

SECTION SIX

ON TAXATION AND CONCURRENT POWERS



Of all the new powers vested with the general government, none proved more controversial than the taxing authority. Most Americans associated the power to tax with sovereignty, and the Confederation Congress under the Articles of Confederation purposefully lacked this power. Although scholars and textbooks repeatedly point to the Confederation's inability to tax as a fatal defect—something with which Publius agreed—they ignore *why* the Confederation could not have that power. The Confederation was a treaty between sovereign states, which operated only upon the states and not directly upon the people and so could not raise taxes. The Constitution's change of this formula, which enacted taxes directly upon the people, required defense and explanation from Publius, outlined in *Federalist 30* through *Federalist 36*.

Publius' primary argument in these essays is that, since the Constitution established dual sovereignty between the states and general government, the authority to tax became a concurrent power shared by the general and state governments. The rest of the essays then attempted to explain why the general government needed taxation power, the nature of that authority, and why states should not worry about sharing the power.

In *Federalist 30* and *Federalist 31* Publius notes that without taxation power, governments either violently plunder their people or, in the case of the Confederation, die of atrophy. By granting the power of unlimited taxation, the proposed Constitution would stave off both calamities. Limiting the government to taxes collected only from international trade (while leaving all domestic taxation to the states) would enervate the general government, Publius argued.

Despite Publius' bold claims, he knew he had to address Anti-Federalists' arguments that the general government's taxation powers would usurp those of the

states. *Federalist 32* to *Federalist 34* address Anti-Federalists' critiques. In *Federalist 32*, he explains how the states "clearly retain all the rights of sovereignty." The only limitation the Constitution would place upon the states' taxing power revolved around imposts (i.e., taxes on foreign goods), which even Anti-Federalists agreed was an issue better suited for the general government. *Federalist 33* tackled the ever-present criticism of the Necessary and Proper Clause and the Supremacy Clause, which allowed Congress to pass legislation it considered important for implementing the other enumerated powers and made the Constitution the supreme law of the land. Publius points out that those powers amount to little more than a tautology. Still, it allowed the general government a latitude of power missing under the Articles of Confederation. In *Federalist 35* and *Federalist 36*, Publius addresses Anti-Federalist concerns regarding taxation and the size of the republic. Most of the members of the House of Representatives would derive from "landholders, merchants, and men of the learned professions," he argued. Having firsthand knowledge of the people, because they derived from the people, meant that the House of Representatives would construct a fair taxation system and not one designed for the needs of special interests. The composition of the House also meant that, despite Anti-Federalists' claims, the general government would know and understand the local circumstances needed for a proper taxation scheme.

Most Anti-Federalists agreed with Publius that the general government needed revenue independent from state requisitions and supported the Constitution's authority over imports and exports for that reason. The real fear for Anti-Federalists, however, lay in the general government's ability to establish domestic taxation. Brutus and Centinel argued that the idea of concurrent power, that both the states and the federal government could levy taxes on the same products, while permitted by the Constitution, amounted to nothing more than mere words on paper. The ability to tax anything and everything, coupled with the power of the sword (a standing army) and courts, made it a matter of time before the general government crowded out and then "annihilated" the states, they warned. The unlimited power over taxation would then lead to oppression. The people would find no respite from the taxman. As Brutus VI chillingly prophesied:

This power, exercised without limitation, will introduce itself into every corner of the city, and country—It will wait upon the ladies at their toilet, and will not leave them in any of their domestic concerns; it will accompany them to the ball, the play, and the assembly; it will go with them when they visit, and will, on all occasions, sit beside them in their carriages nor will it desert them even at church; it will enter the house of every gentleman, watch over his cellar, wait upon his cook in the kitchen, follow the servants into the parlour, preside over the table, and note down all he eats or drinks; it will attend him to his bedchamber, and watch him while he sleeps; it will take cognizance of the professional man in his office, or his study; it will

watch the merchant in the counting-house, or in his store; it will follow the mechanic to his shop, and in his work and will haunt him in his family, and in his bed; it will be a constant companion of the industrious farmer in all his labour, it will be with him in the house, and in the field, observe the toil of his hands, and the sweat of his brow; it will penetrate into the most obscure cottage; and finally, it will light upon the head of every person in the United States. To all these different classes of people, and in all these circumstances, in which it will attend them, the language in which it will address them, will be GIVE! GIVE!

QUESTIONS FOR OUR TIME

1. Why did the Anti-Federalists consider the concurrent power of taxation, the ability of both the federal government and the states to tax the same things, a trap designed to consolidate the states? Consider, for example, how the federal and some states and local governments tax income. Does the taxation power operate today under the concurrency that Publius predicted?
2. The Sixteenth Amendment to the Constitution empowered Congress to collect taxes on income. Did this constitutional amendment alter the nature of the federal government's power to tax?
3. Today, both the state and national governments enact taxes to regulate certain behaviors or practices. For example, many Americans today call for the high taxation of ammunition to curtail who will purchase it and how much can be purchased. Do you see evidence of either Publius or the Anti-Federalists envisioning the taxation power as one that could be used to regulate behavior?
4. If nearly all agreed that the general government should have taxation power over imports and exports, why did Publius insist that the general government should also have virtually unlimited taxing power domestically? Why would Publius not consider a limitation upon the federal taxing power? Has this unlimited taxing authority led to what Brutus claimed it would—a government that demands citizens “GIVE! GIVE!”?

5. Under the Affordable Care Act, the federal government could tax a citizen for failing to purchase medical insurance. Do you see evidence that Publius envisioned the federal government having such power to use its taxation power as a punitive measure?

FEDERALIST NO. 30

CONCERNING TAXATION

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

Money is with propriety considered as the vital principle of the body politic; as that which sustains its life and motion,

and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and in a short course of time perish.

In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the lives and fortunes of his subjects, has no right to impose a new tax. The consequence is, that he permits the bashaws or governors of provinces to pillage the people at discretion; and, in turn, squeezes out of them the sums of which he stands in need, to satisfy his own exigencies, and those of the state. In America, from a like

cause, the government of the union has gradually dwindled into a state of decay, approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries would be promoted by competent authorities in the proper hands, to provide the revenues which the necessities of the public might require?

The present confederation, feeble as it is, intended to repose in the United States an unlimited power of providing for the pecuniary wants of the union. But proceeding upon an erroneous principle, it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which compose that compact (as has been already stated) are authorized to ascertain and call for any sums of money necessary, in their judgment, to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are, in every constitutional sense, obligatory upon the states. These have no right to question the propriety of the demand; no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of union; though it may seldom or never have been avowedly claimed; yet in practice it has been constantly exercised; and would continue to be so, as long as the revenues of the confederacy should remain dependent on the intermediate agency of its members. What the consequences of the system have been, is within the knowledge of every man, the least conversant in our public affairs, and

has been abundantly unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation, that affords ample cause of mortification to ourselves, and of triumph to our enemies.

What remedy can there be for this situation, but in a change of the system which has produced it? In a change of the fallacious and delusive system of quotas and requisitions? What substitute can there be imagined for this *ignis fatuus* in finance, but that of permitting the national government to raise its own revenues by the ordinary methods of taxation, authorized in every well ordered constitution of civil government. Ingenious men may declaim with plausibility on any subject; but no Luman ingenuity can point out any other expedient to rescue us from the inconveniences and embarrassments, naturally resulting from defective supplies of the public treasury.

