place of the mild and salutary *coercion* of the *magistracy*.

PUBLIUS

FEDERALIST NO. 21

FURTHER DEFECTS OF THE PRESENT CONSTITUTION

Having in the three last numbers taken a summary review of the principal circumstances and events, which depict the genius and fate of other confederate governments; I shall now proceed in the enumeration of the most important of those defects, which have hitherto disappointed our hopes from the system established among ourselves. To form a safe and satisfactory judgment of the proper remedy, it is absolutely necessary that we should be well acquainted with the extent and malignity of the disease.

The next most palpable defect of the existing confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no power to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional means. There is no express delegation of authority to them to use force against delinquent members; and if such a right should be ascribed to the

federal head, as resulting from the nature of the social compact between the states, it must be by inference and construction, in the face of that part of the second article, by which it is declared, “that each state shall retain every power, jurisdiction, and right, not *expressly* delegated to the United States in Congress assembled.” The want of such a right involves, no doubt, a striking absurdity; but we are reduced to the dilemma, either of supposing that deficiency, preposterous as it may seem, or of contravening or explaining away a provision, which has been of late a repeated theme of the eulogies of those who oppose the new constitution; and the omission of which, in that plan, has been the subject of much plausible animadversion, and severe criticism. If we are unwilling to impair the force of this applauded provision, we shall be obliged to conclude, that the United States afford the extraordinary spectacle of a government, destitute even of the shadow of constitutional power, to enforce the

execution of its own laws. It will appear, from the specimens which have been cited, that the American confederacy, in this particular, stands discriminated from every other institution of a similar kind, and exhibits a new and unexampled phenomenon in the political world.

The want of a mutual guarantee of the state governments, is another capital imperfection in the federal plan. There is nothing of this kind declared in the articles that compose it: and to imply a tacit guarantee from considerations of utility, would be a still more flagrant departure from the clause which has been mentioned, than to imply a tacit power of coercion, from the like consideration. The want of a guarantee, though it might in its consequences endanger the union, does not so immediately attack its existence, as the want of a constitutional sanction to its laws.

Without a guarantee, the assistance to be derived from the union, in repelling those domestic dangers, which may sometimes threaten the existence of the state constitutions, must be renounced. Usurpation may rear its crest in each state, and trample upon the liberties of the people; while the national government could legally do nothing more than behold its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while no succour could constitutionally be afforded by the union to the friends and supporters of the government. The tempestuous situation from which Massachusetts has scarcely emerged, evinces, that dangers of this kind are not merely speculative. Who can determine

what might have been the issue of her late convulsions, if the malcontents had been headed by a Caesar or by a Cromwell? Who can predict what effect a despotism, established in Massachusetts, would have upon the liberties of New Hampshire or Rhode Island; of Connecticut or New York?

The inordinate pride of state importance, has suggested to some minds an objection to the principle of a guarantee in the federal government, as involving an officious interference in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union; and can only flow from a misapprehension of the nature of the provision itself. It could be no impediment to reforms of the state constitutions by a majority of the people in a legal and peaceable mode. This right would remain undiminished. The guarantee could only operate against changes to be effected by violence. Towards the prevention of calamities of this kind, too many checks cannot be provided. The peace of society, and the stability of government, depend absolutely on the efficacy of the precautions adopted on this head. Where the whole power of the government is in the hands of the people, there is the less pretence for the use of violent remedies, in partial or occasional distempers of the state. The natural cure for an ill administration, in a popular or representative constitution, is, a change of men. A guarantee by the national authority, would be as much directed against the usurpations of rulers, as against the ferments and outrages of faction and sedition in the community.

