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The Constitution of the United States of America

September 17, 1787

We, the people of the United States, In Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this

Constitution for the United States of America

Article One

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

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SECTION 2: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State legislature.

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No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant to that State in which he shall be chosen.

62

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

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When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of **Impeachment.**

51, 65, 66, 79

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

38, 39 40, 45 51, 62 63

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60, 64 66, 67

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class, at the Expiration of the fourth Year, and of the third Class, at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

67

No person shall be a Senator who shall not have attained to the Age of **thirty Years**, and been **nine Years a Citizen** of the United States, and who shall not, when elected, be an **Inhabitant of that State** for which he shall be chosen.

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

68

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

The Senate shall have the sole Power to try all **Impeachments**. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of **Impeachment** shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall, nevertheless, be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4: The Times, Places and Manner of holding **Elections for Senators and Representatives,** shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]** unless they shall by Law appoint a different Day.

SECTION 5: Each House shall be the Judge of the **Elections**, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such manner, and under such Penalties, as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the desire of one fifth of those Present, be entered on the Journal.

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

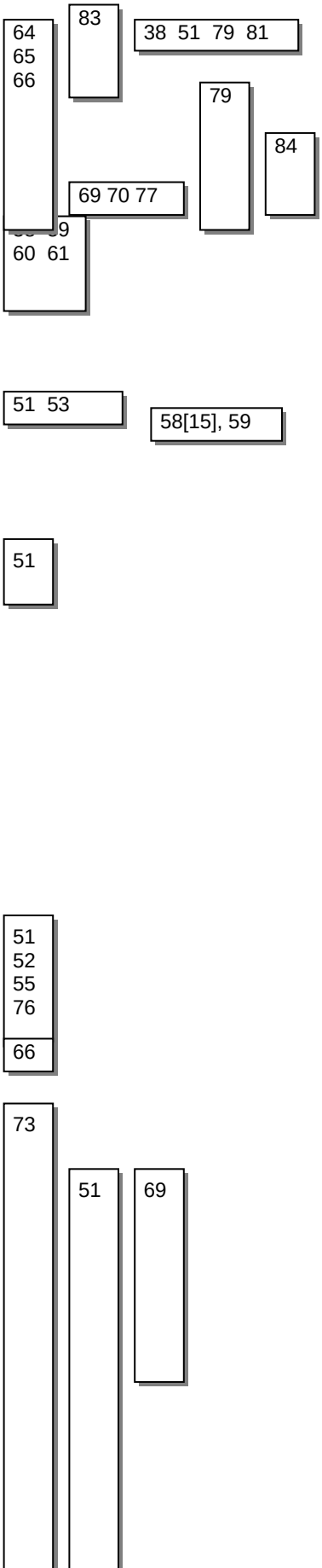
SECTION 6: The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out in the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he



had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8: The Congress shall have Power To lay and collect **Taxes,** Duties, Imposts, and Excises, to pay the Debts and provide for the common **Defence** and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

12, 22, 23, 26, 31 32, 33, 34, 35, 36, 38, 41, 45, 56

To **borrow money** on the credit of the United States;

41 30

To regulate **Commerce** with foreign Nations and among the several States, and with the Indian Tribes;

42

To establish an uniform Rule of **Naturalization**, and uniform Laws on the subject of **Bankruptcies** throughout the United States;

32

To **coin Money**, regulate the Value thereof, and of foreign Coin, and fix the Standard of **Weights and Measures**;

69

To provide for the Punishment of **counterfeiting** the Securities and current Coin of the United States;

To establish **Post Offices** and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to **Authors** and **Inventors** the exclusive Right to their respective Writings and Discoveries;

43

To constitute **Tribunals** inferior to the supreme Court;

To define and punish **Piracies** and Felonies committed on the high Seas, and Offenses against the **Law of Nations**;

81, 82

To **declare War**, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

42

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

41, 69

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To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions;

29 56

24

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dockYards, and other needful Buildings;—And

43

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

22, 29 31, 33, 44

SECTION 9: The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the

42 38

Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels, bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States; And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Price, or foreign State.

SECTION 10: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

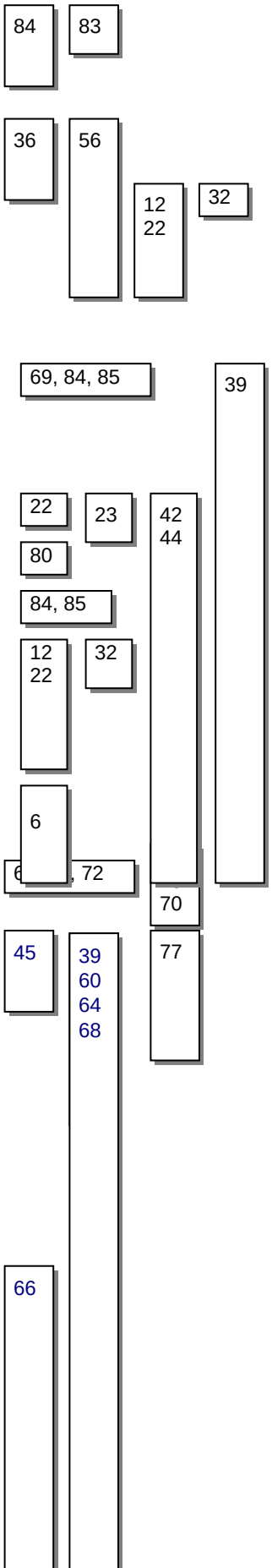
Article Two

SECTION 1: The executive Power shall be vested in a President of the United States of American. He shall hold his Office during the Term of four Years, and together with the Vice President, chosen for the same Term, be elected as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed as Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Government of the United States. Directed to the President of the Senate.

The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no person have a Majority, then from the five highest on the List the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all



the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

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[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly until the Disability be removed, or a President shall be elected.]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

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Before he enter on the execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States."

SECTION 2: The **President** shall be **Commander in Chief** of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and **Pardons** for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make **Treaties**, provided two-thirds of the Senators present concur; and shall nominate, and, by and with the Advice and Consent of the Senate, shall appoint **Ambassadors**, other public Ministers and Consuls, **Judges** of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the end of their next Session

SECTION 3: He shall from time to time give to the Congress Information of the **State of the Union**, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4: The President, Vice President and all civil Officers of the United States. Shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

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39, 66, 81

Article Three

SECTION 1: The judicial Power of the United States, shall be vested in one **supreme Court**, and in such **inferior Courts** as the Congress may from time to time ordain and establish.

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—[between a State and Citizens of another State;—]* between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens, of Subjects.]*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3: **Treason** against the United States, shall consist only in levying War against them, or in adhering to their enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

Article Four

SECTION 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.

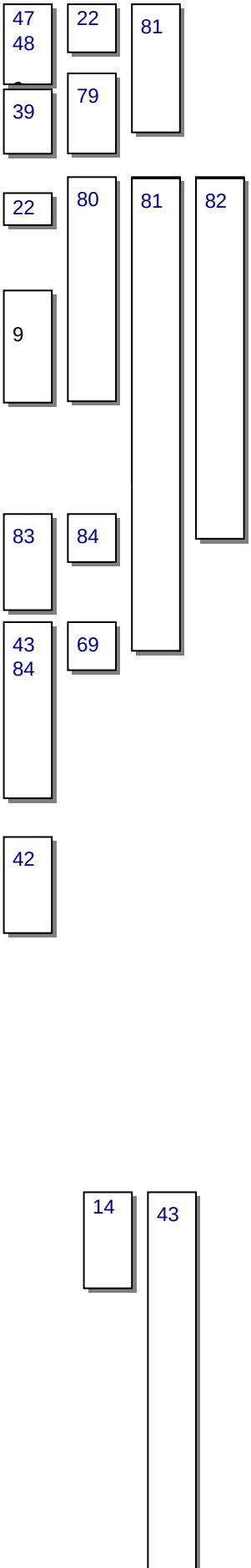
SECTION 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]

SECTION 3: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the **Territory** or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.



SECTION 4: The United States shall **guarantee** to every State in this Union a **Republican Form** of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against **domestic Violence.**

85, 39

Article Five

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose **Amendments** to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

85 39

Article Six

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All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

16 33 39 27 44 31

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

52

Article Seven

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

22, 39, 40, 43, 85

Done in Convention by the unanimous Consent of the States present the Seventeenth day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of American the Twelfth In Witness whereof We have hereunto subscribed our Names,

G Washington—Presid

And deputy from Virginia

Attest:

William Jackson Secretary

Amendments

Article One

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

Article Two

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

Article Three

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

Article Four

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

Article Five

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

Article Six

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

Article Seven

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

Article Eight

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

Article Nine

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

Article Ten

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Article Eleven

The judicial power of the United States shall not be construed to extend to any s in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens Subjects of any Foreign State.

Article Twelve

The Electors shall meet in their respective states, and vote by ballot for President, and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;-The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each State having one vote; a quorum for this purpose shall consist of

a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President-The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers an the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whale number of Senators, and a majority of the whale number shall be necessary to a choice, But no person constitutionally ineligible to the office of President shall be eligible to that of Vice--President of the United States.

Article Thirteen

SECTION I . Neither slavery not involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

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

Article Fourteen

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

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

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

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

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

Article Fifteen

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

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

Article Sixteen

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

Article Seventeen

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

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

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

Article Eighteen

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

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

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

Article Nineteen

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

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

Article Twenty

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

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

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

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

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

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

Article Twenty-one

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

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

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

Article Twenty-two

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

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

Article Twenty-three

SECTION L. The District constituting the seat of Government of the United States shall

appoint in such manner as the Congress may direct:

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

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

Article Twenty-four

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

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

Article Twenty-five

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

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

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

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

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro temp ore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Article Twenty-six

SECTION L . The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

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

#1: Call to Citizens to Study New Constitution

Having experienced the undeniable inefficiency of the existing federal government, you are asked to study and consider adopting a new Constitution for the United States of America.

The importance of this deliberation can not be overstated. The very existence of our country hangs in the balance, as does the safety and welfare of its people, communities, and States. We are called to decide the fate of a nation that is, in many respects, the most interesting in the world.

It has been often said that the people of this country will decide the important question of whether societies can establish a good government by careful thought and choice. Or whether people are forever destined to be governed only by accident and force. If this is true, the answer depends on our response to the current crisis. And the wrong decision deserves to be considered a misfortune for all of mankind.

[2] Variety of Interests Influence Debate

Conscientious patriots understand the weighty importance of deciding whether to adopt the new Constitution. Knowing their decision will affect all human societies raises their anxiety.

It would be wonderful if we based our decision only on the best interests of our society, unbiased by less noble interests unconnected with the public good. Although we may ardently wish this, it can't be seriously expected. The Constitution offered for consideration affects too many special interests and changes too many local institutions not to expect discussions on subjects other than its merits. Views, passions and prejudices unrelated to discovering the truth and meaning of the document are expected.

[3] Opposition From Politicians

Politicians will present some of the most formidable obstacles to the new Constitution. Some will resist any change that might diminish the power and benefits of their current State offices. The perverted ambition of others will see potential self-aggrandizement within a country in disarray. Or will flatter themselves into believing they can rise to a higher level of power within an alliance of several States than within a union under one government.

[4] Moderation Urged

However, I don't plan to dwell on observations of this nature. It would be presumptuous for me to indiscriminately declare a person's opposition due to self-interest or ambitious views merely because their situation might subject them to suspicion. Candidly, we admit even politicians may be motivated by upright intentions. And, undoubtedly, much of the opposition will spring from blameless, if not valid, motivations. Preconceived jealousies and fears will lead arguments astray into honest errors in thinking.

Indeed, so many powerful reasons can create a false bias that there are often wise and good men arguing on both the wrong and right side of society's most important questions. This reality should furnish a lesson of moderation to anyone who thinks they are always in the right in any controversy.

A further reason for caution—we are not always sure that people who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives no more laudable than these, operate as well on those who support, as those who oppose, the right side of a question.

Moderation is important. Nothing is more repugnant than the intolerant spirit that has, at all times, characterized political parties. In politics, as in religion, it's absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

[5] Constitution Called Thief of Liberty

Despite these arguments, a torrent of angry and malignant passions will be let loose about this subject, as in all former cases of great national debate. To judge from the conduct of the opponents of the new Constitution, we will conclude that they hope to show evidence of the justness of their opinions and increase the number of their converts by the loudness of their rhetoric and the bitterness of their denunciations.

Those who argue with enlightened zeal for the energy and efficiency of government will be demonized as being fond of despotic power and hostile to liberty. When supporters profess that the rights of the people must be scrupulously protected, it will be characterized as insincere, a blatant bid for popularity at the expense of the public good.

It will be forgotten that dangers to the rights of people most commonly spring from the head rather than the heart, that the noble enthusiasm of liberty is apt to be infected with narrow-minded bigotry and distrust.

It will also be forgotten that a vital government is essential to secure liberty. Sound judgment shows these can never be separated. And dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the zeal for a firm and efficient government. History teaches us that of the men who have overturned the liberties of republics, most began their career by proclaiming their devotion to the people. They gain position by arousing people's prejudices and end as tyrants.

[6] My Support of New Constitution

As I wrote the above I've tried, my fellow citizens, to put you on guard against all attempts, from whatever quarter, to influence you. Your decision on the new Constitution, of the highest importance to your welfare, should result from the evidence of truth.

I'm sure you have noticed that I am not unfriendly to the new Constitution. Yes, my countrymen, I admit that after having given it attentive consideration, I believe it is in your interest to adopt it. I am convinced

that this is the safest course for your liberty, your dignity, and your happiness.

I don't pretend to have reservations I don't feel. I won't amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity.

The new Constitution has my full and unambiguous support. I shall not, however, dwell on professions of my faith in it. And my motives must remain in my heart.

My arguments will be offered in the spirit of presenting the truth. They will be open to all and may be judged by all.

[7] Discussion of Constitutional Issues

I propose, in a series of papers, to discuss the following interesting particulars:

The usefulness of a successful federal government to the union.

The insufficiency of the present Confederation to preserve the union.

The necessity of a federal government at least as energetic as the one proposed in the Constitution to attain this objective.

The conformity of the proposed Constitution to the true principles of republican government.

Its analogy to the New York constitution.

And the additional security its adoption will afford to the preservation of the republican form of government, to liberty, and to property.

As this discussion progresses, I will endeavor to give satisfactory answers to objections that arise and may claim your attention.

[8] Opponents: Thirteen States Too Big

Arguments proving the utility of the **union** may be thought superfluous. The importance of the **union** may be seen as deeply engraved on the hearts of the people in every State, with no adversaries. But the fact is, we already hear it whispered among those who oppose the new Constitution that thirteen States are too many for any general system. They argue that we must break into several separate confederacies.*

This doctrine will, in all probability, be gradually propagated until it has enough votes to approve it. To those who take an enlarged view of the subject, nothing is more evident than that the alternative to adoption of the new Constitution is dismemberment of the Union.

Therefore, it will be useful to examine the advantages of the Union, and the probable dangers and certain evils to which every State will be exposed from its dissolution. Accordingly, this will constitute the subject of my next editorial.

Publius

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* The same idea, tracing the arguments to their consequences, is held out in several recent publications against the new Constitution.--Publius

#2: Government, Constitution, United America

When the people of America realize the importance of the question they're called upon to decide, their responsibility to make a serious, comprehensive study of it will be evident. The decision and its consequences will prove to be the most important that has ever engaged their attention.

[2] People Empower Government

Government is an indispensable necessity. It is equally undeniable that, whatever its form, the people must cede some of their natural rights to the government to vest it with requisite powers. Therefore, it's worth considering what will best serve the interest of the people of America, one nation, under one federal government, or should Americans divide themselves into separate confederacies, giving the central government of each the same kind of powers as placed in one national government?

[3] Recent Calls to Disunite

Until recently, it's been unanimously agreed that the prosperity of the people of America depends on their staying firmly united. The wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that objective.

But some politicians now say that looking for safety and happiness in a union is wrong. They insist that we should seek division of the States into distinct confederacies, or sovereign nations.

This new doctrine may appear extraordinary, but it has advocates, even some people previously opposed to it. It doesn't matter what arguments induced these people to change their opinions. But it certainly would not be wise for citizens to adopt these new political tenets without being fully convinced that they are founded in truth and sound policy.

[4] America is Geographically United

I find pleasure in observing that independent America isn't composed of detached, distant territories. Instead, the destiny of our western sons of liberty is one connected, fertile, wide-spreading country.

God blessed it with a variety of soils, watered with innumerable streams, for the delight and accommodation of its inhabitants. As if to bind it together, navigable water forms a kind of chain around its borders. And the most noble rivers in the world form convenient highways for easy communication and transportation of commodities.

[5] Americans Culturally United

I often note with equal pleasure that God gave this one connected country to one united people—a people descended from the same language, professing the same religion, attached to the same principles of government, very similar in manners and customs. They fought side by side through a long and bloody war, establishing liberty and independence.

[6] One Country, People

This country and this people seem to have been made for each other. It appears like this inheritance was designed by God for a band of brethren united by the strongest ties. They should never split into a number of unsocial, jealous, and alien sovereignties.

[7] States Have Acted As Nation

Until recently, everyone—all classes of men among us—agreed that we should remain united.

We have acted as one people. Each individual citizen everywhere enjoys the same national rights, privileges, and protection. As a nation we have made peace and war. As a nation we have formed alliances and made treaties, and entered into compacts with foreign states.

[8] Government Hastily Formed

Very early, the people instituted a federal government to preserve and perpetuate the strong sense of value and blessings of union. They formed it almost as soon as they had political existence, at a time when their homes were in flames and citizens were bleeding. However, hostility and desolation left little room for the calm and mature reflections that must precede the formation of a wise and well-balanced government for free people.

Therefore, it's not strange that a government formed at such a time has since been found greatly deficient and inadequate to serve the purpose intended.

[9] Union and Liberty

Being intelligent, the people recognized and regretted the government's defects. They were both attached to the union and enamored with liberty. They observed that the union was in immediate danger, a danger that would eventually jeopardize liberty.

Being persuaded that both—the union and personal liberty—could only be secure in a national government, more wisely framed, they convened the recent convention in Philadelphia to consider the important subject.

[10] Constitutional Convention

The men gathered at the convention possessed the confidence of the people. Many had become highly distinguished by their patriotism, virtue, and wisdom during a time that tried the minds and hearts of men.

The convention undertook the arduous task. During a time of peace, with minds unoccupied by other subjects, they spent many months in cool, uninterrupted, daily consultation.