The more intelligent adversaries of the new constitution, admit the force of this reasoning; but they qualify their admission, by a distinction between what they call *internal* and *external* taxations. The former they would reserve to the state governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head. This distinction, however, would violate that fundamental maxim of good sense and sound policy, which dictates that every POWER ought to be proportionate to its OBJECT; and would still leave the general government in a kind of tutelage to the state governments, inconsistent with

every idea of vigour or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of the union? Taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment, which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves, that this resource alone, upon the most improved scale, would even suffice for its present necessities. Its future necessities admit not of calculation or limitation; and upon the principle more than once adverted to, the power of making provision for them as they arise ought to be equally unconfined. I believe it may be regarded as a position, warranted by the history of mankind, that *in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources.*

To say that deficiencies may be provided for by requisitions upon the states, is on the one hand to acknowledge that this system cannot be depended upon; and on the other hand, to depend upon it for every thing beyond a certain limit. Those who have carefully attended to its vices and deformities, as they have been exhibited by experience, or delineated in the course of these papers, must feel an invincible repugnancy to trusting the national interests, in any degree to its operation. Whenever it is brought into activity, its inevitable tendency must be to enfeeble the union, and sow the seeds of discord and contention between

the federal head and its members, and between the members themselves. Can it be expected that the deficiencies would be better supplied in this mode, than the total wants of the union have heretofore been supplied, in the same mode? It ought to be recollected, that if less will be required from the states, they will have proportionably less means to answer the demand. If the opinions of those who contend for the distinction which has been mentioned, were to be received as evidence of truth, one would be led to conclude, that there was some known point in the economy of national affairs, at which it would be safe to stop, and to say: thus far, the ends of public happiness will be promoted by supplying the wants of government, and all beyond this is unworthy of our care or anxiety. How is it possible that a government, half supplied and always necessitous, can fulfil the purposes of its institution; can provide for the security, advance the prosperity, or support the reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at home, or respectability abroad? How can its administration be any thing else than a succession of expedients temporizing, impotent, disgraceful? How will it be able to avoid a frequent sacrifice of its engagements to immediate necessity? How can it undertake or execute any liberal or enlarged plans of public good?

Let us attend to what would be the effects of this situation, in the very first war in which we should happen to be engaged. We will presume, for argument sake, that the revenue arising from the import duties answers the purposes of a provision for the

public debt, and of a peace establishment for the union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience, that proper dependence could not be placed on the success of requisitions; unable, by its own authority, to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated, from their proper objects to the defence of the state? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was become essential to the public safety. To imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In the modern system of war, nations the most wealthy are obliged to have recourse to large loans. A country so little opulent as ours, must feel this necessity in a much stronger degree. But who would lend to a government, that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure, would be as limited in their extent, as burthensome in their conditions. They would be made upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors . . . with a sparing hand, and at enormous premiums.

It may perhaps be imagined, that from the scantiness of the resources of the country, the necessity of diverting the established funds in the case supposed, would

exist; though the national government should possess an unrestrained power of taxation. But two considerations will serve to quiet all apprehension on this head; one is, that we are sure the resources of the community, in their full extent, will be brought into activity for the benefit of the union; the other is, that whatever deficiencies there may be, can without difficulty be supplied by loans.

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

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

PUBLIUS

FEDERALIST NO. 31

THE SAME SUBJECT CONTINUED

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

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

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

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

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

How else could it happen (if we admit the objectors to be sincere in their opposition) that positions so clear as those which manifest the necessity of a general power of taxation in the government of the union, should have to encounter any adversaries among men of discernment? Though these positions have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as introductory to an examination

of what may have been offered by way of objection to them. They are in substance as follow:

A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible; free from every other control but a regard to the public good and to the sense of the people.

As the duties of superintending the national defence, and of securing the public peace against foreign or domestic violence, involve a provision for casualties and dangers, to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation, and the resources of the community.

As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent, must necessarily be comprehended in that of providing for those exigencies.

As theory and practice conspire to prove that the power of procuring revenue is unavailing, when exercised over the states in their collective capacities, the federal government must of necessity be invested with an unqualified power of taxation in the ordinary modes.

Did not experience evince the contrary, it would be natural to conclude, that the propriety of a general power of taxation in the national government might safely be permitted to rest on the evidence of these propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that the antagonists of the proposed

constitution, so far from acquiescing in their justness or truth, seem to make their principal and most zealous effort against this part of the plan. It may therefore be satisfactory to analyze the arguments with which they combat it.

Those of them which have been most laboured with that view, seem in substance to amount to this: "It is not true, because the exigencies of the union may not be susceptible of limitation, that its power of laying taxes ought to be unconfined. Revenue is as requisite to the purposes of the local administrations, as to those of the union; and the former are at least of equal importance with the latter, to the happiness of the people. It is therefore as necessary, that the state governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty, in respect to the wants of the union. But an indefinite power of taxation in the *latter* might, and probably would, in time, deprive the *former* of the means of providing for their own necessities; and would subject them entirely to the mercy of the national legislature. As the laws of the union are to become the supreme law of the land; as it is to have power to pass all laws that may be NECESSARY for carrying into execution the authorities with which it is proposed to vest it; the national government might at any time abolish the taxes imposed for state objects, upon the pretence of an interference with its own. It might allege a necessity of doing this, in order to give efficacy to the national revenues: and thus all the resources of taxation might, by degrees, become the subjects of federal monopoly,

to the entire exclusion and destruction of the state governments."

This mode of reasoning appears sometimes to turn upon the supposition of usurpation in the national government; at other times, it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light, that it can be admitted to have any pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure, till it gets bewildered amidst the labyrinths of an enchanted castle, and knows not on which side to turn to escape from the apparitions which itself has raised. Whatever may be the limits, or modifications of the powers of the union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here what I have observed in substance in another place, that all observations, founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature and extent of its powers. The state governments, by their original constitutions, are invested with complete sovereignty. In what does our security consist against usurpations from that quarter? Doubtless in the manner of their formation, and in a due dependence of those who are to administer them upon the people. If the proposed construction of the federal government be found, upon

an impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all apprehensions on the score of usurpation ought to be discarded.

It should not be forgotten, that a disposition in the state governments to encroach upon the rights of the union, is quite as probable as a disposition in the union to encroach upon the rights of the state governments. What side would be likely to prevail in such a conflict, must depend on the means which the contending parties could employ, towards insuring success. As in republics, strength is always on the side of the people; and as there are weighty reasons to induce a belief, that the state governments will commonly possess most influence over them, the natural conclusion is, that such contests will be most apt to end to the disadvantage of the union; and that there

is greater probability of encroachments by the members upon the federal head, than by the federal head upon the members. But it is evident, that all conjectures of this kind must be extremely vague and fallible; and that it is by far the safest course to lay them altogether aside; and to confine our attention wholly to the nature and extent of the powers, as they are delineated in the constitution. Every thing beyond this, must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the state governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate the objections, which have been made to an indefinite power of taxation in the United States.

PUBLIUS

FEDERALIST NO. 32

THE SAME SUBJECT CONTINUED

Although I am of opinion that there would be no real danger of the consequences to the state governments, which seem to be apprehended from a power in the union to control them in the levies of money; because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments of the state governments, and a conviction of the utility and necessity of local administrations, for local purposes, would be a complete barrier against the oppressive use of such a power: yet I am willing here to allow, in its full extent, the justness of the reasoning, which requires, that the individual states should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And making this concession, I affirm, that (with the sole exception of duties on imports and exports) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the

national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its constitution.

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

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

the United States." This must necessarily be exclusive; because if each state had power to prescribe a DISTINCT RULE, there could be no UNIFORM RULE.

A case which may perhaps be thought to resemble the latter, but which is in fact widely different, affects the question immediately under consideration. I mean the power of imposing taxes on all articles other than exports and imports. This, I contend, is manifestly a concurrent and co-equal authority in the United States and in the individual states. There is plainly no expression in the granting clause, which makes that power *exclusive* in the union. There is no independent clause or sentence which prohibits the states from exercising it. So far is this from being the case, that a plain and conclusive argument to the contrary is deducible, from the restraint laid upon the states in relation to duties on imports and exports. This restriction implies an admission, that if it were not inserted, the states would possess the power it excludes; and it implies a further admission, that as to all other taxes, the authority of the states remains undiminished. In any other view it would be both unnecessary and dangerous. It would be unnecessary, because if the grant to the union of the power of laying such duties, implied the exclusion of the states, or even their subordination in this particular, there could be no need of such a restriction: it would be dangerous, because the introduction of it leads directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors be just, could not have been intended; I mean that the states, in all cases to which the restriction did not apply, would have a concurrent power of taxation with

the union. The restriction in question amounts to what lawyers call a NEGATIVE PREGNANT; that is, a *negation* of one thing, and an *affirmance* of another; a negation of the authority of the states to impose taxes on imports and exports, and an affirmance of their authority to impose them on all other articles. It would be mere sophistry to argue that it was meant to exclude them *absolutely* from the imposition of taxes of the former kind, and to leave them at liberty to lay others *subject to the control* of the national legislature. The restraining or prohibitory clause only says, that they shall not, *without the consent of congress*, lay such duties; and if we are to understand this in the sense last mentioned, the constitution would then be made to introduce a formal provision, for the sake of a very absurd conclusion; which is, that the states, *with the consent* of the national legislature, might tax imports and exports; and that they might tax every other article, *unless controled* by the same body. If this was the intention, why was it not left, in the first instance, to what is alleged to be the natural operation of the original clause, conferring a general power of taxation upon the union? It is evident that this could not have been the intention, and that it will not bear a construction of the kind.