The principle of regulating the contributions of the states to the common treasury by quotas, is another fundamental error in the confederation. Its repugnancy to an adequate supply of the national exigencies, has been already pointed out, and has sufficiently appeared from the trial which has been made of it. I speak of it now solely with a view to equality among the states. Those who have been accustomed to contemplate the circumstances, which produce and constitute national wealth, must be satisfied that there is no common standard, or barometer, by which the degrees of it can be ascertained. Neither the value of lands, nor the numbers of the people, which have been successively proposed as the rule of state contributions, has any pretension to being a just representative. If we compare the wealth of the United Netherlands with that of Russia or Germany, or even of France; and if we at the same time compare the total value of the lands, and the aggregate population of the contracted territory of that republic, with the total value of the lands, and the aggregate population of the immense regions of either of those kingdoms, we shall at once discover, that there is no comparison between the proportion of either of these two objects, and that of the relative wealth of those nations. If the like parallel were to be run between several of the American states, it would furnish a like result. Let Virginia be contrasted with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey, and we shall be convinced that the respective abilities of those states, in relation to revenue, bear little or no analogy to their comparative stock in lands, or to their

comparative population. The position may be equally illustrated, by a similar process between the counties of the same state. No man acquainted with the state of New York will doubt, that the active wealth of King's county bears a much greater proportion to that of Montgomery, than it would appear to do, if we should take either the total value of the lands, or the total numbers of the people, as a criterion.

The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate, the nature of the productions, the nature of the government, the genius of the citizens; the degree of information they possess; the state of commerce, of arts, of industry; these circumstances, and many more too complex, minute, or adventitious, to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different countries. The consequence clearly is, that there can be no common measure of national wealth; and of course, no general or stationary rule, by which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a confederacy, by any such rule, cannot fail to be productive of glaring inequality, and extreme oppression.

This inequality would of itself be sufficient in America to work the eventual destruction of the union, if any mode of enforcing a compliance with its requisitions could be devised. The suffering states would not long consent to remain associated upon a principle which distributed the public burthens with so unequal a hand; and which was calculated to impoverish and oppress the citizens of some states,

while those of others would scarcely be conscious of the small proportion of the weight they were required to sustain. This, however, is an evil inseparable from the principle of quotas and requisitions.

There is no method of steering clear of this inconvenience, but by authorizing the national government to raise its own revenues in its own way. Imposts, excises, and in general all duties upon articles of consumption, may be compared to a fluid, which will in time find its level with the means of paying them. The amount to be contributed by each citizen will in a degree be at his own option, and can be regulated by an attention to his resources. The rich may be extravagant . . . the poor can be frugal: and private oppression may always be avoided, by a judicious selection of objects proper for such impositions. If inequalities should arise in some states from duties on particular objects, these will, in all probability, be counterbalanced by proportional inequalities in other states, from the duties on other objects. In the course of time and things, an equilibrium, as far as it is attainable, in so complicated a subject, will be established every where. Or if inequalities should still exist, they would neither be so great in their degree, so uniform in their operation, nor so odious in their appearance, as those which would necessarily spring from quotas, upon any scale that can possibly be devised.

It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed . . . that is, an extension of the revenue. When applied

to this object, the saying is as just as it is witty, that “in political arithmetic, two and two do not always make four.” If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds.

This forms a complete barrier against any material oppression of the citizens, by taxes of this class, and is itself a natural limitation of the power of imposing them.

Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to lands and buildings, may admit of a rule of apportionment. Either the value of land, or the number of the people, may serve as a standard. The state of agriculture, and the populousness of a country, are considered as having a near relation to each other. And as a rule for the purpose intended, numbers in the view of simplicity and certainty, are entitled to a preference. In every country it is an Herculean task to obtain a valuation of the land: in a country imperfectly settled and progressive in improvement, the difficulties are increased almost to impracticability. The expense of an accurate valuation, is in all situations a formidable objection. In a branch of taxation where no limits to the discretion of the government are to be found in the nature of the thing, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave that discretion altogether at large.

PUBLIUS

FEDERALIST NO. 22

THE SAME SUBJECT CONTINUED, AND CONCLUDED

In addition to the defects of the existing federal system, enumerated in the last number, there are others of not less importance, which concur in rendering that system altogether unfit for the administration of the affairs of the union.