Finally, without being awed by power or influenced by any passion except love for their country, they unanimously recommended to the people their plan—the proposed Constitution.

[11] Discussion Will Not Always Center on Nation's Best Interest

Admittedly, this plan is only *recommended*, not imposed. Remember, it is neither recommended for *blind* approval nor *blind* rejection. Rather, it is submitted for the sedate, candid consideration that the

magnitude and importance of the subject demands, and that it certainly should receive.

But, as has already been said, a thoughtful examination is more to be wished than expected. Experience on a former occasion teaches us not to be too optimistic.

Let's remember what happened in 1774. The people of America felt, correctly, that they were in imminent danger. They formed the Congress of 1774. It recommended certain measures that later proved prophetically wise. However, the immediate reaction by the press was pamphlets and weekly papers against those very measures.

Relentless calls to reject the advice of that patriotic Congress came from many quarters. Many officers of the government obeyed the dictates of personal interest. Other people predicted mistaken consequences, or were unduly influenced by former attachments, or saw it as a threat to ambitions that did not correspond with the public good.

Although men were deceived and deluded, the great majority of the people reasoned and decided judiciously. Reflecting back, they are happy they did so.

[12] Public Rationally Evaluated 1774 Congressional Recommendations

The people concluded that the 1774 Congress was composed of many wise and experienced men. That they had brought with them, from the different parts of the country, a wide variety of useful information. That as they discussed the true interests of their country, they acquired very accurate knowledge of the subject. That each delegate was committed to public liberty and prosperity. And, therefore, it was both their inclination and their duty to recommend, after mature deliberation, only measures thought prudent and advisable.

[13] Framers of Constitution

The people relied on the judgment and integrity of the 1774 Congress, taking its advice despite efforts to deter them. If the people felt confidence in the men of that Congress, few of whom were well known, they now have a greater reason to respect the judgment and advice of the recent convention. Some of the most distinguished members of the 1774 Congress, who have since proved their patriotism and abilities, and have grown old acquiring political information, carried to this year's Constitutional Convention their accumulated knowledge and experience.

[14] Remaining One Nation Imperative

Every Congress, including the recent Constitutional Convention, has joined with the people in thinking that the prosperity of America depends on its Union. To preserve and perpetuate the Union was the objective of the people in forming a convention and the Constitution the convention has advised them to adopt.

With what propriety, therefore, or what are the real motives behind current attempts to depreciate the importance of the Union? Why is it suggested that three or four confederacies would be better than one?

I believe people have always thought right on this subject. Their universal and uniform attachment to the cause of the Union is based on great and weighty reasons, which I will endeavor to develop and explain in some ensuing papers.

Those who promote the idea of substituting a number of separate confederacies for the convention's plan [the Constitution] know that the rejection of that plan would put the continuance of the Union in utmost jeopardy.

I sincerely wish that every good citizen realizes that, if the Union is dissolved, America will have reason to exclaim, in the words of the poet: **"Farewell! A long farewell to all my greatness."**

Publius

#3: National Union Provides Safety Against Foreign Danger

People of any country (if, like Americans, they are intelligent and well informed) seldom hold and keep erroneous beliefs about their best interests for many years. This explains why Americans feel that remaining firmly united under one federal government, vested with sufficient powers for all national purposes, is important.

[2] Reasons for Unity Valid

The more I seriously consider and investigate the reasons for this opinion, the more I'm convinced they are valid and conclusive.

[3] Safety: Society's First Objective

A wise and free people must focus their attention on many objectives. First is *safety*. The concept of *safety* relates to a wide variety of circumstances and ideas, giving great latitude to people who wish to define it precisely and totally.

[4] Safety Against Hostilities

At this time, I will discuss safety as it relates to the preservation of peace and tranquility against dangers from *foreign arms and influence* and *similar* dangers arising from domestic causes.

The first of these is danger from foreign nations. And it will be discussed first. We'll examine whether the people are right and a Union, under an efficient national government, gives the best security devised against *hostilities* from abroad.

[5] Union Helps Preserve Peace

The number of wars in the world is always proportionate to the number and severity of causes, whether *real* or *imagined*, which *provoke* or *invite* them. If this is true, it becomes useful to ask whether a *United America* will find as many *just* causes of war as a *disunited* America. If it seems that United America will find fewer reasons, it follows that the Union tends to preserve a state of peace with other nations.

[6] Current Relationships With Nations

Just causes of war generally arise from violations of treaties or direct violence, attack or invasion. America already has treaties with at least six foreign nations. All, except Prussia, are maritime and able to annoy and injure us. We have extensive commerce with Portugal, Spain, and Britain. The latter two also have neighboring territory.

[7] Foreign Laws Must Be Obeyed

It is vital to American peace that she observes the laws of foreign nations. For several reasons, it is evident that this will be more perfectly and punctually done by one national government than by either thirteen separate States or by three or four distinct confederacies.

[8] Highest Qualified Men Govern Union

When an efficient national government is established, usually the best men in the country will be appointed to manage it and will consent to serve. A town or county can place men in State assemblies, senates, courts, or executive departments. However, to recommend men to offices in the national government, a wider reputation for talents and qualifications will be necessary. The public will choose from the widest field, never lacking qualified persons, as has happened in some States,

Hence, the administration, political counsels, and judicial decisions of the national government will be more wise, systematical, and judicious than those of individual States. Consequently, a Union will be *safer* with respect to other nations, as well as *safer* with respect to us.

[9] National Treaties, Policies

Under the national government, treaties and laws of nations will always be detailed and executed in the same manner. However, thirteen States, or three or four confederacies, adjudicating the same points and questions, will not always be consistent. Different, independent governments, appointing courts and judges, would have different local laws and interests influencing them. Therefore, the convention's wisdom in committing such questions to the jurisdiction of courts appointed by and responsible to one national government cannot be too much commended.

[10] Temptations: Local Officials

The people governing one or two States may be tempted to swerve from trustworthiness and justice by the prospect of an immediate advantage or loss. Those localized temptations would have little or no influence on the national government, preserving good faith and justice. The peace treaty with Britain is a good case in point.

[11] Temptations: National Officials

Temptations commonly result from circumstances specific to an individual State and may affect a great number of its inhabitants. The governing party may not always be able, if willing, to prevent the planned injustice or punish the aggressors.

Not being affected by local circumstances, national officials will be neither induced to commit wrong themselves nor avoid prevention or punishing its commission by others.

[12] Union: Fewer Treaty Violations

Since intentional or accidental violations of treaties and laws of nations provide *just* cause for war, they are less likely to happen under one general government than several lesser ones. Therefore, one national government most favors the *safety* of the people.

[13, 14] Unlawful Violence Against Nations

It seems equally clear to me that one good national government also provides the greatest security against just causes of war stemming from direct, unlawful violence because it is usually caused by passions and interests of one or two States, rather than the whole Union.

For example, not a single Indian war started because of aggressions of the present federal government. But several instances of Indian hostilities were provoked by improper conduct of individual States. Those States were either unable or unwilling to restrain or punish offenses leading to the slaughter of many innocent inhabitants.

[15] Foreign Hostilities in Border States

Some States border Spanish and British territories. Only bordering States, because of a sudden irritation or sense of injury, would be likely to use violence to excite war with these nations. Nothing can so effectively obviate that danger as a national government, whose wisdom and prudence will not be swayed by regional passions.

[16] Federal Government Settles Hostilities

Not only will a national government find fewer just causes for war, it will have more power to accommodate and settle them amicably. It will be more temperate and cool, and in that respect, as well as others, it will have a better capacity to act advisedly than the offending State.

The pride of States, as well as men, naturally disposes them to justify all their actions and opposes their acknowledging, correcting or repairing their errors and offenses. Not affected by this pride, the national government will proceed with moderation and candor to consider and decide on the proper means to extricate them from threatening difficulties.

[17] Apologies from Strong Nations Accepted

Besides, it is well known that explanations and compensations from a strong united nation are often accepted as satisfactory, when they would be rejected as unsatisfactory if offered by a State or confederacy of little power.

[18] France Wouldn't Humiliate Spain or Britain

In 1685, the state of Genoa offended Louis XIV. He demanded they send their chief magistrate, accompanied by four senators, to *France* to ask his pardon and receive his terms. They were forced to obey for the sake of peace. Would he, on any occasion, either demanded, or received, like humiliation from Spain, Britain or any other *powerful* nation?

Publius

#4: Strong Union Provides Strong Defense

My last paper gave several reasons why a union would better secure the safety of the people against the danger exposed by *just* causes of war given by other nations. Besides supplying fewer causes for grievances, difficulties would be more easily settled by a national government than either the State governments or the proposed small confederacies.

[2] *Feigned* Motives Start Wars

The safety of the people of America not only depends on their not giving other nations *just* causes for war but, also, on their not putting themselves in situations that *invite* hostility. It need not be observed that both *pretended* and just causes of war exist.

[3] Variety of Motives Start Wars

Although a disgraceful fact of human nature, nations, in general, will make war whenever they have a prospect of getting anything from it. In fact, absolute monarchs often make war when their nations get nothing from it.

Motives, clear only to the monarch, often lead him to start wars not sanctified by justice or the interests of his people. These motives include: a thirst for military glory, revenge for personal affronts, ambition, and private compacts to aggrandize or support particular families or partisans. These, and a variety of other motives that affect only the mind of the monarch, lead him to start wars not sanctified by justice or the interests of his people. And they deserve our attention.

But other motives affect nations, as often as kings. And some of them grow out of situations and circumstances like ours.

[4] Commerce Source of Rivalry

France and Britain are fishery rivals. We can supply their markets cheaper than they can themselves, despite their efforts to prevent it with bounties on their own and duties on foreign fish.

[5] Cargo Transport

We are rivals with them and most other European nations in navigation and cargo transport. We're lying to ourselves if we think they'll rejoice to see ours flourish. Since an increase in our transportation industry diminishes theirs, it's in their interest to restrain our trade rather than promote it.

[6] Direct Imports

Our trade with China and India interferes with several nations. We now directly import commodities we used to purchase through, what was essentially, a monopoly.

[7] North American Commerce

The growth of our commerce in our own vessels can't give pleasure to any nation with territories on or near this continent. Our productions are cheap and excellent. Our convenient location gives our enterprising merchants and navigators more advantages in those territories than consistent with the wishes or policies of European sovereigns.

[8] Europe Controls Our Rivers

Spain thinks it is convenient to shut the Mississippi against us on one side. Britain excludes us from the Saint Lawrence on the other. And neither permits the other waterways between them and us to become the means of mutual intercourse and traffic.

[9] Our Success Will Spawn Jealousies

From these and similar considerations that, if it was practical, could be listed and explained, it's easy to see that jealousies and uneasiness may gradually slide into the minds and cabinets of other nations. We can't expect them to regard our advancement in union and power, land and sea, with an eye of indifference and composure.

[10] Healthy Defense Discourages War

Americans know these circumstances may lead to war. As will other reasons, not currently obvious. Whenever such inducements find opportunity, pretenses to justify them will not be wanting. Therefore, union and a good national government is necessary to defensively repress and discourage war instead of *inviting* it. The best defense depends on the government, the arms, and the resources of the country.

[11] All Americans Want to be Safe

The safety of the whole is the interest of the whole. It cannot be provided for without government, either one or many.

In this context, is one good government more competent than any other number?

[12] Defensive Advantages Of Union

One government can use the talents and experience of the ablest men, wherever in the Union they may be found. It can move on uniform policy principles. It can harmonize, assimilate, and protect the parts, extending the benefits of its foresight and precautions to each.

In drafting treaties, one government will regard both the interest of the whole and the specific interests of the parts of the whole. It can use the resources and power of the whole to defend a particular part more easily and expeditiously than State governments or separate confederacies that lack the unity of system.

The militia can be under one discipline with officers in a proper line of subordination to the Chief Executive [President], making it a consolidated corps that is more efficient than thirteen, or three or four distinct independent forces.

[13] Example: Great Britain

What would the militia of Britain be if the English militia obeyed the government of England, if the Scot militia obeyed the government of Scotland, and if the Welsh militia obeyed the government of Wales? If invaded, would those three governments (if they

agreed at all) be able to operate against the enemy as effectively as the single government of Great Britain would?

[14] Strength of Britain's National Navy

The fleets of Britain have been praised. In time, if we are wise, the fleets of America may gain attention. But if Britain's one national government hadn't regulated navigation, making it a nursery for seamen—if one national government hadn't used national means and materials for forming fleets—their prowess and thunder would never have been celebrated.

Let England have its navigation and fleet—let Scotland have its navigation and fleet—let Wales have its navigation and fleet—let Ireland have its navigation and fleet—let those four constituent parts of the British empire be under four independent governments and it is easy to perceive how soon they would each dwindle into comparative insignificance.

[15] Divided America More Vulnerable

Apply these facts to our case. Divide America into thirteen or, if you please, three or four independent confederacies. What armies could they raise and pay? What fleets could they hope to have? If one was attacked, would the others fly to its aid, spend blood and money in its defense?

Or would foreign powers flatter and seduce the separate confederacies into neutrality with specious promises of peace until they fear threatening their tranquility and safety for the sake of their neighbors—neighbors they may already envy?

Although unwise, such conduct is natural. The history of Greece and other countries abounds with examples. And under similar circumstances it probably would happen again.

Constitutional references:

Article 1, Section 8	army and navy
Article 1, Section 8	militia

[16] Union: Better Defense Decisions

Let's say neighboring States are willing to help an invaded State or confederacy. How, when, and what shall determine proportionate aid of men and money? Who will command the allied armies? Who will settle terms of peace? If disputes arise, who will umpire them and compel acquiescence? Various difficulties and inconveniences would be part of the situation.

But one government, watching over the general and common interests, directing the powers and resources of the whole, would be free from these tricky questions and conduce far more safety of the people.

[17] Strong Nat'l Structure => Strong Defense

Whatever our situation—one national government or several confederacies—foreign nations will know and will act towards us accordingly. If they see our national government is efficient and well administered, our trade prudently regulated, our militia organized and disciplined, our resources and finances discreetly managed, our credit reestablished, our people free, contented and united, they will be more disposed to cultivate our friendship than provoke our resentment.

On the other hand, if they find our government ineffectual (each State doing right or wrong, as its ruler finds convenient) or split into three or four independent, and probably discordant, republics or confederacies—one inclining to Britain, another to France, a third to Spain, and perhaps played off each other by the three—what a poor, pitiful figure America will be in their eyes! She'd become a target for not only their contempt, but also their outrage. How soon our dear-bought experience will proclaim that when a people or family divide, it never fails to be against themselves. Publius

#5: Greatest Threat to American Confederacies: Each Other

Queen Anne, in her letter of 1 July 1706 to the Scot Parliament, made some observations on the importance of the *Union,* then forming between England and Scotland, that merit our attention. I will present one or two extracts from it:

"An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be *enabled to resist all its enemies*. . ."

"We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only *effectual* way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will doubtless, on this occasion, *use their utmost endeavors to prevent or delay this union*."

[2] Weak Nation Invites Foreign Danger

The previous paper noted that weakness and divisions at home would invite dangers from abroad. Nothing will more secure us from them than union, strength, and good government. This subject is copious and cannot easily be exhausted.

[3] Great Britain Before Unification

We are acquainted with the history of Great Britain. It gives us many useful lessons. We may profit by their experience without paying the price it cost them.

Although it seems obvious to common sense that the people of such an island should be only one nation, for ages they were divided into three, three nations almost constantly embroiled in quarrels and wars with one another. Despite their mutual interests in dealing with the continental European nations, policies, practices and jealousies kept them perpetually inflamed. For years they were far more inconvenient and troublesome than useful and assisting to each other.

[4] Separation Promotes Disputes

Would not the same thing happen if the people of America divide themselves into three or four nations? Would not similar jealousies arise and be cherished?

Instead of being "joined in affection" and free from worry about different "interests," envy and jealousy would soon extinguish confidence and affection. Instead of the general interests of all America, the specific, limited interests of each confederacy would be the only objectives of their policy and pursuits. Hence, like most other *bordering* nations, they would always be either involved in disputes and war, or live with the constant fear of them.

[5] Confederacies Won't Remain Equal

The most devoted advocates for three or four confederacies cannot reasonably assume they would remain equal in strength, even if it was possible to form them so at first. What human plan can guarantee the equality will continue? Besides local circumstances, which tend to increase power in one part and impede its progress in another, superior policy and good management would probably distinguish one government above the rest. This would destroy the relatively equal strength. It cannot be presumed the same degree of good policy, prudence, and foresight would be uniform among these confederacies for very many years.

[6] Distrust Between Confederacies

Whenever and however it might happen, and it would happen, at the moment when one of these nations or confederacies rise on the scale of political importance above her neighbors, her neighbors would behold her with envy and fear. Because of these passions they would listen to, if not promote, anything that promised to diminish her importance. Jealousy and fear would also restrain them from actions that might advance or even to secure her prosperity. It wouldn't take long for her to discern these unfriendly dispositions. She would soon begin to lose confidence in her neighbors and feel a disposition equally unfavorable to them.

Distrust naturally creates distrust. Nothing changes goodwill and kind conduct more speedily than jealousies and imputations, whether expressed or implied.

[7] Northern Would Grow Stronger Than Southern Confederacies

The North is generally the region of strength. Many local circumstances render it probable that, in a relatively short period, the most Northern of the proposed confederacies would be unquestionably more formidable than any of the others. As soon as this became evident, the more southern parts of America would have the same ideas and feelings about the northern States as the southern parts of Europe felt towards the *Northern Hive*. Nor does it appear rash to suppose that northerners might be tempted to gather honey in the blooming fields and milder air of their luxurious and more delicate southern neighbors.

[8] Confederacies Become Enemies

The history of similar divisions and confederacies has abundant examples that several American confederacies would not become neighbors. They would neither love nor trust one another but, on the contrary, they would be prey to discord, jealousy, and mutual injuries. In short, they would place us in the exact situation some nations wish to see us, that is, *formidable only to each other*.

[9] No American Confederacies' Alliance

Knowing this, it appears those gentlemen who expect alliances, offensive and defensive, might be formed between these confederacies, that they would unite arms and resources to keep them in a formidable state of defense against foreign enemies, are greatly mistaken.

[10] Commerce Creates Foreign Alliances

Britain and Spain were formerly divided into independent states. When did they ever combine in alliance or unite their forces against a foreign enemy?

The proposed American confederacies will be *distinct nations*. Each would have commerce with foreigners regulated by distinct treaties. And since their products and commodities are different, and targeted for different markets, the treaties would be essentially different.