As to a supposition of repugnancy between the power of taxation in the states and in the union, it cannot be supported in that sense which would be requisite to work an exclusion of the states. It is indeed possible that a tax might be laid on a particular article by a state, which might render it *inexpedient* that a further tax should be laid on the same article by the union; but it would not imply a

constitutional inability to impose a further tax. The quantity of the imposition, the expediency or inexpediency of an increase on either side, would be mutually questions of prudence; but there would be involved no direct contradiction of power. The particular policy of the national and of the state system of finance might now and then not exactly coincide, and might require reciprocal forbearances. It is not however a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy, that can by implication alienate and extinguish a pre-existing right of sovereignty.

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

PUBLIUS

FEDERALIST NO. 33

THE SAME SUBJECT CONTINUED

The residue of the argument against the provisions of the constitution, in respect to taxation, is ingrafted upon the following clauses: The last clause of the eighth section of the first article, authorizes the national legislature “to make all laws which shall be *necessary* and *proper*, for carrying into execution *the powers* by that constitution vested in the government of the United States, or in any department or officer thereof;” and the second clause of the sixth article declares, that “the constitution and the laws of the United States made *in pursuance thereof*, and the treaties made by their authority, shall be the *supreme law* of the land; any thing in the constitution or laws of any state to the contrary notwithstanding.”

These two clauses have been the sources of much virulent invective, and petulant declamation, against the proposed constitution. They have been held up to the people in all the exaggerated colours of misrepresentation; as the pernicious engines by which their local governments

were to be destroyed, and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this clamour, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence, that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth, which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers. This is so clear a proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity.

What is a power, but the ability or

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

This simple train of inquiry furnishes us at once with a test of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes, must be a power to pass all laws *necessary* and *proper* for the execution of that power: and what does the unfortunate and calumniated provision in question do, more than declare the same truth; to wit, that the national legislature to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws *necessary* and *proper* to carry it into effect? I have applied these observations thus particularly to the power of taxation; because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the union. But the same process will lead to the same result, in relation to all other powers declared in the constitution. And it is *expressly* to execute these powers, that the sweeping clause, as it has been affectingly called, authorizes the national legislature to pass all *necessary* and *proper* laws. If there be any thing exceptionable, it must be sought for in the specific powers, upon which

this general declaration is predicated. The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless.

But suspicion may ask, why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the union. The convention probably foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most threatens our political welfare, is, that the state governments will finally sap the foundations of the union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction. Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare.

But it may be again asked, who is to judge of the *necessity* and *propriety* of the laws to be passed for executing the powers of the union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers, as upon the declaratory clause: and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers; and its constituents in the last. If the federal government should overpass the just bounds of its authority, and make a tyrannical use of its powers; the people,

whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the constitution, as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced construction of its authority (which indeed cannot easily be imagined) the federal legislature should attempt to vary the law of descent in any state; would it not be evident, that in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the state? Suppose, again, that upon the pretence of an interference with its revenues, it should undertake to abrogate a land tax imposed by the authority of a state; would it not be equally evident, that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which the constitution plainly supposes to exist in the state governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners, who, in the imprudent zeal of their animosity to the plan of the convention, have laboured to envelope it in a cloud, calculated to obscure the plainest and simplest truths.

But it is said, that the laws of the union are to be the *supreme law* of the land. What inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A law, by the very meaning of the term, includes supremacy. It is a rule, which those to whom it is prescribed are bound

to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government; which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow from this doctrine, that acts of the larger society, which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive, that the clause which declares the supremacy of the laws of the union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it *expressly* confines this supremacy to laws made *pursuant to the constitution*; which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.

Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controled; yet, a law

abrogating or preventing the collection of a tax laid by the authority of a state, (unless upon imports and exports) would not be the supreme law of the land, but an usurpation of a power not granted by the constitution. As far as an improper accumulation of taxes, on the same object, might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interests would dictate a concert

in this respect, which would avoid any material inconvenience. The inference from the whole is . . . that the individual states would, under the proposed constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper, that this *concurrent jurisdiction* in the article of taxation, was the only admissible substitute for an entire subordination, in respect to this branch of power, of state authority to that of the union.

PUBLIUS

FEDERALIST NO. 34

THE SAME SUBJECT CONTINUED

I flatter myself it has been clearly shown in my last number, that the particular states, under the proposed constitution, would have CO-EQUAL authority with the union in the article of revenue, except as to duties on imports. As this leaves open to the states far the greatest part of the resources of the community, there can be no colour for the assertion, that they would not possess means as abundant as could be desired, for the supply of their own wants, independent of all external control. That the field is sufficiently wide, will more fully appear, when we come to develop the inconsiderable share of the public expenses, for which it will fall to the lot of the state governments to provide.

To argue upon abstract principles, that this co-ordinate authority cannot exist, would be to set up theory and supposition against fact and reality. However proper such reasonings might be, to show that a thing *ought not to exist*, they are wholly to be rejected, when they are made use of to prove that it does not exist, contrary

to the evidence of the fact itself. It is well known, that in the Roman republic, the legislative authority in the last resort, resided for ages in two different political bodies . . . not as branches of the same legislature, but as distinct and independent legislatures; in each of which an opposite interest prevailed: in one, the Patrician; in the other the Plebeian. Many arguments might have been adduced, to prove the unfitness of two such seemingly contradictory authorities, each having power to *annul* or *repeal* the acts of the other. But a man would have been regarded as frantic, who should have attempted at Rome to disprove their existence. It will readily be understood, that I allude to the COMITIA CENTURIATA and the COMITIA TRIBUTIA. The former, in which the people voted by centuries, was so arranged as to give a superiority to the Patrician interest. In the latter, in which numbers prevailed, the Plebeian interest had an entire predominancy. And yet these two legislatures co-existed for ages,

and the Roman republic attained to the pinnacle of human greatness.

In the case particularly under consideration, there is no such contradiction as appears in the example cited: there is no power on either side to annul the acts of the other. And in practice, there is little reason to apprehend any inconvenience; because, in a short course of time, the wants of the states will naturally reduce themselves within *a very narrow compass*: and in the interim, the United States will, in all probability, find it convenient to abstain wholly from those objects to which the particular states would be inclined to resort.

To form a more precise judgment of the true merits of this question, it will be well to advert to the proportion between the objects that will require a federal provision in respect to revenue, and those which will require a state provision. We shall discover that the former are altogether unlimited: and that the latter are circumscribed within very moderate bounds. In pursuing this inquiry, we must bear in mind, that we are not to confine our view to the present period, but to look forward to remote futurity. Constitutions of civil government are not to be framed upon a calculation of existing exigencies; but upon a combination of these, with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious, than to infer the extent of any power proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies, as they may happen; and as

these are illimitable in their nature, so it is impossible safely to limit that capacity. It is true, perhaps, that a computation might be made, with sufficient accuracy to answer the purpose, of the quantity of revenue requisite to discharge the subsisting engagements of the union, and to maintain those establishments which, for some time to come, would suffice in time of peace. But would it be wise, or would it not rather be the extreme of folly, to stop at this point, and to leave the government intrusted with the care of the national defence, in a state of absolute incapacity to provide for the protection of the community, against future invasions of the public peace, by foreign war or domestic convulsions? If we must be obliged to exceed this point, where can we stop short of an indefinite power of providing for emergencies as they may arise? Though it be easy to assert, in general terms, the possibility of forming a rational judgment of a due provision against probable dangers; yet we may safely challenge those who make the assertion, to bring forward their data, and may affirm, that they would be found as vague and uncertain as any that could be produced to establish the probable duration of the world. Observations, confined to the mere prospects of internal attacks, can deserve no weight; though even these will admit of no satisfactory calculations: but if we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy, and of naval wars, would involve contingencies that must baffle all the efforts of political arithmetic.