The want of a power to regulate commerce, is by all parties allowed to be of the number. The utility of such a power has been anticipated under the first head of our inquiries; and for this reason, as well as from the universal conviction entertained upon the subject, little need be added in this place. It is indeed evident, on the most superficial view, that there is no object, either as it respects the interests of trade or finance, that more strongly demands a federal superintendence. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers; and has given occasions of dissatisfaction between the states. No nation acquainted with the nature of our

political association, would be unwise enough to enter into stipulations with the United States, conceding on their part privileges of importance, while they were apprized that the engagements on the part of the union, might at any moment be violated by its members; and while they found, from experience, that they might enjoy every advantage they desired in our markets, without granting us any return, but such as their momentary convenience might suggest. It is not, therefore, to be wondered at, that Mr. Jenkinson, in ushering into the house of commons a bill for regulating the temporary intercourse between the two countries, should preface its introduction by a declaration, that similar provisions in former bills had been found to answer every purpose to the commerce of Great Britain, and that it would be prudent to persist in the plan until it should appear whether the American government was likely or not

to acquire greater consistency.²⁴

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

The interfering and unneighbourly regulations of some states, contrary to the true spirit of the union, have, in different instances, given just cause of umbrage and complaint to others; and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord, than injurious impediments to the intercourse between the different parts of the confederacy. "The commerce of the German empire²⁵ is in continual trammels, from the multiplicity of the duties which the several princes and states exact upon the merchandises passing through their territories; by means of which the fine streams and navigable rivers with which Germany is so happily watered, are rendered almost useless." Though the genius of the people of this country might never permit this description to be strictly applicable to us, yet we may reasonably expect, from the gradual conflicts of state regulations, that the citizens of each would at length come

to be considered and treated by the others in no better light than that of foreigners and aliens.

The power of raising armies, by the most obvious construction of the articles of the confederation, is merely a power of making requisitions upon the states for quotas of men. This practice, in the course of the late war, was found replete with obstructions to a vigorous, and to an economical system of defence. It gave birth to a competition between the states, which created a kind of auction for men. In order to furnish the quotas required of them, they outbid each other, till bounties grew to an enormous and insupportable size. The hope of a still further increase, afforded an inducement to those who were disposed to serve, to procrastinate their enlistment; and disinclined them from engaging for any considerable periods. Hence, slow and scanty levies of men, in the most critical emergencies of our affairs; short enlistments at an unparalleled expense; continual fluctuations in the troops, ruinous to their discipline, and subjecting the public safety frequently to the perilous crisis of a disbanded army. Hence also, those oppressive expedients for raising men, which were upon several occasions practised, and which nothing but the enthusiasm of liberty would have induced the people to endure.

This method of raising troops is not more unfriendly to economy and vigour, than it is to an equal distribution of the burthen. The states near the seat of war, influenced by motives of self-

24 This, as nearly as I can recollect, was the sense of this speech on introducing the last bill.

25 Encyclopedia, article Empire.

preservation, made efforts to furnish their quotas, which even exceeded their abilities; while those at a distance from danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate pressure of this inequality was not, in this case, as in that of the contributions of money, alleviated by the hope of a final liquidation. The states which did not pay their proportions of money, might at least be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies of men. We shall not, however, see much reason to regret the want of this hope, when we consider how little prospect there is, that the most delinquent states ever will be able to make compensation for their pecuniary failures. The system of quotas and requisitions, whether it be applied to men or money, is, in every view, a system of imbecility in the union, and of inequality and injustice among the members.