Different commercial concerns create different interests and, of course, different degrees of political attachments with different foreign nations. The *Southern* confederacy might be at war with a nation that the *Northern* confederacy would be desirous of preserving peace and friendship. Therefore, an alliance so contrary to their immediate interest would not be easy to form or, if formed, easily observed and fulfilled.

[11] Dangers From Other Confederacies

No. It is far more probable that in America, as in Europe, neighboring nations, with opposite interests and unfriendly passions, would frequently take different sides.

Considering our distance from Europe, it would be more natural for confederacies to fear danger from one another than from distant nations. Therefore, each would guard against the others with the aid of foreign alliances, rather than guard against foreign dangers with alliances between themselves.

And let us not forget how much easier it is to receive foreign fleets into our ports and foreign armies into our country than it is to persuade or compel them to depart. How many conquests did the Romans and others make under the guise of allies? What changes did they make in the governments they pretended to protect?

[12] Would Independent Confederacies Secure Us From Foreign Invasions?

Let candid men judge, then, whether the division of America into a number of independent sovereignties would tend to secure us against the hostilities and improper interference of foreign nations.

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#6: Hostilities Between Separated States, Several Confederacies

The last three papers enumerated the dangers from foreign nations to which we'd be exposed by a state of disunion. Now I'll delineate dangers of a different, and perhaps more alarming, kind—those that will flow from dissension between States and from domestic factions and convulsions. Although previously mentioned, they deserve a fuller investigation.

[2] Disunited States Would Be Enemies

Only a man lost in Utopian speculations would think that if the States are totally disunited or only united in partial confederacies, the subdivisions would not have frequent, violent contests with each other. To presume that there would be few motives for such contests would require forgetting that men are ambitious, vindictive, and rapacious. To expect continued harmony between a number of independent, unconnected sovereignties in the same neighborhood would be to disregard the uniform course of human events, and the accumulated experience of the ages.

[3] Reasons for War

The causes of hostility among nations are innumerable.

Some operate almost constantly on the collective bodies of society. Reasons include the love of power, the desire for preeminence and dominion, the jealousy of power, or the desire for equality and safety.

Other causes have a more indirect, but equally operative, influence. Such are the rivalries and competitions between commercial nations.

Still other reasons, no fewer than the former, originate entirely from private passions—attachments, hatreds, interests, hopes, fears—of leaders in the community. Whether favorites of a king or of people, men have too often abused their positions of public trust by using the pretext of public good to sacrifice the national tranquility for personal advantage or gratification.

[4] Reasons Pericles Began Wars

Reacting to a prostitute's resentment, the celebrated Pericles [Athens, born c. 500 bc, died 429 bc] attacked, vanquished, and destroyed the city of the *Samnians*, costing his countrymen much blood and treasure.[1]

The same man started the famous and fatal *Peloponnesian* war—which eventually led to the ruin of the Athenian commonwealth—for one or more reasons: to assuage a private pique against the *Megarensians*,[2] another nation of Greece, to avoid prosecution as a coconspirator in the theft of a statue of Phidias,[3] to get rid of accusations of using state funds to purchase popularity.[4]

[5] Example: Ambition Led to War

The ambitious Cardinal Wolsey, prime minister to Henry VIII, aspired to become pope and hoped to succeed through the influence of Emperor Charles V. To secure the favor of this powerful monarch, he pushed England into war with France, contrary to policy, hazarding the safety and independence of England as well as Europe. Wolsey was both an instrument and a dupe in Emperor Charles V's intrigues as he attempted to become universal monarch.

[6] Example: Women Stirred Up Strife

The influence on contemporary European policy, ferments, and pacification of Madame de Maintenon's bigotry, the Duchess of Marlborough's petulance, and the cabals of Madame de Pompadour has often been discussed and is generally known.

[7] Example: Personal Motives Start Wars

Multiple examples of the affect of personal motivations on national events, either foreign or domestic, would be a waste of time. Those who have even a superficial acquaintance with history will remember a variety of examples. And those who know a little bit about human nature will need no examples to form their opinion of its reality or prevalence.

However, a reference to a recent event illustrating the general principle may be appropriate. If Shays had not been a *desperate debtor*, It's doubtful Massachusetts would have been plunged into a civil war.

[8] Claim that Commerce Brings Peace

In spite of the concurring testimony of experience, some visionaries, or designing men, make the paradoxical claim that the dismembered and alienated States will exist in perpetual peace. They say republics are inherently pacific.

They contend commerce softens men, extinguishing the inflammable temperament that has so often kindled wars. They claim commercial republics, like ours, will not want to waste themselves in ruinous conflicts with each other, that they will be governed by mutual interest and will cultivate a spirit of peaceful relations.

[9] Commercial Motives Start Wars

We may ask these political prophets, isn't it in the interest of all nations to cultivate a benevolent and philosophic spirit? If this is in their true interest, have they in fact pursued it?

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1 Aspasia, vide Life of Pericles.—Publius

2 Ibid.—Publius

3 Ibid.—Publius

4 Ibid. Phidias, with Pericles, was supposed to have stolen some public gold for the embellishment of the statue of Minerva.—Publius

To the contrary, don't momentary passions and immediate interests have a more active and imperious control over human conduct than considerations of policy, utility, or justice? Have republics been less addicted to war than monarchies? Aren't the former administered by *men* as well as the latter?

Do not aversions, predilections, rivalship, and desires of unjust acquisitions affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and other violent propensities?

Isn't it well known that republics governed by a few trusted individuals are liable to be colored by the passions of those individuals? Has commerce ever done anything more than change the objects of war? Is not the love of wealth as domineering a passion as power or glory?

Haven't as many wars started from commercial motives, since that has become the prevailing system of nations, as were before started by the desire for territory or dominion? Hasn't commerce often given new incentives? Let experience, the least fallible guide to human behavior, answer these inquiries.

[10] Wars: Commercial Republics

Sparta, Athens, Rome, and Carthage were all republics. Athens and Carthage were commercial republics. Yet they engaged in war, offensive and defensive, as often as the neighboring monarchies. Sparta was little more than an army camp. And Rome was never sated of carnage and conquest.

[11] Republics of Carthage, Rome

Carthage, a commercial republic, was the aggressor in the war that ended in her destruction. Hannibal carried her arms into the heart of Italy, to the gates of Rome [217 bc]. Then Scipio [of Rome] overthrew the territories of Carthage and conquered the commonwealth [201 bc].

[12] League of Cambray Defeated Venice

In later times, Venice figured in more than one war of ambition until it became a target of other Italian states. Finally, Pope Julius II founded the League of Cambray (including the Emperor, King of France, King of Aragon, and most of the Italian princes and states) that gave a deadly blow to the power and pride of this haughty republic [c. 1509].

[13] Holland's Role in European Wars

The provinces of Holland, until overwhelmed by debt and taxes, led and participated in European wars. They had furious contests with England for dominion of the sea. And they were among the most persevering and implacable of Louis XIV's opponents.

[14] Great Britain

For ages, Britain's predominant pursuit has been commerce. And one branch of the national legislature is composed of representatives of the people. Nevertheless, few nations have engaged in more wars, frequently initiated by the people.

[15] Representatives Caused British Wars

Britain has been involved in, if I may say so, almost as many popular as royal wars. On various occasions, the nation's representatives have dragged their monarchs into war or, contrary to the monarch's desires and, sometimes, the real interests of the state, continued a war.

In the long European struggle between *Austria* and *Bourbon*, the English antipathies against the French and the ambition, or rather the avarice, of the Duke of Marlborough, protracted the war well beyond sound policy and the opposition of the royal court.

[16] Wars to Retain, Increase Commerce

The wars of these last two nations have been greatly influenced by commercial considerations, either to protect or increase trade and navigation advantages. And sometimes even the more culpable desire of sharing in the commerce of other nations without their consent.

[17] Britain, Spain Commerce War

The last war but two between Britain and Spain sprang from the British merchants attempting to prosecute an illicit trade with the Spanish Main. These unjustifiable practices produced severity on the part of the Spaniards towards the subjects of Great Britain that were not justifiable, because they exceeded the bounds of just retaliation and were inhuman and cruel. Many of the English who were taken on the Spanish coast were sent to dig in the mines of Potosi. And as resentment progresses, after a while, the innocent were confused with the guilty in indiscriminate punishment.

The complaints of English merchants kindled a violent flame that spread throughout the nation, then through the House of Commons, and from that body to the ministry. Letters of reprisal were granted and war ensued. Consequently, all the alliances formed only 20 years before, with sanguine expectations of the most beneficial fruits, were overthrown.

[18] Can't Expect Peace Among Separated States

From this summary of situations similar to our own, why should we confidently expect peace and cordiality between members of the present confederacy if the States separate? Haven't we seen the fallacy and extravagance of idle theories promising an exemption from the imperfections, weaknesses, and evils incident to every type of society?

Isn't it time to awake from the deceitful dream of a golden age? We must adopt the practical maxim for our political conduct that we, as well as the other inhabitants of the globe, are a long way from the happy empire of perfect wisdom and perfect virtue.

[19] Many Excuses for Conflicts

Let the extreme depression over our national dignity, let the inconveniences felt everywhere from a lax and ill government, let the revolt within North Carolina, the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare—!

[20] One Republic Remedies Interstate Conflict

Generally, mankind behaves quite differently than predicted by those endeavoring to lull asleep our fears of discord and hostility if the States disunite. A sort of political axiom, founded on historical observation, is that nearness makes nations natural enemies.

An intelligent writer expresses himself on this subject: “Neighboring nations (says he) are naturally enemies of each other, unless their common weakness forces them to league in a confederate republic, and their constitution prevents the differences that neighborhood occasions, extinguishing that secret jealousy that disposes all states to aggrandize themselves at the expense of their neighbors.”[5]

This passage both points out the evil and suggests the remedy.

Publius

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5 Vide *Principes des Negociations*, par l’Abbe de Mably. – Publius.)

#7: Potential Reasons for Wars Between Disunited States

It is sometimes condescendingly asked, if the States were disunited, what reasons would they have to make war on each other? It would be a full answer to say, precisely the same reasons that have, at different times, deluged in blood all the nations in the world.

However, unfortunately for us, there is a more specific answer to the question. We can think of reasons for differences between us. Even under the restraints of a federal constitution, we have felt their effect. We can deduce the consequences of removing those restraints.

[2] Territorial Disputes

Territorial disputes are always a fertile source of hostility among nations. Perhaps this is the reason for the greatest number of wars that have desolated the earth. This cause would exist among us in full force.

Vast tracts of territory within the boundaries of the United States remain unsettled. Several States still have discordant and undecided claims. If the Union was dissolved, all the States would have similar claims.

Rights to lands not granted at the time of the Revolution, crown lands, remain the subject of serious and animated discussion. The States that controlled their colonial governments claim them as property. Other States contend the rights to that land, which had been granted by the crown, devolved at the founding of the Union. They say this is especially true of the Western territory that was either actually owned by the crown or was under the king of Great Britain's jurisdiction because the Indians who lived on it had been conquered.

Great Britain relinquished this land in the peace treaty. Some claim this territory was an acquisition to the Confederacy by compact with a foreign power. Hoping for an amicable termination of the dispute, Congress prudently prevailed upon States to cede it to the United States for the benefit of the whole. A dismemberment of the Confederacy, however, would revive this dispute and create others on the same subject.

At present, a large part of the vacant Western territory is, by cession if not anterior right, the common property of the Union. If the Union ended, States that had ceded the property as a federal compromise would probably reclaim the lands. The other States would insist on a proportion, arguing that the territory was acquired or secured by joint efforts of the Confederacy.

Even if, contrary to probability, all the States agreed to share in this common territory, the question of proper apportionment would remain. Different principles would be set up by different States with differing interests. They might not easily be persuaded to make an amicable agreement.

[3] Dispute over Wyoming Territory

Therefore, the Western territory provides a theatre for hostile pretensions without any common judge to interpose between the contending parties. History shows we have good ground to fear that the sword would sometimes be used as the arbiter of their differences.

The dispute between Connecticut and Pennsylvania over Wyoming land reminds us not to expect easy answers to such differences. Under the Articles of Confederation, the parties appealed to a federal court for the decision. The court decided in favor of Pennsylvania. But Connecticut was dissatisfied until, by negotiation, an equivalent was found for her perceived loss.

I don't intend to suggest misconduct by Connecticut. She sincerely believed herself injured by the decision and States, like individuals, acquiesce with great reluctance in determinations to their disadvantage.

[4] Dispute over District of Vermont

Those watching the controversy between New York and the district of Vermont can vouch for the opposition from even States not a part of the claim. The peace of the confederacy might have been in danger if New York had attempted to assert its rights by force.

Two primary motives prompted opposition from States that were not part of the claim: (1) jealousy of New York's future power and (2) land grants made to individuals in neighboring States by the government of Vermont.

States who brought claims contrary to New York's (New Hampshire, Massachusetts, Connecticut) seemed more interested in dismembering New York than establishing their own pretensions. New Jersey and Rhode Island discovered a zeal for Vermont's independence; and Maryland agreed until alarmed by the appearance of a connection between Canada and that State. These small States worried about New York's growing greatness. Reviewing these actions shows some causes that would likely embroil the States with each other, if it would be their unfortunate destiny to become disunited.

[5] Commercial Disputes

Commerce offers another fruitful source of contention. The States in less favorable circumstances would want to share in the advantages of their more fortunate neighbors.

Each State, or separate confederacy, would pursue a commercial policy peculiar to itself, creating distinctions, preferences, exclusions and discontent. Since the earliest settlement of the country, commerce has been based on equal privileges. The change would sharpen discontent.

We should be ready to name the injuries that were caused, in reality, by justifiable acts of

independent sovereignties regarding their distinct interests.

The spirit of enterprise characterizing the commercial part of America uses every occasion to improve itself. This unbridled spirit probably won't respect trade regulations designed to secure exclusive benefits for the citizens of a specific State. The infractions of regulations on one side, and the efforts to prevent and repel them on the other, would naturally lead to outrages, then reprisals, then wars.

[6] Example: New York's Import Duties

Some States would have opportunities to make others involuntarily subservient through commercial regulations. The situation of New York, Connecticut, and New Jersey gives an example of this.

In need of revenue, New York put duties on imports. As consumers of the same products, the citizens of these two exporting States pay a large part of these duties. New York would not voluntarily forego this advantage. Her citizens wouldn't consent to a rebate to the citizens of those neighboring States. And it would be impossible to segregate the customers in the New York market.

How long would Connecticut and New Jersey submit to taxation for the exclusive benefit of New York? How long would New Yorkers be permitted to enjoy the advantage of a metropolis that its neighbors find oppressive? Could we preserve New York with the weight of Connecticut on one side and the cooperating pressure of New Jersey on the other? Temerity alone would allow an affirmative answer to these questions.

[7] Disputes Over National Debt

The Union's public debt would cause further collision between the separate States or confederacies. First the apportionment, then the progressive extinguishment, would produce ill humor and animosity.

How could a satisfactory rule of apportionment be possible? Scarcely any proposal is free from real objections. As usual, opposing parties would exaggerate them.

Already, the States have dissimilar views on the general principle of discharging public debt. Some of them, either not impressed with the importance of national credit or because their citizens have little, if any, interest in the question, feel an indifference or repugnance to paying the domestic debt. They would be inclined to magnify the difficulties of a distribution.

Other States have an additional complication. Their citizens' total public credit is greater than their State's proportion of the national debt. They would demand an equitable and effective provision.

The procrastination of debtor States would create resentments in creditor States. Real differences of opinion and manufactured excuses would delay the settlement of an apportion rule.

The citizens of the States would clamor. Foreign powers would demand satisfaction. And the peace of the States would be in double jeopardy from external invasion and internal strife.

[8] Debt: Hostilities Between States

Suppose an apportionment rule was made. Some States would still find it harder to bear than others. Naturally, the suffers would seek mitigation of the burden.

Just as naturally, others would be disinclined to any revision that might increase their own encumbrances. Their refusal would supply a pretext for complaining States to withhold their contributions. The noncompliance of these States would be ground for bitter discussion and altercation.

Even if the rule adopted was equal in principle, some States would be delinquent because of a real deficiency of resources, financial mismanagement, accidental governmental mismanagement, and the reluctance of men to postpone immediate wants by using money to pay debts.

Delinquencies, from whatever causes, produce complaints, recriminations, and quarrels. Perhaps nothing disturbs the tranquility of nations more than their being bound to mutual financial obligations that don't yield an equal, coincident benefit. It is as true as it is trite that men differ over nothing so readily as the payment of money.

[9] Disputes Over Citizens' Contracts

Another probable source of hostility is laws in violation of private contracts, when they injure citizens of a State. We have seen too many instances of State codes being disgraced. We can not expect a more liberal and equitable spirit in the State legislatures if they are unrestrained by checks.

We've seen Connecticut disposed to retaliate against Rhode Island as a consequence of offenses perpetrated by the Rhode Island legislature. We can reasonably assume that under other circumstances, a war, not of *parchment* but of the sword, would punish atrocious breaches of moral obligation and social justice.

[10] Dangers of State Alliances with Foreign Nations

Preceding papers sufficiently unfolded the probability of alliances between States, or confederacies, and different foreign nations, and the effects of such alliances on the peace of the whole. They've shown that, if America is not connected at all or only by the feeble tie of a league, foreign alliances will gradually entangle it in all the pernicious labyrinths of European politics and wars. And the destructive contentions of the parts would be likely to become prey to the artifices and machinations of nations equally the enemies of them all. *Divide et impera*[*] must be the motto of every nation that either hates or fears us.

Publius

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[*] Divide and command. –PUBLIUS

#8: Disunited States Threat to Each Other

Let us assume the States were disunited, or in alliances formed from the wreck of the Union. They would face the same vicissitudes of peace and war, friendship and enmity, experienced by all neighboring nations not united under one government. Let us study some of the consequences in concise detail.

[2] Strong Defense Reduces Wars

During the first period of their separate existences, war between the American States would cause more distress than in countries with long military establishments. Although they damage liberty and economy, the presence of disciplined armies in Europe make sudden conquests impractical, and prevent the rapid devastation that foreshadowed war before their introduction.

Fortifications also delay conquests. The nations of Europe are encircled by fortified places that mutually obstruct invasions. To gain admittance into an enemy's country, invasion resources are wasted on campaigns against two or three frontier garrisons.

Similar impediments occur at every step, exhausting the strength and delaying the progress of an invader. Formerly, an invading army penetrated into the heart of a neighboring country almost as quickly as news of its approach reached its rulers. Now, a comparatively small force of disciplined defensive troops in outposts impedes, finally frustrating, larger invasions.