Admitting that we ought to try the novel and absurd experiment in politics, of tying up the hands of government from offensive war, founded upon reasons of state: yet, certainly, we ought not to disable it from guarding the community against the ambition or enmity of other nations. A cloud has been for some time hanging over the European world. If it should break forth into a storm, who can insure us, that in its progress a part of its fury would not be spent upon us? No reasonable man would hastily pronounce that we are entirely out of its reach. Or if the combustible materials that now seem to be collecting, should be dissipated without coming to maturity; or if a flame should be kindled without extending to us; what security can we have that our tranquillity will long remain undisturbed from some other cause, or from some other quarter? Let us recollect, that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition, of others. Who could have imagined, at the conclusion of the last war, that France and Britain, wearied and exhausted as they both were, would already have looked with so hostile an aspect upon each other? To judge from the history of mankind, we shall be compelled to conclude, that the fiery and destructive passions of war reign in the human breast with much more powerful sway, than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquillity, would be to calculate on the weaker springs of the human character.

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

In the kingdom of Great Britain, where all the ostentatious apparatus of monarchy is to be provided for, not above a fifteenth part of the annual income of the nation is appropriated to the class of expenses last mentioned: the other fourteen fifteenths are absorbed in the payment of the interest of debts contracted for carrying on the wars in which that country has been engaged, and in the maintenance of fleets and armies. If, on the one hand, it should be observed, that the expenses incurred in the prosecution of the ambitious enterprises and vain glorious pursuits of a monarchy, are not a proper standard by which to judge of those which might be necessary in a republic; it ought, on the other hand, to be remarked, that there should be as great a disproportion between the profusion and extravagance of a wealthy kingdom in its domestic administration, and the

frugality and economy which, in that particular, become the modest simplicity of republican government. If we balance a proper deduction from one side, against that which it is supposed ought to be made from the other, the proportion may still be considered as holding good.

But let us take a view of the large debt which we have ourselves contracted in a single war, and let us only calculate on a common share of the events which disturb the peace of nations, and we shall instantly perceive, without the aid of any elaborate illustration, that there must always be an immense disproportion between the objects of federal and state expenditure. It is true, that several of the states, separately, are incumbered with considerable debts, which are an excrescence of the late war. But this cannot happen again, if the proposed system be adopted; and when these debts are discharged, the only call for revenue of any consequence, which the state governments will continue to experience, will be for the mere support of their respective civil lists; to which, if we add all contingencies, the total amount in every state ought to fall considerably short of a million of dollars.

If it cannot be denied to be a just principle, that in framing a constitution of government for a nation, we ought, in those provisions which are designed to be permanent, to calculate, not on temporary, but on permanent causes of expense; our attention would be directed to a provision in favour of the state governments for an annual sum of about 1,000,000 dollars; while the exigencies of the union could be susceptible of no limits, even in imagination. In this view

of the subject, by what logic can it be maintained, that the local governments ought to command, in perpetuity, an *exclusive* source of revenue for any sum beyond that which has been stated? To extend its power further, in *exclusion* of the authority of the union, would be to take the resources of the community out of those hands which stood in need of them for the public welfare, in order to put them into other hands which could have no just or proper occasion for them.

Suppose then, the convention had been inclined to proceed upon the principle of a repartition of the objects of revenue, between the union and its members in *proportion* to their comparative necessities; what particular fund could have been selected for the use of the states, that would not either have been too much or too little; too little for their present, too much for their future wants. As to the line of separation between external and internal taxes, this would leave to the states, at a rough computation, the command of two-thirds of the resources of the community to defray from a tenth to a twentieth of its expenses; and to the union, one third of the resources of the community to defray from nine-tenths to nineteen twentieths of its expenses. If we desert this boundary, and content ourselves with leaving to the states an exclusive power of taxing houses and lands, there would still be a great disproportion between the *means* and the *end*; the possession of one-third of the resources of the community to supply, at most, one-tenth of its wants. If any fund could have been selected, and appropriated, equal to and not greater

than the object, it would have been inadequate to the discharge of the existing debts of the particular states, and would have left them dependent on the union for a provision for this purpose.

The preceding train of observations will justify the position which has been elsewhere laid down, that "A CONCURRENT JURISDICTION in the article of taxation, was the only admissible substitute for an entire subordination, in respect to this branch of power, of state authority to that of the union." Any separation of the objects of revenue that could have been fallen upon, would

have amounted to a sacrifice of the great INTERESTS of the union to the POWER of the individual states. The convention thought the concurrent jurisdiction preferable to that subordination; and it is evident that it has at least the merit of reconciling an indefinite constitutional power of taxation in the federal government, with an adequate and independent power in the states to provide for their own necessities. There remain a few other lights, in which this important subject of taxation will claim a further consideration.

PUBLIUS

FEDERALIST NO. 35

THE SAME SUBJECT CONTINUED

Before we proceed to examine any other objections to an indefinite power of taxation in the union, I shall make one general remark; which is, that if the jurisdiction of the national government, in the article of revenue, should be restricted to particular objects, it would naturally occasion an undue proportion of the public burthens to fall upon those objects. Two evils would spring from this source . . . the oppression of particular branches of industry, and an unequal distribution of the taxes, as well among the several states, as among the citizens of the same state.

Suppose, as has been contended for, the federal power of taxation were to be confined to duties on imports; it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend these duties to an injurious excess. There are persons who imagine that this can never be the case; since the higher they are, the more it is alleged they will tend to

discourage an extravagant consumption, to produce a favourable balance of trade, and to promote domestic manufactures. But all extremes are pernicious in various ways. Exorbitant duties on imported articles serve to beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself: they tend to render other classes of the community tributary, in an improper degree, to the manufacturing classes, to whom they give a premature monopoly of the markets: they sometimes force industry out of its most natural channels into others in which it flows with less advantage; and in the last place, they oppress the merchant, who is often obliged to pay them himself without any retribution from the consumer. When the demand is equal to the quantity of goods at market, the consumer generally pays the duty; but when the markets happen to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his profits but breaks in upon his

capital. I am apt to think, that a division of the duty, between the seller and the buyer, more often happens than is commonly imagined. It is not always possible to raise the price of a commodity, in exact proportion to every additional imposition laid upon it. The merchant, especially in a country of small commercial capital, is often under a necessity of keeping prices down in order to a more expeditious sale.

The maxim, that the consumer is the payer, is so much oftener true than the reverse of the proposition, that it is far more equitable that the duties on imports should go into a common stock, than that they should redound to the exclusive benefit of the importing states. But it is not so generally true, as to render it equitable, that those duties should form the only national fund. When they are paid by the merchant, they operate as an additional tax upon the importing state; whose citizens pay their proportion of them in the character of consumers. In this view, they are productive of inequality among the states; which inequality would be increased with the increased extent of the duties. The confinement of the national revenues to this species of imposts, would be attended with inequality, from a different cause, between the manufacturing and the non-manufacturing states. The states which can go furthest towards the supply of their own wants, by their own manufactures, will not, according to their numbers or wealth, consume so great a proportion of imported articles, as those states which are not in the same favourable situation. They would not, therefore, in this mode alone, contribute to the public treasury in

a ratio to their abilities. To make them do this, it is necessary that recourse be had to excises; the proper objects of which are particular kinds of manufactures. New York is more deeply interested in these considerations, than such of her citizens as contend for limiting the power of the union to external taxation, may be aware of. New York is an importing state, and from a greater disproportion between her population and territory, is less likely, than some other states, speedily to become in any considerable degree a manufacturing state. She would of course suffer, in a double light, from restraining the jurisdiction of the union to commercial imposts.

So far as these observations tend to inculcate a danger of the import duties being extended to an injurious extreme, it may be observed, conformably to a remark made in another part of these papers, that the interest of the revenue itself would be a sufficient guard against such an extreme. I readily admit that this would be the case, as long as other resources were open; but if the avenues to them were closed, HOPE, stimulated by necessity, might beget experiments, fortified by rigorous precautions and additional penalties; which, for a time, might have the intended effect, till there had been leisure to contrive expedients to elude these new precautions. The first success would be apt to inspire false opinions; which it might require a long course of subsequent experience to correct. Necessity, especially in politics, often occasions false hopes, false reasonings, and a system of measures correspondently erroneous. But even if this supposed excess should not

be a consequence of the limitation of the federal power of taxation, the inequalities spoken of would still ensue, though not in the same degree, from the other causes that have been noticed. Let us now return to the examination of objections.

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

The idea of an actual representation of all classes of the people, by persons of each class, is altogether visionary. Unless it were expressly provided in the constitution, that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and

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

With regard to the learned professions, little need be observed: they truly form no distinct interest in society; and according to their situation and talents, will be indiscriminately the objects of the

confidence and choice of each other, and of other parts of the community.