The right of equal suffrage among the states, is another exceptionable part of the confederation. Every idea of proportion, and every rule of fair representation, conspire to condemn a principle, which gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New York; and to Delaware, an equal voice in the national deliberations with Pennsylvania, or Virginia, or North Carolina. Its operation contradicts that fundamental maxim of republican government, which requires that the sense of the majority

should prevail. Sophistry may reply, that sovereigns are equal, and that a majority of the votes of the states will be a majority of confederated America. But this kind of logical legerdemain will never counteract the plain suggestions of justice and common sense. It may happen, that this majority of states is a small minority of the people of America; and two thirds of the people of America²⁶ could not long be persuaded, upon the credit of artificial distinctions and syllogistic subtleties, to submit their interests to the management and disposal of one third. The larger states would, after a while, revolt from the idea of receiving the law from the smaller. To acquiesce in such a privation of their due importance in the political scale, would be, not merely to be insensible to the love of power, but even to sacrifice the desire of equality. It is neither rational to expect the first, nor just to require the last. Considering how peculiarly the safety and welfare of the smaller states depend on union, they ought readily to renounce a pretension, which, if not relinquished, would prove fatal to its duration.

It may be objected to this, that not seven, but nine states, or two thirds of the whole number, must consent to the most important resolutions; and it may be thence inferred, that nine states would always comprehend a majority of the inhabitants of the union. But this does not obviate the impropriety of an equal vote, between states of the most unequal dimensions and populousness: nor is the inference accurate in point of fact; for we

26 New Hampshire, Rhode Island, New Jersey, Delaware, Georgia, South Carolina, and Maryland, are a majority of the whole number of the States, but they do not contain one third of the people.

can enumerate nine states, which contain less than a majority of the people;²⁷ and it is constitutionally possible, that these nine may give the vote. Besides, there are matters of considerable moment determinable by a bare majority; and there are others, concerning which doubts have been entertained, which, if interpreted in favour of the sufficiency of a vote of seven states, would extend its operation to interests of the first magnitude. In addition to this, it is to be observed, that there is a probability of an increase in the number of states, and no provision for a proportional augmentation of the ratio of votes.

But this is not all: what, at first sight, may seem a remedy, is, in reality, a poison. To give a minority a negative upon the majority, which is always the case where more than a majority is requisite to a decision, is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress, from the non-attendance of a few states, have been frequently in the situation of a Polish diet, where a single VETO has been sufficient to put a stop to all their movements. A sixtieth part of the union, which is about the proportion of Delaware and Rhode Island, has several times been able to oppose an entire bar to its operations. This is one of those refinements, which, in practice, has an effect the reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of something approaching towards it, has been founded upon a supposition that it would contribute to security. But its real operation is,

to embarrass the administration, to destroy the energy of government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority. In those emergencies of a nation, in which the goodness or badness, the weakness or strength of its government, is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even fortunate when such compromises can take place: for, upon some occasions, things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savour of weakness; sometimes border upon anarchy.

It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption, as well as to domestic faction, than that which permits the sense of the majority to decide; though the

27 Add New York and Connecticut to the foregoing seven, and they will still be less than a majority.

contrary of this has been presumed. The mistake has proceeded from not attending with due care to the mischiefs that may be occasioned, by obstructing the progress of government at certain critical seasons. When the concurrence of a large number is required by the constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely *to be done*; but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering that which it is necessary to do, and of keeping affairs in the same unfavourable posture in which they may happen to stand at particular periods.

Suppose, for instance, we were engaged in a war, in conjunction with one foreign nation, against another. Suppose the necessity of our situation demanded peace, and that the interest or ambition of our ally led him to seek the prosecution of the war, with views that might justify us in making separate terms. In such a state of things, this ally of ours would evidently find it much easier, by his bribes and his intrigues, to tie up the hands of government from making peace, where two thirds of all the votes were requisite to that object, than where a simple majority would suffice. In the first case, he would have to corrupt a smaller . . . in the last, a greater number. Upon the same principle, it would be much easier for a foreign power with which we were at war, to perplex our councils and embarrass our exertions. And in a commercial view, we may be subjected to similar inconveniences. A nation with which we might have a treaty of commerce, could with much greater

facility prevent our forming a connexion with her competitor in trade; though such a connexion should be ever so beneficial to ourselves.