The history of war in Europe no longer includes whole nations subdued and empires overturned. Instead, towns are taken and returned, battles decide nothing, retreats are more beneficial than victories. There is much effort and little acquisition.

[3] Disunited States: Conquests, Ruin

In this country, the opposite would happen. Jealousy would postpone military spending as long as possible. The lack of fortifications, leaving State frontiers open to one another, would facilitate inroads. With little difficulty, populous States would overrun less populous neighbors. Conquests would be easily made but difficult to retain. Therefore, war would be desultory and predatory. Plunder and devastation march behind irregular troops. The primary result of our military exploits would be calamities on individuals.

[4] Tradeoff Between Liberty, Safety

This is not an exaggeration. Though, I confess, the situation would soon change.

Safety from external danger is the most powerful motivator of national conduct. After a time, even the ardent love of liberty will diminish under its dictates. War's violent destruction of life and property, and the vigilance under a continuous state of danger, will compel even those nations most attached to liberty to resort, for repose and security, to institutions that tend to destroy their civil and political rights. To be safer, they will risk being less free.

[5] Perceived Danger Increases Military Defense, Executive Authority

I'm referring to standing armies and the appendages of military establishments. The new Constitution has no prohibition of a standing army; therefore, by inference they may exist under it.[6]

This inference is, at best, problematical and uncertain. However, it can be argued that standing armies are the inevitable result of the dissolution of the Union. Frequent wars and constant fear require and produce a state of constant military preparedness.

First, the weaker States, or confederacies, would need standing armies to make themselves equal with their stronger neighbors. They would endeavor to supplement their smaller population and fewer resources with a more effective system of defense, including disciplined troops and fortifications. At the same time, their executive arm of government would need to be strengthened and, in doing so, their constitutions would evolve towards a monarchy. It is the nature of war to increase the executive at the expense of the legislative authority.

[6] States Deteriorate Into Despotism

Those States or confederacies who do the above would soon be superior to their neighbors. Small States with less natural strength but vigorous governments and disciplined armies, often triumph over larger States or States with greater natural strength but lacking these advantages.

Neither the pride nor safety of more important States, or confederacies, would permit them to submit to this mortifying and adventitious superiority for long. They would quickly use similar military means to reinstate their lost preeminence. Thus, in a little time, the same engines of despotism that are the scourge of the Old World will be established in every part of this country. This is the natural course of things. Our reasoning will be just in proportion as it follows this model.

[7] Natural Course of Human Societies

These are not vague inferences drawn from speculative defects in a Constitution that derives its power from a people, their representatives, or delegates. Rather, they are solid conclusions drawn from the natural progression of human affairs.

[8] Commercial Nation, Professional Army

It may be asked why standing armies did not spring up out of the frequent conflicts in the ancient republics of Greece. Different answers, equally satisfactory, may be given to this question.

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6 This will be fully examined in its proper place and be shown to be a natural precaution, and a much better one than found in any constitution heretofore framed in America, most of which contain no guard at all on this subject.--PUBLIUS

First, Greece was essentially a nation of soldiers. Today, people industriously pursue profits, devoting their efforts to improvements in agriculture and commerce. Capitalism is incompatible with a nation of soldiers.

The growth of revenue, multiplied by increases of gold, silver, industry, and the modern science of finance, along with the habits of nations, have produced an entire revolution in the system of war. Professional, disciplined armies, separate from the body of citizens, have become the companions of frequent hostility.

[9] Small, Unintrusive Peacetime Army

Also, military establishments in a country seldom exposed to military invasions are quite different than those in a nation often subject to, and always fearing, them. Rulers of the former, even if so inclined, won't have any excuse to keep armies as numerous as is necessary in the latter situation.

In countries not exposed to military invasions, armies are rarely, if ever, activated for interior defense. The people are in no danger of being broken by military subordination. Laws are rarely relaxed because of military emergencies. The civil state remains vigorous, neither corrupted nor confounded by the principles or propensities of a military state. The smallness of the army makes the community's natural strength an over match for it.

Since the citizens neither look to the military for protection nor submit to its oppressions, they neither love nor fear soldiers. The citizens view soldiers as a necessary evil and are ready to resist any attempt to curtail their civil rights.

[10] Executive Use of Military

Under these circumstances, the executive branch of government may use the army to suppress a small faction, an occasional mob or insurrection, but it won't be able to enforce encroachments against the united efforts of the great body of the people.

[11] Large Military Decreases Civil Rights

In a country faced with perpetual menacings, the opposite happens. The government must always be prepared to repel it. It needs armies large enough for instant defense. The continual necessity for their services proportionately enhances the importance of the soldier and degrades the condition of the citizen. The military state becomes elevated above the civil.

The inhabitants of territories, often the theater of war, are unavoidably subjected to frequent infringements on their rights, which weakens their sense of those rights. By degrees, the people begin to consider soldiers not only as their protectors but as their superiors. The transition to seeing them as masters is neither remote nor difficult. Once it has happened, however, it's difficult to get the people to make a bold or effectual resistance to usurpations supported by the military power.

[12] Britain Doesn't Need Large Army

Great Britain is seldom exposed to internal invasions. An insular situation and a powerful navy, guarding it against foreign invasion, supersede the necessity of having a large army within the kingdom. A force that can hold invaders at bay until the militia can be raised, is all that is necessary. Neither national policy nor public opinion has tolerated more domestic troops. It has been a long time since an internal war has produced the enumerated consequences.

To a great degree, Britain being an island has helped preserve the liberty that it enjoys until this day, in spite of prevalent venality and corruption. If Britain was on the continent, she would need home military establishments as extensive as those of the other great European powers. She, like them, would probably be a victim of the absolute power of a single man.

It is possible, but not easy, that the island may be enslaved from other causes, but not from the prowess of an army as small as that usually kept within Britain.

[13] United, States Insulated from Danger

If we're wise enough to preserve the Union, usually we may enjoy the advantage of an insulated situation for a long time. Europe is a great distance from us. Her colonies in our vicinity will probably continue having such disproportionate strength to ours that they'll be unable to be a dangerous annoyance. Therefore, extensive military establishments will be unnecessary for our security.

But if we become disunited, with the parts either separated or thrown together in two or three confederacies, in a short time we would be in the predicament of the continental powers of Europe—our liberties would be at risk because of the armies needed to defend ourselves against the ambition and jealousy of each other.

[14] No Constitution, Dangers Will Be Real

This concern is not superficial or futile, but solid and weighty. It deserves the most serious and mature consideration of every judicious and honest man of whatever party.

If such men will pause and meditate dispassionately on the importance of this interesting idea, if they will contemplate it and trace it to all its consequences, they will give up trivial objections to a Constitution that, if rejected, would probably end the Union. The airy phantoms that flit before the distempered imaginations of some of its adversaries would quickly be replaced by more substantial forms of dangers: real, certain, and formidable.

Publius

9: Constitution Refines "Confederate Republic" Form

A firm Union will act as a barrier against domestic strife and insurrection, preserving the peace and liberty of the States.

Reading the history of the petty republics of Greece and Italy produces sensations of horror and disgust at the continuous agitation. A rapid succession of revolutions perpetually oscillated them between the extremes of tyranny and anarchy. The occasional calms serve only as short-lived contrasts to the furious storms to follow. We view intervals of felicity with some regret because we know they will be quickly replaced by the tempestuous waves of sedition and party rage. Momentary rays of glory break through the gloom, dazzling us with a transient and fleeting brilliancy. At the same time, their history admonishes us to lament political vices that pervert the direction and tarnish the luster of bright talents so justly celebrated.

[2] Opponents: Ordered Society Can't Be Free

From the disfiguring disorders of the republics of Greece and Italy, the advocates of despotism argue against both the republican form of government and the principles of civil liberty. They declare an ordered society incompatible with all free governments. And they indulge in malicious exultation over its supporters.

Happily for mankind, astounding governmental structures formed on the foundation of liberty have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, that America will be the broad and solid foundation of other edifices, no less magnificent, that will become equally permanent monuments of their errors.

[3] Improvement in Republic Form

The histories of the republican governments of Greece and Italy undeniably represent their experience. But if a more perfectly crafted republican-based structure was impossible, the enlightened friends of liberty would have abandoned the cause of that form of government as indefensible.

However, like most sciences, the science of politics has greatly improved. The effectiveness of various principles, ones either not known or imperfectly known to the ancients, is now understood. This includes: a fixed procedure for distribution of power into distinct branches, the introduction of legislative balances and checks, the institution of courts with judges holding their offices during good behavior, and legislative representation by deputies elected by the people. These are new discoveries or have progressed toward perfection in modern times. By these powerful means, the excellencies of republican government may be retained with its imperfections lessened or avoided.

I offer another improvement to the popular systems of civil government. Adding it may seem odd, since it's been used as an objection to the new Constitution. I'm referring to the enlargement of the orbit within which the systems will revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great confederacy. The latter is the object of immediate consideration. An examination of the principle as applied to a single State will be useful and will be done in another place

[4] Opponents: Republic Requires Small Territory

The utility of a Confederacy to suppress internal faction, guarding the tranquillity of states, as well as increasing their external force and security, isn't a new idea. Different countries in different ages have practiced it and have received the approval of political scholars. The opponents of the proposed Constitution have unremittingly cited and circulated Montesquieu's observations that a republican government requires a small territory. But they seem uninformed of sentiments expressed by that great man in another part of his work. Nor do they call attention to the consequences of the principle they support with ready acquiescence.

[5] Recommended Size Smaller Than Most States

When Montesquieu recommends a small area for republics, he's referring to dimensions much smaller than almost every one of our States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can be compared with the models he described. Therefore, if we were to take his ideas on this point as unquestionably true, we would have to either take refuge in the arms of monarchy or split ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt.

Some opponents of the Constitution seem aware of this dilemma. They've even been bold enough to hint that dividing the large States is desirable. Such an infatuated, desperate, self-serving policy might provide a multitude of political offices for men not qualified to hold positions beyond the narrow circles of personal intrigue. But it could never promote the greatness or happiness of the people of America.

[6] Theory Relates to Size of States

As already mentioned, the principle itself will be examined at another place. It's sufficient to say here that Montesquieu's theory would only dictate a reduction of the size of the largest members of the Union. And it does not argue against them being joined under one confederate government. And this is the true question in the present discussion.

[7] Montesquieu: Confederate Republic

Montesquieu is so far from opposing a Union of the States that he explicitly regards a confederate Republic as suitable, reconciling the advantages of monarchy with republicanism.

[8] Advantages of Republic, Monarchy

In the *Sprit of Laws*, book ix, he says mankind very probably would have constantly lived under the

government of a single person if a constitution had not been contrived that has all the internal advantages of a republic together with the external force of a monarchy, that is, a confederate republic.

[9,10] States Combine into Larger Republic

In this form of government, he continues, several smaller *states* agree to become members of a large *one.* It is like an assemblage of societies to make a new one that is able to grow by adding new associations until it is powerful enough to provide security for the united body. This kind of republic can withstand external force and internal corruption, preventing all inconveniences.

[11] Other States Can Oppose One State Usurper

He explains that if one man attempted usurping supreme authority, he wouldn't have equal influence in all the confederate states. If he had too great an influence over one, it would alarm the rest. If he subdued a part, the rest would be free to oppose and overpower him with forces independent of those he usurped.

[12, 13] Confederacy of Republics Stable

A popular insurrection in one state would be quelled by the others. If abuses creep into one part, he argues, it is reformed by those that remain sound. The State may be destroyed on one side and not on the other. The confederacy might be dissolved and the States preserve their sovereignty. Since it is a government composed of small republics, it has internal happiness. And it has the advantage of a large monarchy in external situations.

[14] Union Represses Domestic Faction

I have paraphrased Montesquieu's writing at such length because they are arguments in favor of the Union and they remove false impressions made when other parts of his work is quoted out of context. This part of his writing also speaks to the point of this paper, the tendency of the Union to repress domestic faction and insurrection.

[15] Confederacy vs. Consolidation

A distinction, more subtle than accurate, has been raised between a *confederacy* and a *consolidation* of States. The essential characteristic of the confederacy is the restriction of its authority to the members in their collective capacities, without reaching the individuals of whom they are composed [legislation for states]. It is contended that the national council should not be concerned with any object of internal administration. Equality of suffrage between members has also been insisted on as an important feature of a confederate government.

These are largely arbitrary positions, neither supported by principle nor precedent. Governments of this kind generally seem to be marked with these distinctions and it's easy to assume they are an inherent part of their nature. But there have been such extensive exceptions to the practice, no absolute rule on the subject can be concluded

On the other hand, this investigation will clearly show that wherever the principle argued for by the opposition has prevailed, it caused incurable disorder and imbecility in the government.

[16] Constitution: States Represented, Retain Some Sovereignty

The definition of a *confederate republic* is "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of federal authority are discretionary. As long as the separate organization of members isn't abolished, constitutionally existing for local purposes, and even if it is in subordination to the general authority of the union, it will be, in fact and in theory, an association of states, or a confederacy.

The proposed Constitution, rather than implying an abolition of the State governments, makes them constituent parts of the national sovereignty with direct representation in the Senate. It leaves in their possession certain exclusive and very important portions of sovereign power. This corresponds with the idea of a federal government.

[17] Constitution Refines Confederate Republic Government Form

In the Lycian confederacy with 23 cities or republics, the largest had *three* votes in the common council, the middle had *two*, and the smallest *one*. The common council appointed all judges and executives of the respective cities. This was certainly the most invasive interference in their internal administration; if anything seems exclusively appropriate to local jurisdictions, it is the appointment of their own officers. Yet Montesquieu says, "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia."

Thus we realize that the distinctions insisted upon in the Constitution were not within the contemplation of this enlightened civilian and we shall be led to conclude that they are the novel refinements of an erroneous theory.

Publius

Constitutional references:

Article 1, section 3 Senate, equal representation for each State

10: Large Republic: Best Control of Effects of Faction

The important tendency of a well-constructed Union to break and control the violence of faction deserves careful examination. The propensity for this dangerous vice alarms every friend of popular governments. Therefore, they will appreciate any plan providing a cure that doesn't violate the principles of liberty he so values.

Public councils rift with instability, injustice, and confusion are the mortal diseases that have killed popular governments everywhere. The adversaries of liberty continue to use this excuse for their most specious declamations.

The American State constitutions make valuable improvements on the popular governing models, both ancient and modern, that cannot be too much admired. But claiming they effectually obviate the danger as was wished and expected would be an unwarranted partiality.

Our most considerate and virtuous citizens, equally friends of public and private faith, and public and personal liberty, complain our governments are too unstable. They say the public good is disregarded in the conflicts of rival parties. Too often, measures are decided by the superior force of an interested and overbearing majority rather than the rules of justice and the rights of the minority party.

We may fervently wish these complaints had no foundation, but the evidence shows they are in some degree true.

A candid review shows that some of our distresses have been erroneously blamed on the operation of our governments. However, other causes, alone, will not account for many of our heaviest misfortunes. Specifically, the prevailing and increasing distrust of public engagements and alarm for private rights echoed from one end of the continent to the other. These must be largely, if not totally, the effects of distrusting the injustice that a factious spirit has tainted our public administrations.

[2] Faction Defined:
Group Acts Against Community Interests

By a faction, I mean a group of citizens, either a majority or minority, united and actuated by some common passion or interest adverse to the rights of other citizens or to the aggregate interests of the community.

[3] Faction Cure:
Remove Causes or Control Effect

There are two methods of curing the mischiefs of faction: remove its causes or control its effects.

[4] Remove Causes of Faction:
Destroy Liberty or Equalize Passions

There are also two methods of removing the causes: destroy the liberty essential for it to exist or give every citizen the same opinions, passions, and interests.

[5] Destroy Liberty: Worse Than Factions

The first remedy is far worse than the disease. Liberty is to faction what air is to fire. Without the nourishment of liberty, faction instantly dies. But abolishing liberty, an essential of political life, because it nourishes faction is as silly as the wish to annihilate air, an essential of animal life, because it gives fire its destructive energy.

[6] Equal Passions: Impractical, Impossible

The second cure is an impractical as the first is unwise. As long as man's reasoning remains fallible and he's free to use it, different opinions will be formed. As long as a connection between reasoning and self-love exists, opinions and passions will influence each other. Especially, passions will sway opinions.

Property rights originate from the people. But the diversity in men's abilities is an insurmountable obstacle to equality of acquisitions. Protection of these abilities is government's primary function. Because government protects different and unequal abilities to acquire property, the people end up owning properties of varying value and kind. This diversity of property ownership divides society into groups with different interests and concerns.

[7] Faction: Inherent in Human Nature

Therefore, faction is part of the very nature of man. We see different degrees of it in different circumstances. Differing opinions on religion and government in both theory and practice, the various ambitions of leaders, human passions, and diversity of interests have, at various times, divided mankind into parties and inflamed animosity, making them more apt to oppress each other than cooperate for their common good.

Mankind's propensity toward mutual animosities make even frivolous and insubstantial differences a sufficient excuse to kindle unfriendly passions and excite violent conflicts.

But the most common and durable source of factions is the unequal distribution of property. Those who have property and those who are without property always have different interests. Likewise, creditors and debtors.

From necessity, civilized nations develop property owners, manufacturers, merchants, bankers and many less defined occupations creating different classes with different sentiments and views. The regulation of these various and conflicting interests is the principal task of modern legislation. Therefore, factions are a part of the ordinary operations of government.

[8] Legislators:
Both Advocates, Parties to Causes

No man is allowed to be a judge in his own cause because his interest would certainly bias his judgement and probably corrupt his integrity.

For even greater reasons, a group of men are unfit to be both judges and litigants at the same time. Yet the most important legislative acts are basically judicial determinations, not about the rights of individuals, but about the rights of large bodies of citizens. And the different classes of legislators are both advocates and parties to the causes they determine.

Does a proposed law concern private debts? Creditors are parties on one side; debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges. The most numerous party or, in other words, the most powerful **faction** must be expected to prevail.

Should domestic manufacturers be encouraged, and how much, by restrictions on foreign manufacturers? Landowners would answer differently than manufacturers. Neither would probably use justice and the public good as sole motivators.

The apportionment of taxes on different types of property would seem to require the most exact impartiality. Yet there is, perhaps, no legislative act with greater opportunity and temptation for the predominant party to trample on the rules of justice. With every dollar they overburden the minority party, they save a dollar in their own pockets.