Nothing remains but the landed interest; and this, in a political view, and particularly in relation to taxes, I take to be perfectly united, from the wealthiest landlord, down to the poorest tenant. No tax can be laid on land which will not affect the proprietor of thousands of acres, as well as the proprietor of a single acre. Every landholder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if we even could suppose a distinction of interests between the opulent landholder, and the middling farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number, than in the assembly, which is composed of a greater number. Where the qualifications of the electors are the same, whether they have to choose a small or a large number, their votes will fall upon those in whom they have most confidence; whether these happen to be men of large fortunes or of moderate property, or of no property at all.

It is said to be necessary that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never

happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions. But where is the danger that the interests and feelings of the different classes of citizens will not be understood or attended to by these three descriptions of men? Will not the landholder know and feel whatever will promote or injure the interests of landed property? and will he not, from his own interest in that species of property, be sufficiently prone to resist every attempt to prejudice or encumber it? Will not the merchant understand and be disposed to cultivate, as far as may be proper, the interests of the mechanic and manufacturing arts, to which his commerce is so nearly allied? Will not the man of the learned profession, who will feel a neutrality to the rivalships among the different branches of industry, be likely to prove an impartial arbiter between them, ready to promote either, so far as it shall appear to him conducive to the general interests of the community?

If we take into the account the momentary humours or dispositions which may happen to prevail in particular parts of the society, and to which a wise administration will never be inattentive, is the man whose situation leads to extensive inquiry and information less likely to be a competent judge of their nature, extent, and foundation, than one whose observation does not travel beyond the circle of his neighbours and acquaintances? Is it not natural that a

man who is a candidate for the favour of the people, and who is dependent on the suffrages of his fellow citizens for the continuance of his public honours, should take care to inform himself of their dispositions and inclinations, and should be willing to allow them their proper degree of influence upon his conduct? This dependence, and the necessity of being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they are the strong chords of sympathy between the representative and the constituent.

There is no part of the administration of government that requires extensive information, and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best, will be least likely to resort to oppressive

expedients, or to sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burthensome. There can be no doubt that, in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it is, should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense, the proposition has either no meaning, or an absurd one. And in that sense, let every considerate citizen judge for himself, where the requisite qualification is most likely to be found.

PUBLIUS

FEDERALIST NO. 36

THE SAME SUBJECT CONTINUED

We have seen that the result of the observations to which the foregoing number has been principally devoted, is, that from the natural operation of the different interests and views of the various classes of the community, whether the representation of the people be more or less numerous, it will consist almost entirely of proprietors of land, of merchants, and of members of the learned professions, who will truly represent all those different interests and views. If it should be objected, that we have seen other descriptions of men in the local legislatures; I answer, that it is admitted there are exceptions to the rule, but not in sufficient number to influence the general complexion or character of the government. There are strong minds in every walk of life, that will rise superior to the disadvantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from the society in general. The door ought to be equally

open to all; and I trust, for the credit of human nature, that we shall see examples of such vigorous plants flourishing in the soil of federal, as well as of state legislation; but occasional instances of this sort, will not render the reasoning, founded upon the general course of things, less conclusive.

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

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

There is another objection of a somewhat more precise nature, which claims our attention. It has been asserted that a power of internal taxation in the national legislature, could never be exercised with advantage, as well from the want of a sufficient knowledge of local circumstances, as from an interference between the revenue laws of the union, and of the particular states. The supposition of a want of proper knowledge, seems to be entirely destitute of foundation. If any question is depending in a state legislature, respecting one of the counties, which demands a knowledge of local details, how is it acquired? No doubt from the information of the members of the county. Cannot the like knowledge be obtained in the national legislature, from the representatives of each state? And is it not to be presumed, that the men who will generally be sent there, will be possessed of the necessary degree of intelligence, to be able to communicate that information? Is the knowledge of local circumstances, as applied to taxation, a minute topographical acquaintance with all the mountains, rivers, streams, highways, and bye-paths in each state? Or is it a general acquaintance with its situation, and resources . . . with the state of its agriculture, commerce, manufactures . . . with the nature of its products and consumptions . . . with the

different degrees and kinds of its wealth, property and industry?

Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men, or to boards composed of a few individuals, who digest and prepare, in the first instance, the plans of taxation; which are afterwards passed into law by the authority of the sovereign or legislature. Inquisitive and enlightened statesmen, are every where deemed best qualified to make a judicious selection of the objects proper for revenue; which is a clear indication, as far as the sense of mankind can have weight in the question, of the species of knowledge of local circumstances, requisite to the purposes of taxation.

The taxes intended to be comprised under the general denomination of internal taxes, may be sub-divided into those of the *direct*, and those of the *indirect* kind. Though the objection be made to both, yet the reasoning upon it seems to be confined to the former branch. And indeed as to the latter, by which must be understood duties and excises on articles of consumption, one is at a loss to conceive, what can be the nature of the difficulties apprehended. The knowledge relating to them, must evidently be of a kind, that will either be suggested by the nature of the article itself, or can easily be procured from any well informed man, especially of the mercantile class. The circumstances that may distinguish its situation in one state, from its situation in another, must be few, simple, and easy to be comprehended. The principal thing to be attended to, would be to avoid

those articles which had been previously appropriated to the use of a particular state; and there could be no difficulty in ascertaining the revenue system of each. This could always be known from the respective codes of laws, as well as from the information of the members of the several states.

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

But there is a simple point of view, in which this matter may be placed, that must be altogether satisfactory. The

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

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

It has been very properly observed, by different speakers and writers on the side of the constitution, that if the exercise of the power of internal taxation by the union, should be judged beforehand upon mature consideration, or should be discovered on experiment to be really inconvenient, the federal government may forbear the use of it, and have recourse to requisitions in its stead. By way of answer to this, it has been triumphantly asked, why not in the first instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be given; the first is, that the actual exercise of the power, may be found both *convenient* and *necessary*; for it is impossible to prove in theory, or otherwise than by the experiment, that it cannot be advantageously exercised. The

contrary indeed, appears most probable. The second answer is, that the existence of such a power in the constitution, will have a strong influence in giving efficacy to requisitions. When the states know that the union can supply itself without their agency, it will be a powerful motive for exertion on their part.

As to the interference of the revenue laws of the union, and of its members, we have already seen that there can be no clashing or repugnancy of authority. The laws cannot, therefore, in a legal sense, interfere with each other; and it is far from impossible to avoid an interference even in the policy of their different systems. An effectual expedient for this purpose will be, mutually to abstain from those objects, which either side may have first had recourse to. As neither can *control* the other, each will have an obvious and sensible interest in this reciprocal forbearance. And where there is an *immediate* common interest, we may safely count upon its operation. When the particular debts of the states are done away, and their expenses come to be limited within their natural compass, the possibility almost of interference will vanish. A small land tax will answer the purpose of the states, and will be their most simple, and most fit resource.

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

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

As to any argument derived from a supposed system of influence, it is a sufficient answer to say, that it ought not to be presumed; but the supposition is susceptible of a more precise answer. If such a spirit should infest the councils of the union, the most certain road to the accomplishment of its aim would be, to employ the state officers as much as possible, and to attach them to the union by an accumulation of their emoluments. This would serve to turn the tide of state influence into the channels of the national government, instead of making federal influence flow in an opposite and adverse current. But all suppositions of this kind are invidious, and ought to be

banished from the consideration of the great question before the people. They can answer no other end than to cast a mist over the truth.

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

the community from oppression!

As to poll taxes, I, without scruple, confess my disapprobation of them; and though they have prevailed from an early period in those states,³¹ which have uniformly been the most tenacious of their rights, I should lament to see them introduced into practice under the national government. But does it follow, because there is a power to lay them, that they will actually be laid? Every state in the union has power to impose taxes of this kind; and yet in several of them they are unknown in practice. Are the state governments to be stigmatized as tyrannies, because they possess this power? If they are not, with what propriety can the like power justify such a charge against the national government, or even be urged as an obstacle to its adoption? As little friendly as I am to the species of imposition, I still feel a thorough conviction, that the power of having recourse to it, ought to exist in the federal government. There are certain emergencies of nations, in which expedients, that in the ordinary state of things ought to be forborn, become essential to the public weal. And the government, from the possibility of such emergencies, ought ever to have the option of making use of them. The real scarcity of objects in this country, which may be considered as productive sources of revenue, is a reason peculiar to itself, for not abridging the discretion of the national councils in this respect. There may exist certain critical and tempestuous conjunctures of the state, in which a poll

31 The New England states.

tax may become an inestimable resource. And as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defence and security.