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

In republics, persons elevated from the mass of the community, by the suffrages of their fellow-citizens, to stations of great pre-eminence and power, may find compensations for betraying their trust, which to any but minds actuated by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is, that history furnishes us with so many mortifying examples of the prevalency of foreign corruption in republican governments. How much this contributed to the ruin of the ancient commonwealths, has been already disclosed. It is well known that the deputies of the United Provinces have, in various instances, been purchased by the emissaries of the neighbouring kingdoms. The earl of Chesterfield, if my memory serves me right, in a letter to his court,

intimates, that his success in an important negotiation, must depend on his obtaining a major's commission for one of those deputies. And in Sweden, the rival parties were alternately bought by France and England, in so barefaced and notorious a manner, that it excited universal disgust in the nation; and was a principal cause that the most limited monarch in Europe, in a single day, without tumult, violence, or opposition, became one of the most absolute and uncontrolled.

A circumstance which crowns the defects of the confederation, remains yet to be mentioned . . . the want of a judiciary power. Laws are a dead letter, without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. To produce uniformity in these determinations, they ought to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. These ingredients are both indispensable. If there is in each state a court of final jurisdiction, there may be as many different final determinations on the same point, as there are courts. There are endless diversities in the opinions of men. We often see not only different courts, but the judges of the same court, differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations

have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort an uniform rule of civil justice.

This is the more necessary where the frame of the government is so compounded, that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if the particular tribunals are invested with a right of ultimate decision, besides the contradictions to be expected from difference of opinion, there will be much to fear from the bias of local views and prejudices, and from the interference of local regulations. As often as such an interference should happen, there would be reason to apprehend, that the provisions of the particular laws might be preferred to those of the general laws, from the deference with which men in office naturally look up to that authority to which they owe their official existence. The treaties of the United States, under the present constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which these are composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honour, their happiness, their safety, on so precarious a foundation?

In this review of the confederation,

I have confined myself to the exhibition of its most material defects; passing over those imperfections in its details, by which even a considerable part of the power intended to be conferred upon it, has been in a great measure rendered abortive. It must be by this time evident to all men of reflection, who are either free from erroneous prepossessions, or can divest themselves of them, that it is a system so radically vicious and unsound, as to admit not of amendment, but by an entire change in its leading features and characters.

The organization of congress is itself utterly improper for the exercise of those powers which are necessary to be deposited in the union. A single assembly may be a proper receptacle of those slender, or rather fettered authorities, which have been heretofore delegated to the federal head: but it would be inconsistent with all the principles of good government, to intrust it with those additional powers which even the moderate and more rational adversaries of the proposed constitution admit, ought to reside in the United States. If that plan should not be adopted; and if the necessity of union should be able to withstand the ambitious aims of those men, who may indulge magnificent schemes of personal aggrandizement from its dissolution; the probability would be, that we should run into the project of conferring supplementary powers upon congress, as they are now constituted. And either the machine, from the intrinsic feebleness of its structure, will moulder into pieces, in spite of our ill judged efforts to prop it; or,

by successive augmentations of its force and energy, as necessity might prompt, we shall finally accumulate in a single body, all the most important prerogatives of sovereignty; and thus entail upon our posterity, one of the most execrable forms of government that human infatuation ever contrived. Thus we should create in reality that very tyranny, which the adversaries of the new constitution either are, or affect to be, solicitous to avert.

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

PUBLIUS

FEDERALIST NO. 23

THE NECESSITY OF A GOVERNMENT, AT LEAST EQUALLY ENERGETIC WITH THE ONE PROPOSED

The necessity of a constitution, at least equally energetic with the one proposed, to the preservation of the union, is the point, at the examination of which we are now arrived.

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

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

The authorities essential to the care

of the common defence, are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation; because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite; and for this reason, no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defence.

This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer

by argument or reasoning. It rests upon axioms, as simple as they are universal . . . the *means* ought to be proportioned to the *end*; the persons from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.

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

Defective as the present confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the states, who are in fact under the most solemn obligations to furnish the supplies required of them,

the intention evidently was, that the United States should command whatever resources were by them judged requisite to the “common defence and general welfare.” It was presumed, that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has however demonstrated, that this expectation was ill founded and illusory; and the observations made under the last head will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system. That if we are in earnest about giving the union energy and duration, we must abandon the vain project of legislating upon the states in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised in other governments.