[9] *All* Private Interests Never Ignored

It is naïve to say that enlightened statesmen will adjust the clashing interests, making them all subservient to the public good. Enlightened statesmen will not always be at the helm. Besides, to make such an adjustment indirect and remote effects must be considered. And they will rarely prevail over the immediate interest one party may have in disregarding the rights of another or the good of the whole.

[10] Effect of Faction Must Be Controlled

The obvious inference is that the *causes* of faction cannot be removed and relief can only be sought in the means of controlling its *effects.*

[11] Majority Faction: Downside of Popular Government

If a faction isn't a majority, relief comes from the republican principle that enables the majority to defeat sinister views by vote. The minority faction may clog the government systems and convulse society, but under the Constitution it can't execute and mask its violence.

When a faction is a majority, popular government enables it to sacrifice public good and the rights of other citizens to their passions and interests.

To secure the public good and private rights against the danger of such a faction and, at the same time, preserve the spirit and form of popular government, is the objective of our discussion. Let me add that our most fervent desire is to rescue popular government from the disgrace of shameful conduct under which it has so long labored and recommend it be appraised and adopted by mankind.

[12] Prevent Majority Faction's Passions Or Actions

How is this objective obtainable? Evidently, by only one of two ways. Either the negative passions and interests in a majority faction must be prevented or that faction must be rendered unable to effect schemes of oppression.

If the desire and opportunity coincide, neither moral nor religious motives can be relied on as adequate control. Moral values don't control the injustice and violence of individuals and their efficacy decreases proportionately to the number of people involved. In other words, the effectiveness of moral values decreases as their need increases.

[13] Pure Democracy: Magnifies Violent Effects of Faction

It may be concluded from this view of the subject that pure democracy, by which I mean a society of citizens who assemble and administer the government in person, won't cure the harm caused by faction. In a pure democratic government, a common passion or interest will, almost always, be felt by a majority of the whole. There is nothing to check the inducement to sacrifice the weaker party or obnoxious individual.

Therefore, such democracies are always spectacles of turbulence and contention. They are incompatible with personal security or property rights. Their lives are as short as their deaths, violent. Political theorists who support this type of government erroneously suppose that after people are reduced to perfect political equality, their possessions, their opinions, and their passions will also be equal.

[14] Republic vs. Pure Democracy

A republic, by which I mean a government with a representation plan, suggests a different expectation and promises the cure we are seeking. Let's examine the points it varies from pure democracy and we will understand both the nature of the cure and the efficacy it derives from the Union.

[15] Representatives, Larger Area

The two great points of difference between a democracy and a republic are: first, in a republic, a small number of governmental delegates are elected by the rest of the citizens; secondly, a republic can be composed of a greater number of citizens over a larger country.

[16] Representatives: Guard Public Good

The first difference, representation, refines and enlarges public views by passing them through the chosen body of citizens. The representatives' wisdom may discern the true interest of their country and their patriotism and love of justice will make it less likely to sacrifice it to temporary or partial considerations. Under this system, the public voice, as pronounced by the representatives of the people, may be more in line with the public good than if all the people gathered and spoke for themselves.

On the other hand, the effect may be inverted. Men with local prejudices or sinister designs may, by

intrigue, corruption, or other means, be voted into office, then betray the interests of the people.

The question becomes whether small or extensive republics elect better guardians of the public good. For two obvious reasons, extensive republics do.

[17] Large Nation: More Qualified People

In the first place, no matter how small the republic may be, there must be enough representatives to guard against the plots of a few. However, in a large republic the number must be limited to guard against the confusion of a multitude. Hence, the number of representatives in the two cases are not in the same proportion to their constituents, with the larger proportion in the small republic. If the proportion of qualified people is the same in a large as a small republic, the large republic will present greater options and, consequently, result in a greater probability of a fit choice.

[18] Large Republic: More Qualified Men

Since each representative is chosen by a greater number of citizens in a large than a small republic, it will be more difficult for unworthy candidates to successfully win through election fraud. And with wide voter freedom, elections will more likely center on men who possess the most attractive merit and the most diffusive and established character.

[19] Representative/Constituent Ratio

It must be confessed that, as in most things, inconveniences will be found. Too large a number of electors (voters) leaves the representative too little acquainted with all their local circumstances and lesser issues. Reducing the electorate too much renders the representative unduly attached and unfit to comprehend and pursue great and national issues. The federal Constitution forms a happy combination in this respect. The great and aggregate issues are referred to the national government, local issues referred to State legislatures.

[20] Large Area: Conspiracy Harder

The second difference between a pure democracy and a republic is that a republic can encompass a greater number of citizens and larger territory than a democracy. This circumstance makes factious combinations difficult.

The smaller the society, the fewer the distinct parties and interests, and the more frequently they will be a majority. The smaller the number of individuals composing a majority and the smaller area they inhabit, the more easily will they combine and execute their plans of oppression.

Expanding the size adds a greater variety of parties and interests. It becomes less probable that a majority of the whole will have a common motive to invade the rights of other citizens. Even if a common motive exists, it will be more difficult for those holding it to discover their combined strength and act in unison with each other.

Besides other impediments, when a consciousness of unjust or dishonorable purposes exists, communication is limited by distrust in proportion to the number whose concurrence is necessary.

[21] Union as Control of Effects of Faction

Hence, it clearly appears that the same advantage a republic has over a democracy, controlling the effects of faction, is enjoyed by a large over a small republic, and enjoyed by the Union over the States composing it. Is the advantage the result of substituting enlightened, virtuous representatives who are above local prejudices and schemes of injustice? It won't be denied that Union representatives will most likely possess these requisite endowments. Is it the greater security afforded by a greater variety of parties, so one party can't outnumber and oppress the rest? Does the increased variety of parties within the Union increase this security? Is a large republic safer because it has more obstacles to the accomplishment of the secret wishes of an unjust majority? Again, the large size of the Union gives it the most obvious advantage.

[22] Factious Passions: Effect on Union

Factious leaders may kindle a flame within their specific States, while not able to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy. But the variety of sects dispersed over the entire country secures the national councils against danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a specific member of it, just like a malady is more likely to taint a specific county or district than an entire States.

[23] Positive Effects of Size, Structure of Government

In the size and proper structure of the Union, therefore, we see a republican remedy for the most common diseases of republican government. And according to the degree of pleasure and pride we feel in being a republic, we will cherish and support the character of Federalists.

Publius

11: Benefits of Strong Union to American Commerce

Few people doubt that the Union is important to American commerce. Most men knowledgeable about the subject generally agree. This applies to both trade with foreign countries and each other.

[2] European Policies Restrain Our Trade

The adventurous spirit of America's commercial character already worries several of Europe's maritime powers. They seem apprehensive of our intruding on their shipping trade, which is the support and foundation of their naval strength. Nations with colonies in America worry about our country's capabilities. They foresee the possible threats to their American territories from a Union with the power and resources to create a powerful marine.

Impressions like these will foster divisions among us and, as far as possible, deprive us of an active commerce in our own ships. This would fulfill their threefold goal: preventing our interference in their navigation, monopolizing the profits of our trade, and clipping the wings by which we might soar to dangerous greatness.

If it wasn't an impractical exercise, the European policy of restraining our commerce could be traced back to the cabinets of European ministers.

[3] Unified Foreign Commerce Regulations

If we remain united, we can counteract policies unfriendly to our prosperity in a variety of ways.

Prohibitory regulations throughout the States may force foreign countries to bid against each other for the privilege of our markets. This conclusion won't seem fanciful to people who appreciate the importance of a market of three million people—with a rapidly growing population dedicated to agriculture and likely to remain so—to any manufacturing nation. This nation's trade and navigation would be dramatically different if it could use its own ships rather than be forced to use the ships of another country to indirectly convey its products to and from America.

For instance, suppose the American government could exclude Great Britain (with whom we presently have no commerce treaty) from all our ports. How would this effect her politics? Could we successfully negotiate valuable and extensive commercial privileges in that kingdom?

In the past, these questions received plausible, but not solid or satisfactory, answers. Some said prohibitions on our part would not change the British system because her trade with us would continue through the Dutch, who would buy and transport British goods to be sold in our markets. But losing the advantage of being her own carrier would seriously injure British navigation. Would not the Dutch intercept the primary profits as compensation for their agency and risk? Wouldn't paying for freight considerably reduce Britain's profit? Wouldn't the British circuitous supply line encourage competition among other nations, increasing the price of British commodities in our markets and transferring to other nations the management of this branch of British commerce?

[4] Britain Would Change Policies

A mature consideration of the ideas suggested by these questions highlight Britain's disadvantages in such a situation. After adding to this argument the established British habit of American trade and the importance of the West India Islands, Britain would relax her present system, letting us enjoy the privileges of the island markets and substantially benefiting our trade.

[5] Navy Will Effect International Commerce

An established federal navy would further influence the conduct of European commerce towards us. If the Union continued under an efficient government, in the near future it would undoubtedly have the power to create a navy. It might not vie with great maritime powers but it could change a struggle if it allied with either side of a conflict. Our ships would be especially influential in West Indian operations. A few ships, reinforcing either side, could decide the fate of a campaign that had halted trade important to many people. In this respect, our position is a commanding one.

If we add to the prosecution of military operations in the West Indies the usefulness of supplies from this country, we'd gain an advantageous position to bargain for commercial privileges. Our friendship and our neutrality would be valuable. By keeping the Union, we may hope to become the arbiter of Europe in America, influencing the balance of European competitions in this part of the world as our interests dictate.

[6] Disunited We'll Be Weak, Easy Prey

But if we disunite, the rivalries between our separate parts will produce a stalemate, frustrating all our great natural advantages. Our insignificant commerce would fall prey to the wanton intermeddling of warring nations. They would have nothing to fear from us. With few scruples, they'll plunder our property as often as it falls in their way. Neutrality rights are respected only when defended by adequate power. A despicably weak nation forfeits even the privilege of being neutral.

[7] Strong Government Aids Commerce

A vigorous national government dedicating its strengths and resources to a common interest would deflect all European alliances attempting to restrain our growth. Since a single national government makes success impractical, it removes the motive for such alliances. Moral and physical necessity would create an active commerce, extensive navigation, and a flourishing marine. We could defy the ploys of little politicians to control or vary the irresistible and unchangeable course of nature.

[8] If States Disunite, Europe Will Dominate Our Commerce

But if we were disunited, European coalitions might exist and operate with success. Powerful maritime nations, responding to our universal impotence, would dictate the conditions of our political existence.

They have a common interest in being our carriers and preventing our becoming theirs. They'd probably ally to embarrass our navigation, destroying it and confining us to passive commerce. We would be compelled to accept the first price for our commodities and see the profits of our trade snatched from us to enrich our enemies and persecutors. The unequaled spirit of enterprise and genius of American merchants and navigators, in itself an inexhaustible mine of national wealth, would be stifled and lost, poverty and disgrace would spread across a country that, with wisdom, might make herself the admiration and envy of the world.

[9] If States Disunite, Europe Controls Our Waterways

The American Union has some very important trade rights—I refer to the fisheries, the navigation of Western lakes and the Mississippi. The dissolution of the Union would make room for delicate questions about the future of these rights. The more powerful foreign partners, no doubt, would change them to their advantage.

Spain's attitude towards the Mississippi needs no comment.

France and Britain view our fisheries as important to their navigation. Of course, they wouldn't long remain indifferent to our mastery of this valuable branch of traffic, by which we are able to undersell those nations in their own markets. What would be more natural than that they ban such dangerous competitors?

[10] Commerce Improves Navigation

This is an important branch of trade. In different degrees and with an extension of mercantile capital, all navigating States would probably advantageously participate. As the United States improves its navigation, it will become a universal resource. It is indispensable to establishing a navy.

[11] Vast Resource For U.S. Navy

A navy. Union will contribute to this great national objective in various ways. Every institution grows and flourishes in proportion to the quantity and extent of the means concentrated towards its formation and support.

A United States navy, using the resources of all, is a far more attainable objective than a navy of any single State or partial confederacy. Indeed, different areas of confederate America possess the various resources needed for this essential establishment. The southernmost States furnish an abundance of certain naval stores—tar, pitch, and turpentine. Their wood for the construction of ships is more solid and lasting. The longer duration of naval ships chiefly constructed of Southern wood would be particularly important to naval strength and the national economy. Some Southern and Middle States yield plenty of high quality iron. The Northern States will supply most of the seamen.

The necessity of naval protection to external or maritime commerce doesn't require elucidation any more than the importance of maritime commerce to the prosperity of a navy.

[12] Union Promotes Healthier Commerce

Unrestrained commerce between the States will advance the trade of each through exchange of their respective products, supplying reciprocal wants at home and exportation to foreign markets. In every area, the veins of commerce will be replenished from the free circulation of commodities.

The diversity of State products will increase the range of commercial enterprise. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another.

Both the variety and value of products for exportation contributes to an active foreign commerce. Trade competitions and market fluctuations mean foreign commerce can be conducted on better terms with a large number of materials of a given value than a small number of the same value. Specific articles may be in great demand at certain periods and unsalable at others. But if there were a variety of articles, rarely would they all be unsalable so merchant operations would be less susceptible to obstruction or stagnation.

The speculative trader will immediately understand the validity of these observations and acknowledge that the aggregate of United States commerce would be much more favorable than that of the thirteen States without union or with partial unions.

[13] Disunity Create Commercial Barriers

Some may argue that whether the States are united or disunited, interstate commerce would achieve the same ends. But commerce would be fettered, interrupted, and narrowed for many reasons, as listed in these papers. A unity of commercial and political interests can only be achieved through a unity of government.

[14] Union Eliminates European Domination

There are other striking and animating point of views. But they lead to speculations about the future and involve topics not proper for a newspaper discussion. I will briefly observe that our situation and interests encourage us to aim for a position of dominance in American affairs.

The world may be politically and geographically divided into four parts, each with a distinct set of interests. Unhappily for the other three, Europe, using arms and negotiations, by force and fraud, has, to varying degrees, extended her dominion over them all. Africa, Asia and America have successively felt her domination. Her long superiority has tempted her to crown herself Mistress of the World, considering the rest of mankind as created for her benefit.

Men who are admired as profound philosophers have, in direct terms, attributed to Europe's inhabitants physical superiority. And they have gravely asserted that all animals, including the human species, degenerate in America. Even dogs cease to bark after having breathed our atmosphere for awhile.*

For too long, facts have supported these European pretensions. It is up to us to vindicate the honor of the human race and teach that assuming brother moderation.

As a Union, we will be able to do it. Disunion will add another victim to Europe's triumphants.

Let Americans refuse to be the instruments of European greatness! Let the thirteen States, bound together in a strict and indissoluble Union, erect one great American system with the superiority to control all transatlantic force or influence, able to dictate the terms of the connection between the old and the new world.

Publius

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* Recherches philosophiques sur les Americans.–PUBLIUS

12: Union Promotes Revenue

The effects of Union on the commercial prosperity of the States have been sufficiently delineated. The subject of this inquiry is its tendency to promote revenue interests.

[2] Commerce Increases Nation's Wealth

All enlightened statesmen acknowledge that commerce is the most productive source of national wealth. Therefore, it's become a primary political concern.

The introduction and circulation of precious metals, those darling objects of human avarice and enterprise, will multiply the means of gratification. This will invigorate the channels of industry, making them flow with greater activity and copiousness. The industrious merchant, the laborious farmer, the active mechanic, and the industrious manufacturer—all orders of men look forward with eager expectation and growing alacrity to this pleasing reward for their toils.

Experience has silenced the former rivalry between agriculture and commerce. Their interests are intimately blended and interwoven. Various countries have discovered that as commerce flourishes, land values rise. And what else could happen? Commerce procures a freer movement for the products of the earth. It stimulates the cultivation of land. Commerce is the most powerful instrument in increasing the quantity of money in a state. Commerce is the faithful handmaid of labor and industry, in every way. Therefore, how could commerce fail to augment agriculture, the prolific parent of the majority of commercial products?

It's astonishing that so simple a truth ever had an adversary. It is one of many proofs of how a spirit of ill-formed jealousy or dependence on theoretical abstraction can lead men astray from the plainest truths of reason and conviction.

[3] Money Turnover Increases Tax Revenue

A country's ability to pay taxes is related, to a great degree, to the quantity and turnover of money in circulation. Commerce contributes to both these objectives. This renders the payment of taxes easier and facilitates the requisite supplies to the treasury.

The German Emperor's realm is fertile, cultivated and populous. Much of it enjoys mild, luxuriant climates. Some parts of it contain the best gold and silver mines in Europe. But the failure to foster commerce has severely limited the monarch's revenues. Several times he's been compelled to borrow money from other nations to preserve his essential interests. And he is unable, using the strength of his own resources, to sustain a long or continued war.

[4] New Tax Laws Don't Increase Tax Revenue

But this is not the only way that Union will encourage revenue. The Union's influence will appear more immediate and decisive in other ways. From the state of the country, the people's habits, and our experience, raising very considerable sums by direct taxation is impractical.

Tax laws have been multiplied in vain. New methods to enforce collection have been tried in vain. The public expectation has been uniformly disappointed. And the States' treasuries have remained empty.

The nature of popular government promotes a popular system of administration. A languid and mutilated state of trade results in a real scarcity of money. Combined, these have defeated every experiment for extensive collections. And the different legislatures have learned the folly of attempting them.

[5] Britain's Tax Revenue from Commerce

This circumstance won't surprise anyone acquainted with what happens in other countries. In Britain, an opulent nation, direct taxes from superior wealth is much more tolerable. And the vigor of the government makes it much more practical than in America. Yet, by far the greatest part of her national revenue is derived from indirect taxes, imposts and excises. Import duties form a large part of this latter description.

[6] Commerce as Source of Tax Revenue

Clearly, America must depend chiefly on revenue from such duties for a long time. Excises must be confined within a narrow compass because the character of the people won't tolerate the inquisitive and peremptory spirit of excise laws. On the other hand, farmers will reluctantly pay even very limited taxes on their houses and lands. Personal property is too precarious and invisible an asset to tax in any way than by the imperceptible agency of taxes on consumption.

[7] Union Increases Tax Revenues

If these remarks have any basis, we must adopt the system best able to improve and extend our valuable resources. Without a doubt, a general Union is that system. As this helps commerce, State revenues from that source will increase. A Union simplifies regulations and makes collecting duties more efficient. The rate of duties would be

consistent, and the government would increase the rate without prejudice to trade.

[8] Illicit Trade Lowers State Revenues

Many circumstances conspire to make illicit trade easy and insure frequent evasions of the commercial regulations of each State, including the relative situation of the States, the intersecting rivers, the bays, the ease of communication in every direction, the affinity of language and manners, and similar commercial habits.