I have now gone through the examination of those powers, proposed to be conferred upon the federal government, which relate more peculiarly to its energy, and to its efficiency for answering the great and primary objects of union. There are others which, though omitted here, will, in order to render the view of the subject more complete, be taken notice of under the next head of our inquiries. I flatter myself the progress already made, will have sufficed to satisfy

the candid and judicious part of the community, that some of the objections which have been most strenuously urged against the constitution, and which were most formidable in their first appearance, are not only destitute of substance, but if they had operated in the formation of the plan, would have rendered it incompetent to the great ends of public happiness and national prosperity. I equally flatter myself, that a further and more critical investigation of the system, will serve to recommend it still more to every sincere and disinterested advocate for good government; and will leave no doubt with men of this character, of the propriety and expediency of adopting it. Happy will it be for ourselves, and most honourable for human nature, if we have wisdom and virtue enough, to set so glorious an example to mankind.

PUBLIUS

THE ANTI-FEDERALIST PERSPECTIVE

BRUTUS VI

For the *New York Journal*

The general government is to be vested with authority to levy and collect taxes, duties, and excises; the separate states have also power to impose taxes, duties, and excises, except that they cannot lay duties on exports and imports without the consent of Congress. Here then the two governments have concurrent jurisdiction; both may lay impositions of this kind. But then the general government have superadded to this power, authority to make all laws which shall be necessary and proper for carrying the foregoing power into execution. Suppose then that both governments should lay taxes, duties, and excises, and it should fall so heavy on the people that they would be unable, or be so burdensome that they would refuse to pay them both—would it not be necessary that the general legislature should suspend the collection of the state tax? It certainly would. For, if the people could not, or would not pay both, they must be discharged from the tax to the state, or the tax to the general government could not be collected. —The conclusion therefore is inevitable, that the respective state governments will not have the power to raise one shilling in any way, but by the permission of the Congress. I presume no one will pretend, that the states can exercise legislative authority, or administer justice among their citizens for any length of time, without being able to raise a sufficiency to pay those who administer their governments.

If this be true, and if the states can raise money only by permission of the general government, it follows that the state governments will be dependent on the will of the general government for their existence.

What will render this power in Congress effectual and sure in its operation is, that the government will have complete judicial and executive authority to carry all their laws into effect, which will be paramount to the judicial and executive authority of the individual states: in vain therefore will be all interference of the legislatures, courts, or magistrates of any of the

states on the subject; for they will be subordinate to the general government, and engaged by oath to support it, and will be constitutionally bound to submit to their decisions.

The general legislature will be empowered to lay any tax they chuse, to annex any penalties they please to the breach of their revenue laws; and to appoint as many officers as they may think proper to collect the taxes. They will have authority to farm the revenues and to vest the farmer general, with his subalterns, with plenary powers to collect them, in any way which to them may appear eligible. And the courts of law, which they will be authorized to institute, will have cognizance of every case arising under the revenue laws, the conduct of all the officers employed in collecting them; and the officers of these courts will execute their judgments. There is no way, therefore, of avoiding the destruction of the state governments, whenever the Congress please to do it, unless the people rise up, and, with a strong hand, resist and prevent the execution of constitutional laws. The fear of this, will, it is presumed, restrain the general government, for some time, within proper bounds; but it will not be many years before they will have a revenue, and force, at their command, which will place them above any apprehensions on that score.

How far the power to lay and collect duties and excises, may operate to dissolve the state governments, and oppress the people, it is impossible to say. It would assist us much in forming a just opinion on this head, to consider the various objects to which this kind of taxes extend, in European nations, and the infinity of laws they have passed respecting them. Perhaps, if leisure will permit, this may be essayed in some future paper.

It was observed in my last number, that the power to lay and collect duties and excises, would invest the Congress with authority to impose a duty and excise on every necessary and convenience of life. As the principal object of the government, in laying a duty or excise, will be, to raise money, it is obvious, that they will fix on such articles as are of the most general use and consumption; because, unless great quantities of the article, on which the duty is laid, is used, the revenue cannot be considerable. We may therefore presume, that the articles which will be the object of this species of taxes will be either the real necessities of life; or if not these, such as from custom and habit are esteemed so. I will single out a few of the productions of our own country, which may, and probably will, be of the number.

Cider is an article that most probably will be one of those on which an excise will be laid, because it is one, which this country produces in great

abundance, which is in very general use, is consumed in great quantities, and which may be said too not to be a real necessary of life. An excise on this would raise a large sum of money in the United States. How would the power, to lay and collect an excise on cider, and to pass all laws proper and necessary to carry it into execution, operate in its exercise? It might be necessary, in order to collect the excise on cider, to grant to one man, in each county, an exclusive right of building and keeping cider-mills, and oblige him to give bonds and security for payment of the excise; or, if this was not done, it might be necessary to license the mills, which are to make this liquor, and to take from them security, to account for the excise; or, if otherwise, a great number of officers must be employed, to take account of the cider made, and to collect the duties on it.

Porter, ale, and all kinds of malt-liquors, are articles that would probably be subject also to an excise. It would be necessary, in order to collect such an excise, to regulate the manufactory of these, that the quantity made might be ascertained or otherwise security could not be had for the payment of the excise. Every brewery must then be licensed, and officers appointed, to take account of its product, and to secure the payment of the duty, or excise, before it is sold. Many other articles might be named, which would be objects of this species of taxation, but I refrain from enumerating them. It will probably be said, by those who advocate this system, that the observations already made on this head, are calculated only to inflame the minds of the people, with the apprehension of dangers merely imaginary. That there is not the least reason to apprehend, the general legislature will exercise their power in this manner. To this I would only say, that these kinds of taxes exist in Great Britain, and are severely felt. The excise on cider and perry, was imposed in that nation a few years ago, and it is in the memory of every one, who read the history of the transaction, what great tumults it occasioned.

This power, exercised without limitation, will introduce itself into every corner of the city, and country—It will wait upon the ladies at their toilet, and will not leave them in any of their domestic concerns; it will accompany them to the ball, the play, and the assembly; it will go with them when they visit, and will, on all occasions, sit beside them in their carriages nor will it desert them even at church; it will enter the house of every gentleman, watch over his cellar, wait upon his cook in the kitchen, follow the servants into the parlour, preside over the table, and note down all he eats or drinks;

it will attend him to his bedchamber, and watch him while he sleeps; it will take cognizance of the professional man in his office, or his study; it will watch the merchant in the counting-house, or in his store; it will follow the mechanic to his shop, and in his work and will haunt him in his family, and in his bed; it will be a constant companion of the industrious farmer in all his labour, it will be with him in the house, and in the field, observe the toil of his hands, and the sweat of his brow; it will penetrate into the most obscure cottage; and finally, it will light upon the head of every person in the United States. To all these different classes of people, and in all these circumstances, in which it will attend them, the language in which it will address them, will be GIVE! GIVE!

A power that has such latitude, which reaches every person in the community in every conceivable circumstance, and lays hold of every species of property they possess, and which has no bounds set to it, but the discretion of those who exercise it[,] I say, such a power must necessarily, from its very nature, swallow up all the power of the state governments.

I shall add but one other observation on this head, which is this—It appears to me a solecism, for two men, or bodies of men, to have unlimited power respecting the same object. It contradicts the scripture maxim, which saith, “no man can serve two masters,” the one power or the other must prevail, or else they will destroy each other, and neither of them effect their purpose. It may be compared to two mechanic powers, acting upon the same body in opposite directions, the consequence would be, if the powers were equal, the body would remain in a state of rest, or if the force of the one was superior to that of the other, the stronger would prevail, and overcome the resistance of the weaker.

But it is said, by some of the advocates of this system, “That the idea that Congress can levy taxes at pleasure, is false, and the suggestion wholly unsupported: that the preamble to the constitution is declaratory of the purposes of the union, and the assumption of any power not necessary to establish justice, &c. to provide for the common defence, &c. will be unconstitutional. Besides, in the very clause which gives the power of levying duties and taxes, the purposes to which the money shall be appropriated, are specified, viz. to pay the debts, and provide for the common defence and general welfare” [Noah Webster]. I would ask those, who reason thus, to define what ideas are included under the terms, to provide for the common defence and general welfare? Are these terms definite, and will they be

understood in the same manner, and to apply to the same cases by every one? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter. To provide for the general welfare, is an abstract proposition, which mankind differ in the explanation of, as much as they do on any political or moral proposition that can be proposed; the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare; and both sides may be honest in their professions, or both may have sinister views. Those who advocate this new constitution declare, they are influenced by a regard to the general welfare; those who oppose it, declare they are moved by the same principle; and I have no doubt but a number on both sides are honest in their professions; and yet nothing is more certain than this, that to adopt this constitution, and not to adopt it, cannot both of them be promotive of the general welfare.