If the circumstances of our country are such as to demand a compound, instead of a simple . . . a confederate, instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the objects, as far as it can be done, which shall appertain to the different

provinces or departments of power: allowing to each the most ample authority for fulfilling those which may be committed to its charge. Shall the union be constituted the guardian of the common safety? Are fleets, and armies, and revenues, necessary to this purpose? The government of the union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same state, the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigour and success.

Who so likely to make suitable provisions for the public defence, as that body to which the guardianship of the public safety is confided? Which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the whole, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exactions; and which, by the extension of its authority throughout the states, can

alone establish uniformity and concert in the plans and measures, by which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defence, and leaving in the state governments the *effective* powers, by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burthens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description it ought to be rejected. A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident

powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention, would have given a better impression of their candour, if they had confined themselves to showing, that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils, about the extent of the powers. The POWERS are not too extensive for the objects of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face, of confiding to a government the

direction of the most essential national concerns, without daring to trust it with the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative.

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

PUBLIUS

THE ANTI-FEDERALIST PERSPECTIVE

CENTINEL VI

For the *Philadelphia Independent Gazetteer*

Incredible transition! the people who seven years ago, deemed every earthly good, every other consideration as worthless, when placed in competition with Liberty, that Heaven-born blessing, that zest of all others; the people, who, actuated by the noble ardor of patriotism, rose superior to every weakness of humanity, and shone with such dazzling lustre amidst the greatest difficulties; who, emulous of eclipsing each other in the glorious assertion of the dignity of human nature, courted every danger, and were ever ready, when necessary, to lay down their lives at the altar of liberty: I say the people, who exhibited so lately a spectacle, that commanded the admiration, and drew the plaudits of the most distant nations, are now revealing the picture, are now lost to every noble principle, are about to sacrifice that inestimable jewel, liberty, to the genius of despotism. A golden phantom held out to them, by the crafty and aspiring despots among themselves, is alluring them into the fangs of arbitrary power; and so great is their infatuation, that it seems, as if nothing short of the reality of misery necessarily attendant on slavery, will rouse them from their false confidence, or convince them of the direful deception; but then alas! it will be too late, the chains of despotism will be fast rivetted, and all escape precluded.

For years past, the harpies of power have been industriously inculcating the idea, that all our difficulties proceed from the impotency of Congress, and have at length succeeded to give to this sentiment almost universal currency and belief: the devastations, losses, and burthens occasioned by the late war; the excessive importations of foreign merchandize and luxuries which have drained the country of its specie, and involved it in debt, are all overlooked, and the inadequacy of the powers of the present confederation is erroneously supposed to be the only cause of our difficulties. Hence, persons of every description are revelling in the anticipation of the halcyon days consequent on the establishment of the new constitution. What gross

deception and fatal delusion! For, although very considerable benefit might be derived from strengthening the hands of Congress, so as to enable them to regulate commerce and counteract the adverse restrictions of other nations, which would meet with the concurrence of all persons; yet this benefit is accompanied in the new constitution with the scourge of despotic power, that will render the citizens of America tenants at will of every species of property, of every enjoyment, and make them the meer drudges of government. The gilded bait conceals corrosives that will eat up their whole substance.

Since the late able discussion, all are now sensible of great defects in the new constitution, are sensible that power is thereby granted without limitation or restriction; yet such is the impatience of people to reap the golden harvest of regulated commerce, that they will not take time to secure their liberty and happiness, nor even to secure the benefit of the expected wealth, but are weakly trusting their every concern to the discretionary disposal of their future rulers; are content to risque every abuse of power, because they are promised a good administration, because moderation and self denial are the characteristic features of men in possession of absolute sway. What egregious folly! What superlative ignorance of the nature of power does such conduct discover!