Separate States or confederacies would be forced to keep their duties low to avoid the temptations of illicit trade. For a long time, the temper of our governments would not permit those rigorous precautions used by European nations to guard the land and water avenues into their respective countries. Even there, avarice leads to adventurous strategies around the obstacles.

[9] French Armies Restricted Illegal Trade

In France, an army of patrols (as they are called) secures their commercial regulations against the inroads of the dealers in contraband trade. Mr. Neckar computes the number of these patrols at more than twenty thousand. This shows the immense difficulty in preventing that type of traffic in areas of inland communication. And it throws a strong light on the disadvantages in collecting duties this country would encounter if the disunion of the States placed it in a situation resembling that of France with respect to her neighbors. The arbitrary and vexatious powers with which the patrols are necessarily armed would be intolerable in a free country.

[10] Coast Protected from Contraband

However, since the principal part of our commerce transactions are only on one side—the atlantic coast—if all the States were under one government, there would be only one side to guard. Vessels laden with valuable cargoes arriving directly from foreign countries would rarely choose to hazard themselves to the complicated and critical perils attendant to attempts to unladen prior to their coming into port.

They would dread dangers of the coast and detection, both before and after arriving at their final destination. Only normal vigilance would be needed to prevent substantial tax evasion. At a small expense, a few armed vessels, judiciously stationed at our port entrances, could serve as sentinels of the laws. And since the national government is interested in providing against violations everywhere, the cooperation with each State would tend to render them effectual.

In this respect, too, the Union would preserve the natural advantage that would be lost if the States separated. The United States lie a great distance from Europe and all other places with extensive foreign trade connections. Separation would reduce international shipping time to a few hours or overnight, as between France and Britain, eliminating our natural prodigious security against direct contraband with foreign countries. Circuitous contraband to one State through another would be both easy and safe. The difference between direct importation and indirect, through a neighboring State in small parcels as time and opportunity presents as determined through the ease of inland communication, must be obvious to every man of discernment.

[11] Increase Consumption Tax

It is evident that one national government could extend duties on imports further than practical to separate States or partial confederacies and at much less expense. Until now, I believe these duties in any State have not averaged more than 3%. In France they are estimated to be 15% and in Britain the proportion is still greater.

Nothing would hinder this country from tripling the present amount. Alcohol alone, under federal regulation, might furnish considerable revenue. Based on the importation into this State (New York), the whole quantity imported into the United States may be estimated at four million gallons. A shilling per gallon would produce 200,000 pounds. Alcohol would easily bear this rate of duty. However, if the tax diminished the consumption of alcohol, such a consequence is equally favorable, favorable to agriculture, the economy, the morals, and the health of society. There is, perhaps, nothing so much a subject of national extravagance as these spirits.

[12] Commerce Tax

What will be the consequence if we are not able to fully use this resource? A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence and sink into the degraded condition of a province. No government would choose this extremity.

Therefore, revenue is necessary. In this country, if it isn't drawn from commerce, it must oppressively fall upon land. It has already been mentioned that the people are largely opposed to internal taxation. With agriculture almost the sole employment in the States, there are so few objects proper for excise taxes, collections would be limited. As said before, because personal assets are difficult to trace, large tax contributions can only be achieved through consumption taxes. In populous cities, individuals would probably be oppressed into

paying personal taxes, with little benefit going to the State. Outside these cities, assets, for the most part, escape the eye and hand of the tax gatherer.

Nevertheless, resources must be gathered in some fashion to pay the expenses of the State. When they can't be obtained from any other source, the principal weight of public burden must be carried by landowners.

On the other hand, unless all sources of revenue are open when needed for government finances, the community won't have the money to remain respectable and secure. So we won't even have the consolation of a full treasury to atone for the oppression of citizens employed in the cultivation of the soil. Public and private distress will be equal, and will unite in deploring the foolishness of those counsels that led to disunion.

Publius

Constitutional References:

Article 1:

Section 8	165-171	lay and collect taxes
Section 8	174-176	regulate commerce
Section 9	242-243	no tax on State exports
Section 9	244-247	no commercial preference for any State
Section 10	266-273	no State shall tax imports or exports

13: One National Government Cheaper Than Several Confederacies

While discussing revenue, economy of scale may be considered. Money saved in one area may be applied to another, and less money need be drawn from the pockets of the people. If the States are united under one government, only one national governmental structure will need to be supported. If they are divided into several confederacies, there will be that many national bureaucracies, each as extensive as one national government bureaucracy.

Separating the States into thirteen unconnected sovereignties is too extravagant and too filled with danger to have many advocates. The men who speculate on the dismemberment of the empire generally suggest three confederacies: one consisting of the four Northern, another of the four Middle, and a third of the five Southern States. A greater number is improbable.

As described, each confederacy would be larger than Great Britain. No intelligent man can suggest such a confederacy can be properly regulated by a government smaller than the one proposed by the Constitutional Convention. When the dimensions of a State attain a certain size, it requires the same governmental energy and administration as much larger territories.

This can't be proven because no rule exists to measure the momentum of civil power necessary to govern any given number of individuals. But we can consider the concept as follows: each proposed confederacy is approximately the size of the British island, which contains about eight million people. When we consider the size of governmental authority required to direct the passions of so large a society towards the public good, we can suppose the same size power would suffice for a much larger population. Properly organized and exerted, civil power can diffuse its force to a very great extent. By a judicious arrangement of subordinate institutions, it can, in a manner, reproduce itself in every part of a great empire.

[2] Each Confederacy Needs Lg Gov't

Each individual confederation of States would require a government no smaller than the one proposed. If we consider geography and commerce, including the habits and prejudices of the different States, we'll conclude that if disunited, they will most naturally league themselves under two governments.

The four Eastern States (New Hampshire, Massachusetts, Connecticut, Rhode Island), linked through national sympathy, would certainly be expected to unite. New York, situated as she is, would never be unwise enough to expose a feeble, unsupported flank to the weight of the confederacy. There are other obvious reasons that would facilitate her accession to it. New Jersey is too small to think of being a frontier in opposition to this still more powerful combination. And there doesn't appear to be any obstacles to her admission into it. Even Pennsylvania would have strong inducements to join the Northern league. Her active foreign commerce, based on her own navigation, coincides with the opinions and dispositions of her citizens.

For various reasons, the Southern States may not be much interested in the encouragement of navigation. They may prefer a system allowing all nations to be carriers as well as purchasers of their commodities.

Pennsylvania may not choose to undermine her interests in a connection so adverse to her policy. No matter what happens, she will be a frontier. She may deem it safest to have her exposed side turned towards the weaker power of the Southern Confederacy, rather than towards the stronger Northern power. This would give her the best chance to avoid being the Flanders of America.

Whatever Pennsylvania decides, if the Northern Confederacy includes New Jersey, there is no likelihood of more than one confederacy to the south of that State.

[3] Easier For Thirteen States to Support Government

Nothing is more evident than that the thirteen States will be able to support a national government better than one half, or one third, or any number less than the whole. This fact must have great weight in preventing the objection to the proposed plan that is based on its expense. This objection, when we take a closer look at it, will appear in every light to stand on mistaken ground.

[4] Separate Confederacies Creates Many Problems

There are considerations in addition to having several civil bureaucracies. People must be employed to guard the inland confederacies against the inevitable illicit trade. Military establishments would be the unavoidable result from jealousies and conflicts between the divided States. We would also discover that a separation would injure the economy, tranquility, commerce, revenue, and liberty of every part.

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14: Republican Unique, Best for American People

We have seen that we need a Union:
as our bulwark against foreign danger [Numbers 3, 4, 5],
as conservator of peace among ourselves [Numbers 5. 6. 7. 8],
as guardian of our commerce [#11] and other common interests,
as the only substitute for those military establishments that have subverted the liberties of the Old World [Number 8].

The diseases of faction have proved fatal to other popular governments and alarming symptoms of them have already appeared in our own. We have seen that a Union is the proper antidote. [Number 10]

The only objection left to discuss is based on the **large geographic area** the Union embraces. A few observations on this subject are proper. Adversaries of the new Constitution are using the current prejudice regarding the practicality of republican administration in order to invent problems because they endeavor in vain to find solid objections.

[2] *Democracy* Must Be Small

The illogical argument that a republic must be limited to a small district has been discussed and refuted in a preceding paper [Number 9]. The argument seems to arise from confusing a republic with a democracy, applying to a republic theories drawn from the nature of a democracy.

The distinction between these systems was previously discussed [Number 10]. In a democracy, the people meet and administer the government in person. In a republic, representatives and agents assemble and administer it. Consequently, a democracy will be confined to a small area. But a republic may be extended over a large region.

[3] Monarchy v. Democracy or Republic

To this unintentional error may be added the artifice of some celebrated authors whose writings have influenced modern public opinions. They were subjects of monarchies, absolute or limited. They stress the advantages or rationalize the evils of monarchies by comparing them to the vice and defects of a republic. Then, to prove their points, they cite the turbulent democracies of ancient Greece and modern Italy.

The confusion of the two names makes it easy to transfer to a “republic” the observations applicable only to a “democracy.” One observation is that a republic can only be established among a small number of people, living within a small territory.

[4] *Popular* Governments—Democracies

The fallacy may not have been noticed because most popular governments of antiquity were democracies. Even modern Europe, to which we owe the great principle of representation, has no example of a completely popular and republican government.

If Europe discovered the system that concentrates the objectives on the largest political body and directs its force as the public good requires, America can claim using the discovery as the basis of extensive republics. That any citizen wishes to deprive her the additional credit of displaying the full efficacy of establishing the comprehensive system now under consideration is lamentable.

[5] Democracy Limits Area, Population

A democracy has a natural geographic limit—the distance from the central point that permits the most remote citizens to assemble as often as public functions demand. The population of a democracy is limited to the number that can join those functions.

The natural limit of a republic is the distance from the center that barely allows representatives to meet as often as necessary for the administration of public affairs.

Does the United States exceed this distance? The Atlantic coast is the longest side of the Union. During the last thirteen years, representatives of the States have been almost continually assembled. The attendance records of members from the most distant States have been no worse than those from the States in the neighborhood of Congress.

[6] Potential Geographic Area of Union

To form a more precise estimate on this interesting subject, let’s use the actual dimensions of the Union. According to the peace treaty, the eastern boundary is the Atlantic, the southern is the latitude of 31 degrees, the western is the Mississippi, and the northern is an irregular line running between 42 degrees and 45 degrees. The southern share of Lake Erie lies below that latitude.

The distance between 31 degrees and 45 degrees is 973 miles, between 31 degrees and 42 degrees is 764½ miles. The average, therefore, is 868¾ miles. The average distance

between the Atlantic and the Mississippi probably doesn't exceed 750 miles.

Comparing this to the size of several European countries seems to demonstrate the practicality of the republican system. Our territory is not much larger than Germany, where representatives of the whole empire continually assemble, or than Poland, where before the recent dismemberment another national assembly was the center of supreme power. Passing by France and Spain, although Great Britain is smaller, representatives from the northern extremity of the island travel as far to their national council as required of those from the most remote parts of the Union.

[7] Other Advantages of Republic

Favorable as this view of the subject may be, more observations will place it in a still better light.

[8] Federal Government: Defined, Limited Jurisdiction

First, remember that the federal government is not charged with the whole power of making and administering laws. Its defined jurisdiction is limited to specific objectives of the whole republic. The subordinate [State and local] governments will retain their authority to care for all other concerns.

If the convention proposed abolishing the State governments, adversaries would have some ground for objection. In fact, if they were abolished, self-preservation would compel the national government to reinstate them in their proper jurisdiction.

[9] Constitution: Union, Adding States

Second, the federal constitution's immediate objectives are securing the union of the thirteen original States, which we know is practical, and adding other States, which we cannot doubt to be equally practical. The arrangements necessary for territory on our northwestern frontier must be left to those whose further discoveries and experience will render them more equal to the task.

[10] Commerce, Communication Will Improve

Third, new improvements will facilitate commerce throughout the Union. Roads will be shortened and better maintained. Traveler accommodations will multiply and improve. Interior navigation on our eastern side will extend throughout, or nearly throughout, the thirteen States. Communication between the Western and Atlantic districts and different parts within each will become easier by the numerous canals with which the beneficence of nature has intersected our country and engineers find easy to connect and complete.

[11] Frontier Benefits from Union's Defense

A fourth and still more important consideration is safety. Almost every State will be, on one side or other, a frontier. This will induce some sacrifices for the sake of general protection. States that lie at the greatest distance from the heart of the Union and may partake in fewer ordinary benefits are, at the same time, immediately contiguous to foreign nations. On some occasions, they will have the greatest need for the Union's strength and resources.

It may be inconvenient for Georgia, or the States forming our western or northeastern borders, to send representatives to the seat of government. However, it would be much more than inconvenient for them to struggle alone against an invading enemy, or even carry the full expense of defensive precautions dictated by being in the neighborhood of continual danger. So, if they derive less benefit from the Union in some respects than less distant States, they will derive greater benefit from it in other respects. Thus, the proper equilibrium will be maintained throughout.

[12] American Spirit Unique in History

I submit to you, my fellow citizens, these considerations with full confidence that the good sense that has so often marked your past decisions will allow you to objectively evaluate them. I am confident you will never automatically allow predictions of catastrophe, however formidable in appearance or fashionable the error on which they may be founded, drive you into the gloomy despair the advocates for disunion would lead you.

Do not listen to the unnatural voice telling you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family. That they can not continue to be mutual guardians of their mutual happiness. That they can no longer be fellow-citizens of one great, respectable, and flourishing empire.

Do not listen to the voice petulantly telling you that the form of government recommended for your adoption is a novelty in the political world. That it has no place in even the wildest political theories. That it rashly attempts what is impossible to accomplish.

No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison it conveys. The kindred blood flowing in the veins of American citizens, the mingled blood shed in defense of their sacred rights, consecrate their Union and excite horror at the idea of their becoming aliens, rivals, enemies.

And if new concepts are to be shunned, believe me, the most alarming ideas, the most wild of all projects, the most rash of all actions

is that of rending us into pieces in order to preserve our liberties and promote our happiness.

Why is the experiment of an extended republic to be rejected merely because it is a new concept? Is it not the glory of the American people that while they study and respect opinions of former times and other nations, they do not suffer from blind veneration for antiquity, for custom, or for names, allowing them to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?

Posterity will be indebted to the American spirit for having and showing the world numerous innovations in favor of private rights and public happiness. If the leaders of the Revolution had not taken unprecedented steps, establishing a unique model of government, the people of the United States might currently be numbered among the melancholy victims of misguided councils, laboring under the weight of some form of government that has crushed the liberties of the rest of mankind.

Happily for America. Happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution that has no parallel in the annals of human society. They tailored fabrics of governments that have no pattern on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate. If their works have imperfections, we wonder at the fewness of them.

If they erred most in the structure of the Union [Articles of Confederation], this was their most difficult work. Your Constitutional Convention has made a new model. And it is that act on which you are now to deliberate and decide.

Publius

Constitutional reference:

Article 4, section 3 463-468 adding States

15: Confederation Near Total Collapse

In the preceding papers I have endeavored, my fellow citizens, to clearly and convincingly show you how our remaining united is important to your political safety and happiness. I've exposed the dangers of permitting the sacred knot binding the American people together to be severed or dissolved by ambition or avarice, by jealousy or misrepresentation.

I next propose to discuss truths based on facts and arguments that, until now, have remained unnoticed. If this road sometimes seems tedious or irksome, remember that you are seeking information about the most momentous subject that can engage the attention of a free people. The countryside through which you must travel is vast. And mazes of sophistry have unnecessarily increased the difficulties of the journey. My goal is to simplify the issues without sacrificing thoroughness.

[2] Confederacy Can't Preserve Union

Following my discussion plan, the next point for examination is the "insufficiency of the present Confederation to the preservation of the Union."

Some people may ask why this needs proof when both opponents and supporters of the new Constitution agree it's true, that material imperfections exist in our national system and something needs to be done to rescue us from impending anarchy.

This opinion is supported by facts, not speculation. These facts force themselves upon the sensibility of the people. Even those people whose mistaken policies have made our current precarious situation even worse reluctantly confess to the defects in the organization of our federal government. Intelligent friends of the Union have been pointing out, and regretting, these defects for a long time.

[3] Nation Faces Total Humiliation

We may have reached almost the last stage of national humiliation. We experience nearly everything that can wound the pride or degrade the character of an independent nation.

Do we have commitments that should be honored? These are constantly and unblushingly violated. Do we owe debts to foreigners and our own citizens, contracted during imminent peril to our political existence? The debts remain with no plan or provision for their discharge.

Does a foreign power still occupy territories that, by express stipulations, should have been surrendered a long time ago? They remain, against our best interests and our rights. Are we in a condition to repel an aggressor? We have neither troops, nor treasury, nor government.* Are we even in a condition to protest with dignity? The just imputations on our own faith, in respect to the same treaty, should first be removed.

Are we entitled by nature and treaty to navigate the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have given up, deciding it's impossible. Is commerce important to our national wealth? Ours is at the lowest point of deterioration.

Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? Our government is so weak that they need not negotiate with us. Our ambassadors abroad merely imitate representatives of a sovereign nation.

Is a dramatic, unnatural decrease in land value a symptom of national distress? In most parts of the country, the price of improved land is much lower than can be accounted for by the quantity of wasteland on the market. It can only be fully explained by an alarmingly prevalent lack of private and public confidence that has depreciated property of every kind.

Is private credit the friend and supporter of industry? Consumer credit is at its lowest. This is more the result of insecurity than scarcity of money.

To shorten the list of particulars, because it gives neither pleasure nor instruction, it can be asked: what indication of national disorder, poverty, and insignificance could befall a community, so specially blessed with natural advantages as we are, that does not form a part of the dark catalogue of our public misfortunes?

[4] Those Responsible Oppose Constitution

We have been brought to this sad situation by maxims and councils of the very people who now oppose the proposed Constitution. Not content with leading us to the brink of a precipice, they now seem resolved to plunge us into the abyss.

Here, my countrymen, impelled by every motive influential on enlightened people, let us make a firm stand for our safety, our tranquility, our dignity, our reputation. Let us break the fatal charm that has too long seduced us from the paths of felicity and prosperity.

[5] Amendments Can't Correct Flaws

As previously observed, obvious facts have produced general agreement to the abstract proposition that there are material defects in our national system. But the usefulness of this

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* "I mean for the Union."—PUBLIUS

concession by old adversaries of the federal system is destroyed by their strenuous opposition to a remedy based on the only principles that give it a chance of success. While admitting the United States government is destitute of energy, they fight against giving it those powers necessary to supply that energy.