It is as absurd to say, that the power of Congress is limited by these general expressions, “to provide for the common safety, and general welfare,” as it would be to say, that it would be limited, had the constitution said they should have power to lay taxes, &c. at will and pleasure. Were this authority given, it might be said, that under it the legislature could not do injustice, or pursue any measures, but such as were calculated to promote the public good, and happiness. For every man, rulers as well as others, are bound by the immutable laws of God and reason, always to will what is right. It is certainly right and fit, that the governors of every people should provide for the common defence and general welfare; every government, therefore, in the world, even the greatest despot, is limited in the exercise of his power. But however just this reasoning may be, it would be found, in practice, a most pitiful restriction. The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves.

There are others of the favourers of this system, who admit, that the power of the Congress under it, with respect to revenue, will exist without limitation, and contend, that so it ought to be.

It is said, “The power to raise armies, to build and equip fleets, and to provide for their support, ought to exist without limitation, because it is impossible to foresee, or to define, the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.”]

This, it is said, “is one of those truths which, to correct and unprejudiced minds, carries its own evidence along with it. It rests upon axioms as simple as they are universal: 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” [Federalist, No. 23].

This same writer insinuates, that the opponents to the plan promulgated by the convention, manifests a want of candor, in objecting to the extent of the powers proposed to be vested in this government; because he asserts, with an air of confidence, that the powers ought to be unlimited as to the object to which they extend; and that this position, if not self-evident, is at least clearly demonstrated by the foregoing mode of reasoning. But with submission to this author’s better judgment, I humbly conceive his reasoning will appear, upon examination, more specious than solid. The means, says the gentleman, ought to be proportioned to the end: admit the proposition to be true it is then necessary to enquire, what is the end of the government of the United States, in order to draw any just conclusions from it. Is this end simply to preserve the general government, and to provide for the common defence and general welfare of the union only? certainly not: for beside this, the state governments are to be supported, and provision made for the managing such of their internal concerns as are allotted to them. It is admitted, “that the circumstances of our country are such, as to demand a compound, instead of a simple, a confederate, instead of a sole government,” that the objects of each ought to be pointed out, and that each ought to possess ample authority to execute the powers committed to them. The government then, being complex in its nature, the end it has in view is so also; and it is as necessary, that the state governments should possess the means to attain the ends expected from them, as for the general government. Neither the general government, nor the state governments, ought to be vested with all the powers proper to be exercised for promoting the ends of government. The powers are divided between them—certain ends are to be attained by the one, and other certain ends by the other; and these, taken together, include all the ends of good government. This being the case, the conclusion follows, that each should be furnished with the means, to attain the ends, to which they are designed.

To apply this reasoning to the case of revenue; the general government is charged with the care of providing for the payment of the debts of the United States; supporting the general government, and providing for the defence of the union. To obtain these ends, they should be furnished with

means. But does it thence follow, that they should command all the revenues of the United States! Most certainly it does not. For if so, it will follow, that no means will be left to attain other ends, as necessary to the happiness of the country, as those committed to their care. The individual states have debts to discharge; their legislatures and executives are to be supported, and provision is to be made for the administration of justice in the respective states. For these objects the general government has no authority to provide; nor is it proper it should. It is clear then, that the states should have the command of such revenues, as to answer the ends they have to obtain. To say, “that the circumstances that endanger the safety of nations are infinite,” and from hence to infer, that all the sources of revenue in the states should be yielded to the general government, is not conclusive reasoning: for the Congress are authorized only to controul in general concerns, and not regulate local and internal ones; and these are as essentially requisite to be provided for as those. The peace and happiness of a community is as intimately connected with the prudent direction of their domestic affairs, and the due administration of justice among themselves, as with a competent provision for their defence against foreign invaders, and indeed more so.

Upon the whole, I conceive, that there cannot be a clearer position than this, that the state governments ought to have an uncontrollable power to raise a revenue, adequate to the exigencies of their governments; and, I presume, no such power is left them by this constitution.

BRUTUS VII

For the New York Journal

The idea, that the powers of congress in respect to revenue ought to be unlimited, “because the circumstances which may affect the public safety are not reducible to certain determinate limits,” is novel, as it relates to the government of the united states. The inconveniencies which resulted from the feebleness of the present confederation was discerned, and felt soon after its adoption. It was soon discovered, that a power to require money, without either the authority or means to enforce a collection of it, could not be relied upon either to provide for the common defence, the discharge of the national debt, or for support of government. Congress therefore, so early as February 1781, recommended to the states to invest them with a power to levy an impost of five per cent ad valorem, on all imported goods, as a fund to be appropriated to discharge the debts already contracted, or which

should hereafter be contracted for the support of the war, to be continued until the debts should be fully and finally discharged. There is not the most distant idea held out in this act, that an unlimited power to collect taxes, duties and excises was necessary to be vested in the united states, and yet this was a time of the most pressing danger and distress. The idea then was, that if certain definite funds were assigned to the union, which were certain in their natures, productive, and easy of collection, it would enable them to answer their engagements, and provide for their defence, and the impost of five per cent was fixed upon for the purpose.

This same subject was revived in the winter and spring of 1783, and after a long consideration of the subject, and many schemes were proposed; the result was, a recommendation of the revenue system of April 1783; this system does not suggest an idea that it was necessary to grant the United States unlimited authority in matters of revenue. A variety of amendments were proposed to this system, some of which are upon the journals of Congress, but it does not appear that any of them proposed to invest the general government with discretionary power to raise money. On the contrary, all of them limit them to certain definite objects, and fix the bounds over which they could not pass. This recommendation was passed at the conclusion of the war, and was founded on an estimate of the whole national debt. It was computed, that one million and an half of dollars, in addition to the impost, was a sufficient sum to pay the annual interest of the debt, and gradually to abolish the principal. —Events have proved that their estimate was sufficiently liberal, as the domestic debt appears upon its being adjusted to be less than it was computed, and since this period a considerable portion of the principal of the domestic debt has been discharged by the sale of the western lands. It has been constantly urged by Congress, and by individuals, ever since, until lately, that had this revenue been appropriated by the states, as it was recommended, it would have been adequate to every exigency of the union. Now indeed it is insisted, that all the treasures of the country are to be under the controul of that body, whom we are to appoint to provide for our protection and defence against foreign enemies. The debts of the several states, and the support of the governments of them are to trust to fortune and accident. If the union should not have occasion for all the money they can raise, they will leave a portion for the state, but this must be a matter of mere grace and favor. Doctrines like these would not have been listened to by any state in the union, at a time when we were pressed on every side by a powerful enemy, and were called upon

to make greater exertions than we have any reason to expect we shall ever be again. The ability and character of the convention, who framed the proffered constitution, is sounded forth and reiterated by every declaimer and writer in its favor, as a powerful argument to induce its adoption. But are not the patriots who guided our councils in the perilous times of the war, entitled to equal respect. How has it happened, that none of these perceived a truth, which it is pretended is capable of such clear demonstration, that the power to raise a revenue should be deposited in the general government without limitation? Were the men so dull of apprehension, so incapable of reasoning as not to be able to draw the inference? The truth is, no such necessity exists. It is a thing practicable, and by no means so difficult as is pretended, to limit the powers of the general government in respect to revenue, while yet they may retain reasonable means to provide for the common defence.