History exhibits this melancholy truth, that slavery has been the lot of nearly the whole of mankind in all ages, and, that the very small portion who have enjoyed the blessings of liberty, have soon been reduced to the common level of slavery and misery. The cause of this general vassalage may be traced to a principle of human nature, which is more powerful and operative than all the others combined; it is that lust of dominion that is inherent in every mind, in a greater or less degree; this is so universal and ever active a passion, as to influence all our actions; the different situation and qualifications of men only modifies and varies the complexion and operation of it.

For this darling pre-eminence and superiority, the merchant already possessed of a competency, adventures his all in pursuit of greater wealth; it is for this, that men of all descriptions, after having amassed fortunes still persevere in the toils of labour; in short, this is the great principle of exertion in the votaries of riches, learning, and fame.

In a savage state, pre-eminence is the result of bodily strength and intrepidity, which compels submission from all such as have the misfortune to be less able; therefore, the great end of civil government is to protect the weak from the oppression of the powerful, to put every man upon the level of equal liberty; but here again, the same lust of dominion by different means

frustrate almost always this salutary intention. In a polished state of society, wealth, talents, address, and intrigue, are the qualities that attain superiority in the great sphere of government.

The most striking illustration of the prevalence of this lust of dominion is, that the most strenuous assertors of liberty in all ages, after successfully triumphing over tyranny, have themselves become tyrants, when the unsuspecting confidence of an admiring people have entrusted them with unchecked power: rare are the instances of self-denial, or consistency of conduct in the votaries of liberty, when they have become possessed of the reins of authority; it has been the peculiar felicity of America, that her *great deliverer* did not prove a Cromwell.

Compare the declarations of the most zealous asserters of *religious* liberty whilst under the lash of persecution, with their conduct when in power; you will find that even the benevolence and humility inculcated in the gospels prove no restraint upon this love of domination—The mutual contentions of the several sects of religion in England some ages since, are sufficient evidence of this truth.

The annals of mankind demonstrate the precarious tenure of privileges and property dependent upon the will and pleasure of rulers; these illustrate the fatal danger of relying upon the moderation and self-denial of men exposed to the temptations that the Congress under the new constitution will be. The lust of power or domination is of that nature, as seeks to overcome every obstacle, and does not remit its exertions whilst any object of conquest remains, nothing short of the plenitude of dominion will satisfy this cursed demon: therefore liberty is only to be preserved by a due responsibility in the government, and by the constant attention of the people; whenever that responsibility has been lessened, or this attention remitted, in the same degree has arbitrary sway prevailed.

The celebrated Montesquieu has warned mankind of the danger of an implicit reliance on rulers; he says, that “a perpetual *jealousy* respecting liberty, is absolutely requisite in all free states:” and again “that slavery is ever preceded by sleep.”

IMPARTIAL EXAMINER V
For the *Virginia Independent Chronicle*

When a change, so momentous in it's nature, as that of new modelling a *plan* of government, becomes the object of any people's meditation, every citizen, whose mind is duly impressed with a regard for the welfare of his country, will consider himself under an indispensable obligation to make some such enquiries, as the following.—Whence flows the necessity of a change?—Does it proceed from certain *vicious properties*, which reside in the old system and form the essential parts of it?—Or will such a measure become eligible, because *evils* have arisen from the feeble texture of the plan, or a loose exercise of government, which could not well be avoided?—What are the *evils* complained of? and what will be their correspondent remedies?—Are the evils *radical*, and not be removed but by a *general* reform throughout the constitution?—Or do they result from a defect in some particular branch only? and may an adequate remedy be effected by introducing a new regulation merely as to *that* branch?

If investigations like these are seriously and dispassionately pursued, and it should be found that the present confederation of the American states contains *vicious properties*, which are inherent, fundamental, and tending to produce a general corruption, the *necessity of a change* must then be manifest. This discovery will lead to another enquiry; and that is—Do such properties pervade the whole system and contaminate all the parts of it? If so—then a *thorough change* will appear to be expedient, and it may be necessary to new model the system.