They still seem to have repugnant and irreconcilable, mutually exclusive goals. They want augmentation of federal authority without a diminution of State authority. They want a sovereign Union with completely independent members. They still seem to cherish blind devotion to the political monster of an *imperium in imperio*.

The principal defects of the Confederation must be listed, to show that the evils we experience are not the result of minor imperfections but fundamental structural flaws that cannot be amended but must be completely rebuilt.

[6] Problem: Legislation For States

The existing Confederation's great and fundamental defect is the principle of legislation for states in their collective capacities rather than for the individuals living in the States.

Although this principle doesn't apply to all the powers delegated to the Union, it pervades those on which the effectiveness of the rest depends. Except for the rule of apportionment, the United States has indefinite discretion to requisition men and money. But it has no authority to raise either directly from individual citizens of America. Therefore, in theory their resolutions are constitutionally binding on members of the Union. But in practice they are merely recommendations that the States observe or disregard at their option.

[7] This Principle Ruined Confederation

This shows the capriciousness of the human mind that, after all the warnings on the subject, some men still object to the new Constitution because it deviates from the principle [legislation for states] that ruined the old. A principle, in short, that must substitute the violence of the sword to the mild influence of the magistracy.

[8] Treaties: Very Limited Effectiveness

The idea of a league or alliance between independent nations for purposes defined in a treaty that precisely regulates details of time, place, circumstance, and quantity is not absurd or impractical, a treaty that leaves nothing to future discretion, and with its execution depending on the good faith of the parties.

Compacts of this kind exist among all civilized nations, subject to the vicissitudes of peace and war, observance and nonobservance, as the interests or passions of the signature nations dictate. In the early part of this century, these compacts were very popular in Europe, with politicians hoping for benefits that were never realized. Trying to establish an equilibrium of power and peace in Europe, all negotiation resources were exhausted, and triple and quadruple alliances were formed. But they were scarcely formed before they were broken, showing how little dependence should be placed on treaties with no sanctions except obligations of good faith and signed on impulse, fulfilling an immediate interest or passion, while ignoring considerations of peace and justice.

[9] States as Nations: Both Allies, Enemies

If the States in this country decide to abandon the federal discretionary superintendence and become separate nations, then form alliances in a manner similar to Europe, it would be ruinous, as previously detailed. But it would have the merit of being consistent. However, without a confederate government, offensive and defensive alliances would make us alternately friends then enemies of each other, as dictated by jealousies and rivalries, and nourished by intrigues of foreign nations.

[10] Fed Authority Must Extend to Citizens

But if we are unwilling to be in this dangerous situation, if we stay with the plan of a national government or, in other words, a superintending power under the direction of a common council, we must decide to incorporate into that plan ingredients that differentiate between a league and a government. We must extend the authority of the Union to the citizens—the only proper objects of government.

[11] Laws Enforced By Courts or Armies

Having a government implies it has the power to make laws. A law needs a sanction. Or, in other words, a punishment or penalty for disobedience. If no penalty is tied to disobedience, resolutions that pretend to be laws will, in reality, amount to nothing more than advice or recommendations.

A penalty, whatever it might be, can be only inflicted in two ways: by the courts or by military force—by coercion of the magistracy or by coercion of arms. The first can apply only to individual people; the last must be employed against politic groups, communities, or states.

Of course, courts have no way to directly enforce laws. Sentences may be pronounced against violators. But sentences can only be executed by the sword. If the authority is confined to an alliance between collective bodies, every breach of the law must involve a state of war, with punishment by the military the only instrument of civil obedience. Such a situation doesn't deserve to be called a government. Nor would any prudent man choose to depend on it for his happiness.

[12] Government: Control over Passions

We were once told that States wouldn't violate federal regulations, that a feeling of common interest would control the conduct of the respective members, producing full compliance with all the constitutional requisitions.

Today, this sounds ludicrous; current pronouncements from the same people will sound just as wild after we receive more lessons from that best oracle of wisdom, experience. It betrayed an ignorance of the actual motivator of human behavior and contradicted the original reason for establishing civil power.

Why has government been instituted at all? Because the passions of men won't conform to the dictates of reason and justice without constraint. Do groups of men act with more virtue or greater disinterest than individuals? Observers of human behavior infer the opposite; and this inference is founded on obvious reasons. An individual worries more about his reputation than that of his group, because blame for the detestable action of a group is divided among a number of people. A spirit of faction often poisons the deliberations of bodies of men, pushing the group into improper and excessive behavior that would embarrass the individuals.

[13] Sovereignties Hate Outside Control

In addition, by its very nature, sovereign power hates control and looks with an evil eye on all external attempts to restrain it or direct its operations. Because of this, when lesser sovereignties are united in political associations by a common interest, there will be a perpetual tendency for the smaller units to fly off from the common center.

This tendency can be easily understood. Its origin is the love of power. Power controlled or restrained is almost always the enemy of that power doing the controlling. This simple proposition shows that administrators of individual members of an alliance will not be always ready, with perfect good humor and unbiased by the public's well being, to execute the decrees of the general authority. So predicts the psychology of human nature.

[14] Allies Can't Be Forced to Comply

Therefore, if the resolutions of an alliance cannot be implemented without the intervention of individual administrations, they probably won't be implemented at all. The rulers of the member states, whether they have a constitutional right to do it or not, will try to judge the necessity of the resolution itself. They will consider whether complying with the resolution conforms to their immediate interests, and the conveniences or inconveniences its adoption would cause. All this scrutiny will be done without knowing the national situation or the reasons for the resolution, an essential for an informed decision. And local objectives will also influence the decision.

Every member of the alliance will repeat this process. The execution of plans drafted by the alliance will always fluctuate, depending on the ill-informed and prejudiced opinions of the individual parts.

Those familiar with popular assemblies know harmonious resolutions on important issues are difficult to achieve even without pressure from external circumstances. They will quickly agree it is impossible to induce a number of assemblies, deliberating at a distance from each other, at different times, with different impressions, to cooperate by having the same views and pursuits.

[15] States Not Supporting Confederation

In our case under the Confederation, the thirteen distinct sovereignties must agree to the execution of every important measure proposed by the Union. What happened was expected. The measures have not been executed. State delinquencies have matured and grown until they have clogged and stopped the wheels of the national government.

Congress barely has the means to keep some kind of administration until the States can agree on a substantial substitute for the present shadow of a federal government.

This desperate situation didn't happen overnight. The causes discussed here first produced unequal degrees of compliance with the Union's requisitions. The greater deficiencies of some States furnished a temptation to the complying, least delinquent States, who wondered why they should pay proportionately more than others embarked on the same political voyage. Why they should bear more than their proper share of the common burden. Human selfishness could not withstand these suggestions. Even speculative men, who can foresee remote consequences, would not hesitate to combat these arguments. Each State, yielding to persuasion and immediate convenience, has successively withdrawn its support. Now the frail and tottering edifice seems ready to fall on our heads and crush us beneath its ruins.

Publius

16: *Legislation for States:* Civil War Inevitable
Replace with Laws for Individuals

The principle of legislation for States or communities is detrimental to all confederate governments. Our experiment has shown this. And it was also proven by governments we know about in the past. The negative effects of legislation for States are in exact proportion to its prevalence in those systems.

A confirmation from history is worthy of examination. Of the confederacies remembered from antiquity, the Lycian and Achaean leagues appear to have been most free from the restraints of the principle of legislation for States. They deserve, and have liberally received, the approval of political writers.

[2] State Noncompliance => Military Force

This objectionable principle may truly and emphatically be called the parent of anarchy. Delinquencies by Union members (States) are its natural and necessary offspring. When they happen, the only constitutional remedy is force. And the immediate consequence of using force is a civil war.

[3] Civil War => Dissolution of Union

Whether our government would even be capable of enforcement remains to be seen. If the national government doesn't have a standing army, it might be incapable of employing force. If it could use force, it would amount to a war between parts of the Confederacy over league infractions. The strongest force would prevail, whether it consisted of supporters or resisters of the national authority.

A delinquency would rarely be confined to a single member. If more than one neglected their duty, they probably would unite for common defense.

Independent of this sympathy motive, if a large, influential state is delinquent, it would often win over some non-delinquent neighbors to its cause. Specious arguments of the danger to liberty would easily be contrived. Plausible excuses for deficiencies would be invented to increase apprehensions, inflame passions, and conciliate the good-will of some States not in violation or omission of their duty.

This could happen when a large State is delinquent because of the ambitious premeditation of rulers who want all external control on their plans for personal aggrandizement removed. Presumably, they would tamper beforehand with the leaders of adjacent States.

If other States didn't become allies, foreign powers would be asked for aid. They would often encourage dissensions within the Confederacy because if it is firmly united, they will have much to fear.

Once the sword is drawn, men's passions observe no moderation. If the Union used force against delinquent States, wounded pride and irritated resentment would push those States to any extreme necessary to avenge the affront or to avoid the disgrace of submission. The first war of this kind would probably end in the dissolution of the Union.

[4] Complying v. Non-Complying States

The Confederacy would suffer a violent death. Currently we are close to experiencing a more natural death, if the federal system isn't quickly and substantially renovated.

Considering our history, complying States would rarely support the Union's authority by engaging in a war against non-complying States. They would often prefer pursuing the milder course of putting themselves on equal footing with the delinquent members, imitating their example and making their common guilt become their common security. Our experience has shown this in full light.

In fact, it would be very difficult to determine when force should properly be used. When a State's monetary contribution is delinquent,, it would often be impossible to decide if this was because they didn't want to pay or were unable to pay. The latter excuse would always be available. And the deception must be very flagrant to justify the harsh expedient of forced compulsion. It's easy to see that every time this problem occurred, factious views, partiality, and oppression by the majority in the national council would be common.

[5] Can't Enforce Constitution with Army

Obviously the States shouldn't want a national Constitution that has to be enforced by a standing army ready to execute ordinary governmental decrees. Yet this is the alternative to a Constitution extending its operations to individuals. If practical at all, such a scheme would instantly degenerate into military despotism.

But it is, in every way, impractical. Union resources won't be large enough to maintain an army capable of confining the larger States within the limits of their duty. The Union won't have the money to even form such an army. When you look at the current strength and population of several of the large States, then look forward even half a century, you'll dismiss any scheme aimed at regulating State movements by laws that have to be enforced by coercion. Such a project is but a little less

fanciful then the monster-taming spirit attributed to the fabulous heroes and demigods of antiquity.

[6] Legislation Enforced By Military Coercion Never Works

Even in confederacies composed of members smaller than many of our States, the principle of legislation for sovereign States, supported by military coercion, has never been effectual. It has only been employed against the weaker members. And in most cases, it produced bloody wars, with half of the confederacy fighting the other half.

[7] Nat'l Legislation Acts on Citizens

If a federal government able to regulate common concerns and preserve tranquility could be constructed, an intelligent mind must clearly see that the objectives committed to its care must be based on the reverse of the principle supported by the opponents of the proposed Constitution. It must carry its authority to the persons of the citizens. It must not need intermediate legislatures. It must be empowered to use the ordinary judiciary to execute its own resolutions. National authority must manifest through the courts of justice.

The government of the Union, like that of each State, must be able to address itself directly to the hopes and fears of individuals and attract support from the passions with the strongest influence on the human heart. In short, it must have the means and the right to resort to the same methods of executing the powers entrusted to it as possessed and exercised by State governments.

[8] States Could Still Block Union's Laws

An objection to this reasoning could be raised: if any State becomes disloyal to the Union's authority, it could still obstruct the execution of the Union's laws, bringing up the same issue of using force.

[9] Non-Compliance vs Active Resistance

This objection will not seem plausible when we point out the essential difference between non-compliance, and direct and active resistance.

If State legislatures must approve every measure of the Union, they only need to not act or to act evasively to defeat the measure. This neglect of duty might be disguised under bogus unsubstantial provisions so the people won't be alarmed about the Constitution's safety. State leaders might even excuse their surreptitious evasions of it on the grounds of some temporary convenience, exemption, or advantage.

[10] Blocking Laws Applicable to Citizens

But if the implementation of national laws doesn't require the intervention of State legislatures, if they apply immediately to citizens, then a State government couldn't block them without an open and violent exertion of unconstitutional power. No omissions or evasions would suffice. They would be forced to act and, therefore, leave no doubt that they had encroached on national rights.

This action would always be hazardous with a constitution able to defend itself and enlightened citizens who can distinguish between legal authority and illegal usurpation of authority.

Blocking a national law would require both a factious majority in the State legislature, and the concurrence of the courts and the citizens. If judges were not conspiring with the legislature, they would pronounce the resolutions contrary to the supreme law of the land, unconstitutional, and void. If the people didn't concur, as the natural guardians of the Constitution, they would support the national government, giving it the heavier weight in the contest.

State leaders would not attempt this with levity or rashness because of the danger to them, except when the federal government uses its authority tyrannically.

[11] Nat'l, Local Laws Enforced Same Way

If opposition to the national government arises from the disorderly conduct of rebellious individuals, it could be overcome by the same method used daily against the same evil under the State governments. The judiciary, being ministers of the law of the land, would be as ready to guard national as local regulations from the inroads of private licentiousness.

[11a] Civil Wars

The federal government could command more resources to suppress the smaller commotions and insurrections that sometimes disquiet society, the intrigues or ill humor of a small faction, than would be in the power of any single State.

And as to those deadly feuds that sometimes spread a conflagration through a whole nation or a large part of it, those caused by either a weighty discontent of the government or by the spread of a violent popular paroxysm, they do not fall within any ordinary rules of calculation. When they happen, they commonly amount to revolutions and dismemberments of empire. No form of government can always either avoid or control them. It is vain to hope to guard against events too mighty for human foresight or precaution. It would be idle to object to a government because it could not perform impossibilities.

Publius

17: Authority Over Individual Citizens: National Government Usurp State Authority?

A different objection than addressed in my last paper may also be argued against the principle of legislation for the individual citizens of America: that it would tend to make the national government too powerful. The Union might assume authority more properly left with the States for local purposes.

Even allowing for the greatest love of power, I confess I am at a loss to discover what might tempt national government administrators to divest the States of their authorities. The regulation of State domestic police appears to me to hold few allurements to ambition.

Commerce, finance, negotiation, and war seem to cover all the objects attractive to people with a passion for power. And all these powers should be vested in the national government.

The administration of private justice between citizens of the same State, the supervision of agriculture, and concerns of a similar nature are properly provided for by local legislation and can never be desirable worries of a national government. Therefore, it's improbable that federal politicians would usurp these powers, because the attempt would be as troublesome as it would be trifling. Possession of these powers would contribute nothing to the dignity, importance, and splendor of the national government.

[2] State Encroaches National Authorities

But let's say, for argument's sake, that mere wantonness and lust for domination would be enough to want control over State issues. Still, it can be safely said that the congress of national representatives or, in other words, the people of all the States, would control the indulgence of so extravagant an appetite.

It will always be far easier for State government to encroach upon the national authorities, than for the national government to encroach on State authorities. The proof of this conclusion is based on the greater degree of influence that the State governments will generally have over the people, if they administer their affairs with honesty and prudence. Therefore, all federal constitutions are inherently and intrinsically weak. They must be carefully structured to give them all the force compatible with the principles of liberty.

[3] States More Influential

Local governments have more influence because of the diffusive construction of the national government and, more importantly, from the type of issues State administrations address.

[4, 5] Nearness Promotes Affection

It's a fact of human nature that affections are weak in proportion to distance or diffusiveness of the object. Man is more attached to his family than his neighborhood, to his neighborhood than the community at large. People of a State feel a stronger bias towards their local governments than towards the government of the Union, unless this basic fact of human nature is destroyed by a much better administration of the latter.

This strong propensity of the human heart would find powerful inducements in the issues of State regulation.

[6] Local Governments: Small Vital Issues

A variety of minutia will fall under the supervision of local governments. They will form many rivulets of influence through every part of society. Itemizing them would involve too much tedious and uninteresting detail to compensate for its instructive value.

[7] Justice Systems Give States Power

The authority of State governments has one transcendent advantage that, by itself, puts the matter in a clear and satisfactory light. I am referring to the administration of criminal and civil justice. This is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is the immediate, visible guardian of life and property, with its benefits and its terrors constantly before the public eye. It regulates the personal interests and everyday concerns of individuals. More than anything else, this influences the people's affection, esteem, and reverence towards the government.

This great unifying authority will almost totally diffuse itself through local governments. Without any other influence, this power over their citizens will make the States, at all times, a complete counterbalance and, frequently, dangerous rivals to the power of the Union.

[8] National Focus: More Esoteric Issues

On the other hand, the national government's functions are not as easily observed by the majority of the citizens. The benefits derived from it will chiefly be watched and perceived by speculative men. Since they relate to more general interests, they will be less in touch with the feelings of people at home and, proportionately, less likely to inspire obligation and active attachment.

[9] Historical Proof

There are abundant examples in all historical federal constitutions and all others similar to them.

[10] European Feudal Period

Although the ancient feudal systems were not, strictly speaking, confederacies, they had similarities. There was a common head, chieftain or sovereign, whose authority extended over the whole nation. A number of subordinate vassals, barons or lords supervised large portions of land allotted to them. And numerous *inferior* vassals or retainers occupied and cultivated that land out of loyalty or obedience to the persons who held it. Each supervising vassal was a kind of sovereign within his particular territory.

This situation created constant opposition to the national sovereign's authority and frequent wars between the great barons or chief feudatories themselves. The nation was usually too weak to preserve the public peace or protect the people against the oppressions of their immediate lords. Historians emphatically categorize this European era as a time of feudal anarchy.

[11] Barons More Powerful than Sovereign

When the sovereign was vigorous, with a warlike temper and superior abilities, he acquired personal influence fulfilling, for a time, the role of authority. But in general, the power of the barons triumphed over that of the prince. And in many instances, the sovereign's rule was entirely thrown off and the great fiefs were erected into independent principalities or States.

In those instances where the monarch finally prevailed over his vassals, he was successful primarily because of the tyranny of the barons over their dependents. The barons, or nobles, were both enemies of the sovereign and oppressors of the common people. They were dreaded and detested by both. Eventually, mutual danger and mutual interest created a union between the monarch and the common people that was fatal to the power of the aristocracy. If the nobles had preserved the fidelity and devotion of the common people through clemency and justice, the contests between the barons and the prince would have almost always ended in their favor, with subversion of the royal authority.