It is admitted, that human wisdom cannot foresee all the variety of circumstances that may arise to endanger the safety of nations—and it may with equal truth be added, that the power of a nation, exerted with its utmost vigour, may not be equal to repel a force with which it may be assailed, much less may it be able, with its ordinary resources and power, to oppose an extraordinary and unexpected attack; —but yet every nation may form a rational judgment, what force will be competent to protect and defend it, against any enemy with which it is probable it may have to contend. In extraordinary attacks, every country must rely upon the spirit and special exertions of its inhabitants—and these extraordinary efforts will always very much depend upon the happiness and good order the people experience from a wise and prudent administration of their internal government. The states are as capable of making a just estimate on this head, as perhaps any nation in the world. —We have no powerful nation in our neighbourhood; if we are to go to war, it must either be with the Aboriginal natives, or with European nations. The first are so unequal to a contest with this whole continent, that they are rather to be dreaded for the depredations they may make on our frontiers, than for any impression they will ever be able to make on the body of the country. Some of the European nations, it is true, have provinces bordering upon us, but from these, unsupported by their European forces, we have nothing to apprehend; if any of them should attack us, they will have to transport their armies across the atlantic, at immense expence, while we should defend ourselves in our own country, which abounds with every necessary of life. For defence against any assault, which there is any

probability will be made upon us, we may easily form an estimate.

I may be asked to point out the sources, from which the general government could derive a sufficient revenue, to answer the demands of the union. Many might be suggested, and for my part, I am not disposed to be tenacious of my own opinion on the subject. If the object be defined with precision, and will operate to make the burden fall any thing nearly equal on the different parts of the union, I shall be satisfied.

There is one source of revenue, which it is agreed, the general government ought to have the sole controul of. This is an impost upon all goods imported from foreign countries. This would, of itself, be very productive, and would be collected with ease and certainty. —It will be a fund too, constantly encreasing—for our commerce will grow, with the productions of the country; and these, together with our consumption of foreign goods, will encrease with our population. It is said, that the impost will not produce a sufficient sum to satisfy the demands of the general government; perhaps it would not. Let some other then, equally well defined, be assigned them: —that this is practicable is certain, because such particular objects were proposed by some members of Congress when the revenue system of April 1783, was agitated in that body. It was then moved, that a tax at the rate of _____ ninetieths of a dollar on surveyed land, and a house tax of half a dollar on a house, should be granted to the United States. I do not mention this, because I approve of raising a revenue in this mode. I believe such a tax would be difficult in its collection, and inconvenient in its operation. But it shews, that it has heretofore been the sense of some of those, who now contend, that the general government should have unlimited authority in matters of revenue, that their authority should be definite and limited on that head. —My own opinion is, that the objects from which the general government should have authority to raise a revenue, should be of such a nature, that the tax should be raised by simple laws, with few officers, with certainty and expedition, and with the least interference with the internal police of the states. — Of this nature is the impost on imported goods—and it appears to me that a duty on exports, would also be of this nature—and therefore, for ought I can discover, this would be the best source of revenue to grant the general government. I know neither the Congress nor the state legislatures will have authority under the new constitution to raise a revenue in this way. But I cannot perceive the reason of the restriction. It appears to me

evident, that a tax on articles exported, would be as nearly equal as any that we can expect to lay, and it certainly would be collected with more ease and less expence than any direct tax. I do not however, contend for this mode, it may be liable to well founded objections that have not occurred to me. But this I do contend for, that some mode is practicable, and that limits must be marked between the general government, and the states on this head, or if they be not, either the Congress in the exercise of this power, will deprive the state legislatures of the means of their existence, or the states by resisting the constitutional authority of the general government, will render it nugatory.

GENUINE INFORMATION VI

by Luther Martin

For the *Maryland Gazette and Baltimore Advertiser*

By the *eighth* section of this article, Congress is to have power to *lay* and *collect taxes, duties, imposts, and excises*.—When we met in convention after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us, what powers were meant to be vested in Congress by the word *duties* in this section, since the word *imposts* extended to duties on goods *imported*, and by another part of the system no duties on *exports* were to be laid: In answer to this inquiry we were informed, that it was meant to give the general government the power of laying *stamp* duties on paper, parchment, and vellum. We then proposed to have the power inserted in *express words*, least disputes hereafter might arise on the subject, and that the meaning might be understood by *all* who were to be *affected* by it; but to this it was objected, because it was said that the word *stamp* would probably sound *odiously* in the ears of many of the inhabitants, and be a cause of objection. By the power of imposing *stamp duties* the Congress will have a *right* to declare, that *no wills, deeds, or other instruments* of writing, shall be *good and valid*, without being *stamped*—that without being reduced to *writing*, and being *stamped*, no *bargain, sale, transfer of property, or contract* of any kind or nature whatsoever shall be *binding*; and also that no *exemplifications of records, depositions, or probates* of any kind shall be received in evidence, unless they have the same solemnity—They may likewise oblige all proceedings of a *judicial* nature to be *stamped* to give them effect—Those *stamp duties* may be imposed to any amount they please, and under the pretence of *securing the collection* of these duties, and to prevent the laws which imposed them from being evaded, the Congress

may bring the *decision* of all *questions* relating to the *conveyance, disposition* and *rights of property*, and *every question* relating to *contracts* between man and man into the *courts* of the *general government*.—Their *inferior* courts in the *first* instance and the *superior* court by *appeal*. By the power to lay and collect imposts, they may impose duties on any or *every* article of *commerce* imported into these States to what amount they please. By the power to lay *excises*, a power very odious in its nature, since it authorises officers to go into your *houses*, your *kitchens*, your *cellars*, and to examine into your *private concerns*: the Congress may impose *duties* on every *article* of *use* or *consumption*, on the *food* that we *eat*, on the *liquors* we *drink*, on the *clothes* that we *wear*, the *glass* which *enlighten* our *houses*, or the *hearths* necessary for our *warmth* and *comfort*. By the power to lay and collect taxes, they may proceed to *direct taxation* on *every individual* either by a *capitation* tax on their *heads*, or an *assessment* on their *property*. By this part of the section therefore, the government has a power to lay what duties they please on *goods imported*; to lay what duties they please afterwards on whatever we *use* or *consume*; to impose *stamp duties* to what amount they please, and in whatever case they please: afterwards to impose on the people *direct taxes*, by *capitation* tax, or by *assessment*, to what amount they choose, and thus to *sluice* them at *every vein* as long as they have a *drop* of blood, without any controul, limitation, or restraint; while *all the officers* for *collecting* these taxes, *stamp duties*, *imposts*, and *excises*, are to be appointed by the *general government*, under its directions, not accountable to the *States*; nor is there *even* a security that they shall be *citizens* of the *respective States*, in which they are to exercise their offices; at the same time the construction of *every law imposing* any and all these taxes and duties, and *directing* the collection of them, and *every question* arising thereon, and on the *conduct* of the *officers* appointed to execute these laws, and to collect these taxes and duties so various in their kinds, are *taken away* from the courts of justice of the *different States*, and *confined* to the courts of the *general government*, there is to be *heard* and *determined* by judges holding their offices under the appointment *not* of the *States*, but of the *general government*.

CENTINEL II

For the *Freeman's Journal*

The delegation of the power of taxation to Congress, as far as duties on imported commodities, has not been objected to. But to extend this to excises, and every species of internal taxation, would necessarily require so many ordinances of Congress, affecting the body of the people, as would perpetually interfere with the State laws and personal concerns of the people. This alone would directly tend to annihilate the particular governments; for the people fatigued with the operations of two masters would be apt to rid themselves of the weaker. But we are cautioned against being alarmed with imaginary evils, for Mr. *Wilson* has predicted that the great revenue of the United States, will be raised by impost. Is there any ground for this? Will the impost supply the sums necessary to pay the interest and principal of the foreign loan, to defray the great additional expence of the new constitution; for the policy of the new government will lead it to institute numerous and lucrative civil offices, to extend its influence and provide for the swarms of expectants; (the people having in fact no controul upon its disbursements) and to afford pay and support for the proposed standing army, that darling and long wished for object of the *well-born* of America; and which, if we may judge from the principles of the intended government, will be no trifling establishment, for cantonments of troops in every district of America, will be necessary to compel the submission of the people to the arbitrary dictates of the ruling powers? I say will the impost be adequate? By no means. To answer these there must be excises and other indirect duties imposed, and as land taxes will operate too equally to be agreeable to the wealthy aristocracy in the senate who will be possessed of the government, *poll taxes* will be substituted as provided for in the new plan; for the doctrine then will be, *that slaves ought to pay for wearing their heads*.

As the taxes necessary for these purposes, will drain your pockets of every penny, what is to become of that virtuous and meritorious class of citizens the public creditors. However well disposed the people of the United States may be to do them justice, it would not be in their power; and, *after waiting year after year*, without prospect of the payment of the interest or principal of the debt, they will be constrained to sacrifice their certificates in the purchase of waste lands in the far distant wilds of the western territory.