If, on the other hand, *evils* are found existing, which proceed, not so much from any internal corrupt *qualities*, as from the *feeble texture* of any parts of the system, or a *laxity* in the exercise of it's powers, it should seem adviseable to make alterations so far as to add a due degree of strength to the *weak parts*, and thereby insure *efficacy* in the government.

Should it appear, after a proper enquiry into the nature of the evils, that they are *radical*, and strike at the *vital principles* of the constitution—then to apply a *correspondent remedy*, an institution, which would produce a *general reform*, might with great propriety be deemed requisite.

If the defects are of a trivial nature, and subsist merely in some particular department or branch of the system—then amendments in the *defective branch*, tending to give energy where it had hitherto been wanting, would be amply sufficient for removing the *evils* and forming a competent remedy.

In order to discover how far the present system is vicious, or inadequate to the purposes of *this* great confederated society, for which it was established, a retrospect of the *original design* of the confederacy *itself* may afford no small degree of assistance.—Let it be recollected, then, that the *primary* object was to *form a perfect union*. This is manifested by the very “style of the confederacy.”—That it was intended to promote *justice* equally between all the states cannot be doubted; because it is an institution, calculated to unite a number of *independent republics* under a *firm league* of amity, and to provide that contributions of every kind, which had been, or might be, necessary towards supporting their *general* government, should be furnished in due proportions—whilst it was stipulated that a *mutual intercourse* and *reciprocal privileges* and *immunities* should subsist between the citizens of *all* the several states. Again, to *ensure domestic tranquility* must have been another important object with the framers of this confederation: for union, harmony and justice cannot fail to promote tranquility; and whenever a contract is formed for the purpose of procuring the *three first*, it follows, as a regular consequence, that the *other* should partake of the intention.—This great association is expressly declared to be entered into between the states “for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.”

The objects herein recited do certainly form the chief design of the present confederation; and the same are declared to be the great *ends* of the *proposed* plan of government. So far then do they agree. A subject of much contention, however, and with which the minds of different citizens are variously agitated, has arose.

It has been said that some of *these advantages*, and of high import too, cannot be obtained under the present system. It is the opinion of some citizens that the constitution proposed to us will secure all *these objects* and form a complete remedy for every *evil* now subsisting; whilst it is asserted by others that amendments might be introduced in the former, which would be competent to every *good* purpose, and promote *some* of very great consequence, that might be endangered by an adoption of the latter. Thus it is inferred that *this* system extends too far—and, like many human institutions, flits by a rapid progress from *one* extreme to *another*.

Those, who cannot approve of this plan, have very strong objections to it, because they apprehend that no *security for their liberties* will remain after

it's adoption: and although some of the *ends* proposed might be obtained thereby; yet they think the sacrifice will be too great for the benefit to be received. To enjoy a competent degree of *liberty* they consider as the greatest of human blessings—for the loss of which no acquisitions whatsoever can compensate. They esteem this (and deservedly too) as the *soul* of *all* political happiness.

It seems to be agreed on all sides that in the present system of union the Congress are not invested with sufficient powers for *regulating commerce*, and procuring the *requisite contributions* for all expences, that may be incurred for the *common defence* or *general welfare*. Hence arise the *principal* defects;—and it is presumed that the *evils* resulting from *these weak* branches in the foederal government might be adequately remedied by making due amendments merely *therein*.

It is thought by some that the powers of making and enforcing the observance of treaties are not ample enough at present. If so—cannot these be enlarged so as to answer every desirable purpose of *that branch* in the foederal institution? Thus, while many citizens cannot think that the confederation is *fundamentally vicious*, but that all the *evils* now complained of do rather proceed from a weakness in some of its parts, they apprehend no necessity for an innovation further than strengthening *those parts*. If such measures were effectually established, they conceive that all the great ends of the *general* government might be promoted.—No contention, therefore, subsists about supporting a *union*, but only concerning the *mode*; and as well those, who disapprove of the proposed plan, as those, who approve of it, consider the existence of a *union* as essential to their happiness.