[12] Scot Clans More Power than Monarch

This assertion isn't based in speculation or conjecture. Scotland will furnish an example. Early on, the spirit of clanship was introduced into that kingdom, uniting the nobles and their dependents by ties equivalent to those within an extended family. This made the aristocracy more powerful than the monarch, until the incorporation with England subdued its fierce and ungovernable spirit with the civility already established in England.

[13] State Government like Feudal Baron

The separate, State government in a confederacy may be compared with the feudal barons. With this advantage, for reasons explained, they will generally possess the confidence and goodwill of the people.

With such important support, they will effectually oppose all encroachments of the national government. It's a good idea that they will not be able to counteract the national government's legitimate and necessary authority.

The points of similarity include the rivalry of power and the concentration of large portions of the community strength into particular deposits. In one case, the feudal barons, as individuals, held the power. In the other case, the State, as a political body, holds it.

[14] Study of Historical Confederacies

A concise review of events in confederate governments will further illustrate this important doctrine. Inattention to history has been the great source of our political mistakes and allowed jealousy to point us in the wrong direction. This will be the subject of some ensuing papers.

Publius

18: Weaknesses That Doomed Ancient Greek Confederacies

The most important ancient confederacy was the association of Greek republics under the Amphityonic federal council. Historical accounts present very instructive analogies to our present Confederation of the American States.

[2] Federal Powers, Responsibilities of Greek Council Members

The individual Greek city-states remained independent, sovereign states with representatives (Amphictyons) and equal votes in the federal council. The council had the authority to propose and resolve whatever it judged necessary for the common welfare of Greece: to declare and wage war, to be the last court of appeals in controversies between states, to fine the aggressing party, to employ the force of the confederacy against the disobedient, to admit new members.

The federal council was the guardian of religion and the immense riches of the temple of Delphos, where it had jurisdiction in controversies between inhabitants and those who came to consult the oracle.

To promote the efficacy of federal powers, council members took an oath to defend and protect the united cities, punish violators of this oath, and inflict vengeance on sacrilegious despoilers of the temple.

[3] In Theory, Council's Power Sufficient

In theory, these powers seem sufficient. In several ways, they exceed the powers enumerated in the Articles of Confederation. For example, superstitions strengthened the Amphictyon federal government. They could use coercion against disobedient cities. And they pledged to exert this authority on necessary occasions.

[4] In Reality, Not Enough Power

Nevertheless, reality was very different than the theory. The powers, like those of our Congress, were administered by deputies appointed by the member city-states as political units. Hence the weakness, disorders and, finally, the destruction of the confederacy.

The more powerful cities, instead of being in awe and subordination, tyrannized the rest. Demosthenes (b.-384 d.-322) writes that Athens was the arbiter of Greece for 73 years (c. - 477 to - 404). Sparta next governed it for 29 years. After the battle of Leuctra (-371), Thebes ruled.

[5] Stronger States Tyrannized Weaker

The Greek historian Plutarch (b. 47 d. 120) wrote that the representatives of the strongest cities often threatened and corrupted those of the weaker and judgment favored the most powerful party.

[6] Wars Didn't Even Unite City-States

Even during dangerous wars with Persia (- 490 to - 449) and Macedon (- 330), the member States never acted as a unit and were, more or less, eternally the dupes or hirelings of the common enemy. The intervals between foreign wars were filed with domestic vicissitudes, convulsions, and carnage.

[7] Athenian Self-Interest

After the war with Persia, Sparta demanded some cities be expelled from the confederacy for being unfaithful. However, the Athenians decided they would lose more partisans than Sparta, giving the latter a majority in public. So, Athens opposed and defeated the attempt.

This piece of history proves the inefficiency of the confederacy. Ambition and jealousy motivated its most powerful members. The rest were degraded, becoming dependent. In theory, the smaller members were entitled to equal pride and majesty; in fact, they became satellites of the larger members.

[8] Weak Federal Government; Most Danger from Other States

Abbe' Milot says that if the Greeks had been as wise as they were courageous, experience would have taught them the necessity of a closer union. And they would have used the peace following their success against Persia for reforms.

Instead of following this obvious coarse, Athens and Sparta, inflated by victories and glory, became rivals and then enemies. They then inflicted more mischief against each other than they had suffered from Persia. Their mutual jealousies, fears, hatreds, and injuries ended in the famous Peloponnesian war (Athens vs. Sparta, - 431 to -404), which ended in the ruin and slavery of Athens, who had begun it.

[9] Internal Problems: Dangers from Outside

When a weak government is not at war, it is constantly agitated by internal dissensions that always bring fresh calamities from abroad.

After the Phocians plowed up consecrated ground at the temple of Apollo, the Amphictyonic council fined the sacrilegious offenders. The Phocians, aided by Athens and Sparta, refused to submit to the decree.

On the other side, the Thebans, with some other cities, supported the Amphictyons' authority to avenge the violated god.

[9a] Enter as Ally; Stay as Conqueror

Philip of Macedon (-343) was invited to help the Thebans. However, he'd secretly started the feud, so he gladly seized the opportunity to execute his plans against the liberties of Greece. By his intrigues and bribes, he won over the popular leaders of several cities. Their influence and votes gained his admission into the Amphictyonic council. And by his intrigues and his arms, Philip made himself master of the confederacy. [Philip defeated the Greeks in –339.]

[10] Stronger Government Might Have Repelled Macedon, Rome

Such were the consequences of the fallacious principle on which Greece was founded. A judicious observer of her fate says that if Greece had been united by a stricter confederation and fought to stay unified, she never would have worn the chains of Macedon. And she might have been a barrier to Rome.

[11] Achaean League

The Achaean league, another society of Grecian republics, supplies valuable instruction.

[12] Better Organized than Amphictyons

This union was far more intimate and organized more wisely than the preceding one. Although not exempt from a similar catastrophe, it did not equally deserve it.

[13] Division of Governmental Authorities

The cities in the league retained their municipal jurisdiction, appointed their own officers, and were perfectly equal.

They were represented in the **senate** that had the sole and exclusive rights of: peace and war, sending and receiving ambassadors, entering into treaties and alliances, appointing a chief magistrate or praetor.

The **praetor** commanded their armies and, with the advice and consent of ten senators, administered the government during the senate recess and shared in its deliberations when assembled. Their primitive constitution called for two administrative praetors but in practice one was preferred.

[14] All City-States had Same Laws

It appears the cities had all the same laws and customs, the same weights and measures, and the same money. But it's uncertain whether this was a federal decree. The only mandate was that cities have the same laws and usages.

As a member of the Amphictyonic confederacy, Sparta fully exercised her government and her legislation. However, when Sparta became part of the Achaean league, her ancient laws and institutions were abolished and those of the Achaeans adopted. This shows the material difference between the two systems.

[15] If We Knew More, We'd Learn Much

It is too bad that a better historical record of these interesting political systems doesn't exist. If their internal structure could be studied, we would probably learn more about the science of federal government than by any of the similar experiments with which we are acquainted.

[16] Achaean Government More Just

Historians who study Achaean affairs agree on one fact. Both after Aratus renovated the league and before its dissolution by Macedon, its government was infinitely more moderate and just and its citizens were less than those in any solitary city exercising all the power of a sovereignty. In his observations on Greece, Abbe' Mably says that the popular government, so tempestuous elsewhere, caused no disorders in the members of the Achaean republic, *because it was tempered by the general authority and laws of the confederacy.*

[17] However, Faction Caused Problems

However, we shouldn't hastily conclude that faction did not agitate particular cities, or that subordination and harmony reigned. The contrary is shown in the vicissitudes and fate of the republic.

[18] Again, Allies Became Conquerors

During the Amphictyonic confederacy, the less important cities of the Achaeans were minor characters in the theater of Greece. When the Achaean cities fell to Macedon, the policy of Philip II and his son, Alexander the Great, saved Greece. Their successors followed a different policy. Each city had separate interests and the union was dissolved. Some fell under the tyranny of Macedonian garrisons; others fell to usurpers within Greece.

Before long, shame and oppression awakened their love of liberty. A few cities reunited. Others followed their example as opportunities to cut off their tyrants were found. Soon the league embraced almost the whole Peloponnesus [southern peninsula of Greece]. Macedon saw its progress but internal dissensions hindered her from stopping it.

All Greece caught the enthusiasm and seemed ready to unite in one confederacy until

jealousy and envy in Sparta and Athens, over the rising glory of the Achaeans, threw a fatal wrench into the enterprise. The dread of Macedonian power induced the league to court an alliance with the kings of Egypt and Syria who, as successors of Alexander, were rivals of the Macedonian king.

Ambition led Cleomenes, king of Sparta, to make an unprovoked attack on the Achaeans [- 236]. As an enemy of Macedon, Cleomenes got the Egyptian and Syrian princes to breach their engagements with the league. The Achaeans were reduced to the dilemma of submitting to Cleomenes or requesting the aid of Macedon, its former oppressor.

The Achaeans chose the aid of Macedon, who often enjoyed meddling in Greek's affairs. A Macedonian army quickly appeared and took possession of Sparta [- 221]. Cleomenes was vanquished to Egypt. But the Achaeans soon learned that a victorious and powerful ally is often just another name for a master. All their abject compliances earned them only a toleration of their laws.

The tyrannies of Philip, on the throne of Macedon, provoked new alliances among the Greeks. The Achaeans were weakened by internal dissensions and by the revolt of one of its members, Messene, but they joined the Aetolians and Athenians in opposition. However, they were unequal to the undertaking and once more had to resort to the dangerous expedient of help from foreign arms. The Romans were invited and eagerly accepted. Philip was conquered. Macedon was subdued.

A new crisis ensued to the league. The Roman fostered dissensions broke out among its members. Popular leaders became mercenary instruments for manipulating their countrymen. To nourish discord and disorder, the Romans proclaimed universal liberty* throughout Greece, much to the astonishment of those who trusted their sincerity. With the same insidious views, they reduced members from the league by appealing to their pride, highlighting the violation it committed on their sovereignty. Because of these tactics, this union, the last hope of Greece and the last hope of ancient liberty, was torn into pieces. Such imbecility and distraction reigned that the Roman army easily completed the ruin that their intrigues had begun. The Achaeans were cut to pieces and Achaia loaded with chains under which it groans at this hour.

[19] Shows Federal Gov't Tends Towards Anarchy, Not Tyranny

I do not think an outline of this important portion of history is superfluous. It teaches several lessons. And, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies more towards anarchy among the members than to tyranny in the head.

Publius

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

19: Current Confederacies—German, Polish, Swiss

The examples of ancient confederacies cited in my last paper have not exhausted the sources of instruction on the subject. Some existing institutions, founded on a similar principle, merit particular consideration. The first is the Germanic body.

[2] History of Germany

In the early ages of Christianity, seven distinct nations occupied Germany with no common chief. After conquering the Gauls, the Franks established the kingdom named for them. (c. 418)

In the ninth century, its warlike monarch, Charlemagne, carried his victorious arms in every direction. Germany became part of his vast dominions. On the dismemberment under his sons, Germany became a separate, independent empire.

Charlemagne and his immediate descendants possessed both power and the dignity of imperial power. But the principal vassals, whose lands became hereditary and who composed the national assembly, which Charlemagne had not abolished, gradually threw off the yoke and moved towards sovereign jurisdiction and independence. The imperial sovereignty was unable to restrain such powerful dependents or preserve the unity and tranquility of the empire. Furious private wars, accompanied by every type of calamity, raged between different princes and states.

Unable to maintain public order, the imperial authority declined by degrees until anarchy agitated during the long interval between the death of the last emperor of the German province of Swabia and the first emperor of Austria.

In the eleventh century the emperors held full sovereignty; in the fifteenth, they were only symbols and decorations of power.

[3] German Federal Authority: Legislative, Executive, Judiciary

The feudal system had many important features of a confederacy. The federal system that constitutes the German empire grew from it.

An assembly, the diet, representing the component members of the confederacy, holds its legislative power. The emperor, who is the executive magistrate, has veto power over the decrees of the assembly. The two judiciary tribunals, the imperial chamber and the aulic council, have supreme jurisdiction in controversies concerning the empire or among its members.

[4] Legislative Authorities

The assembly has general legislating power for the empire, making war and peace, contracting alliances, assessing quotas for troops and money, constructing fortresses, regulating coins, admitting new members, and punishing disobedient members by removing sovereign rights and forfeiture of possessions.

[4a] Member State Restrictions

Members of the confederacy are expressly restricted from entering into compacts prejudicial to the empire, imposing tolls and duties on interstate commerce without the consent of the emperor and assembly, altering the value of money, doing injustice to one another, or giving assistance or retreat to disturbers of the public peace. And violators of these restrictions are subject to the above stated punishment.

[4b] Judiciary

Members of the diet, as such, are to be judged by the emperor and the assembly and, as private citizens, by the aulic council and imperial chamber.

[5] Emperor: Duties, Rights

The emperor has numerous prerogatives. The most important are: an exclusive right to propose legislation to the assembly, veto its resolutions, name ambassadors, confer dignities and titles, fill vacant electorates, found universities, grant privileges not injurious to the states of the empire, receive and apply public revenues, and generally watch over the public safety.

In certain cases, the electors form a council to the emperor. As emperor, he possesses no territory within the empire nor receives any revenue for his support. But his revenue and dominions, in other qualities, constitute him one of the most powerful princes in Europe.

[6] Federal Government; Sovereign Members

This set of constitutional powers of the representatives and head of this confederacy suggests that it must be an exception to the general character of similar systems. Nothing could be further from the reality. The fundamental principle on which it rests—that the empire is a community of sovereigns, that the assembly represents sovereigns, and that the laws are addressed to sovereigns—renders the empire a nerveless body. It couldn't regulate its members or secure against external

dangers. Unceasing fermentations agitated its bowels.

[7] Internal Battles, Invasions, Misery

The history of Germany is a history of wars. Wars between the emperor and the princess and states. Wars among the princes and states. Its history includes the licentiousness of the strong and oppression of the weak. Foreign invasions and intrigues. Requisitions of money and men are largely disregarded and enforcement attempts have been either aborted or accompanied by slaughter of the innocent with the guilty. It's a history of general imbecility, confusion, and misery.

[8] Constant Civil War

In the sixteenth century, the emperor, supported by part of the empire, fought other princes and states. The emperor had to flee from one conflict after nearly being made prisoner by the Elector of Saxony. The late king of Prussia fought his imperial sovereign more than once, usually defeating him.

Controversies and wars among members were so common that German annals are crowded with bloody descriptions.

Before the peace of Westphalia (1648), thirty years of war desolated Germany. The emperor with one half the empire opposed Sweden and the other half. Foreign powers finally negotiated and dictated the peace. Peace treaty articles became a fundamental part of the German constitution.

[9] Crises Don't Pacify Internal Conflict

If the nation happens to unite in self-defense during an emergency, its situation is still deplorable. Military preparations must be preceded by so many tedious assembly discussions—inflamed by jealousies, pride, separate views, and clashing pretensions of sovereign bodies—that enemy troops are in the field before the assembly settles the military counter-strategy. And the enemy is retiring into winter quarters before federal troops are prepared to fight.

[10] Army Inadequate, Underpaid

The small body of national troops judged necessary in peacetime is poorly maintained, badly paid, infected with local prejudices, and supported by irregular and disproportionate contributions to the treasury.

[11] Districts Wage Constant Civil War

Because maintaining order and dispensing justice among sovereign subjects was impossible, the empire was divided into nine or ten circles or districts. They had interior organization and were authorized to use the military to enforce laws against delinquent and disobedient members.

This experiment fully demonstrates the radical vice of the constitution. Each circle is the miniature picture of the deformities of this political monster. They either fail to execute their commissions or do it with all the devastation and carnage of civil war. Sometimes whole circles default, increasing the mischief they were established to remedy.

[12] Internal Military Coercion

We may judge the use of military coercion from an example presented by Thuanus. In Donawerth, a free and imperial city within the Swabian circle, the Abbe de St. Croix enjoyed certain reserved immunities. While exercising them on some public occasions, the people of the city committed outrages on him. In consequence, the city was put under the ban of the empire.

The director of another district, the Duke of Bavaria, obtained an appointment to enforce it. He arrived in the city with 10,000 troops to forcefully revive and move on an antiquated claim that the city had been stolen from his ancestors' territory. He took possession of it in his own name, disarmed and punished the inhabitants, and reannexed the city to his domain.

[13] Weakness, Foreign Danger Promotes Status Quo

What has kept this disjointed machine from completely falling apart? The answer is obvious: most members are weak and unwilling to expose themselves to the mercy of the formidable foreign powers around them. The emperor derives vast weight and influence from his own hereditary properties, so he wants to preserve a system that is tied with his family pride and makes him the first prince of Europe.

These circumstances support a feeble and precarious Union. The nature of sovereignty includes a repellent quality, which time strengthens, preventing any reform by consolidation.

Even if this obstacle could be surmounted, neighboring powers would not allow a revolution because it would give the empire the force and preeminence to which it is entitled. Foreign nations are interested in any changes made to the German constitution and, on various occasions, their policy of perpetuating its anarchy has been evident.

[14] Poland: Government Over Sovereigns

There are more examples. Poland, a government over local sovereigns, might be noticed. It gives striking proof of the calamities flowing from institutions that are equally unfit for self-government and self-defense. Poland has long been at the mercy of its powerful

neighbors who recently, and graciously, disburdened it of one-third of its people and territories.

[15] Swiss States Not Confederacy

The connection between the Swiss states can scarcely be called a confederacy, even though it is sometimes cited as an example of the stability of such institutions.

[16] Swiss States: No Common Sovereignty

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

[17] League's Unifying Features

They are kept together by their geographic location, their individual weakness and insignificance, the fear of powerful neighbors (one formerly ruled them), by the few contentions among the basically homogeneous manners, by their joint interest in their dependent possessions, by mutual aid for suppressing insurrections and rebellions, and by some regular and permanent provision for solving disputes among the states.

To settle disputes, each party involved chooses four judges from neutral states who, in case of disagreement, choose an umpire. Under the oath of impartiality, this tribunal pronounces a definitive sentence that all the states are bound to enforce. This regulation's effectiveness may be estimated by a clause in their treaty of 1683 with Victor Amadeus of Savoy. In it, he is obliged to interpose as mediator in disputes between states and employ force, if necessary, against the disobedient party.

[18] Controversies Easily Severed League

Comparing their case to the United States confirms our opinion. However effective the union may be in ordinary cases, as soon as severe differences appeared, it failed. In three instances, religious controversies have kindled violent and bloody contests that severed the league.

The Protestant and Catholic states established separate assemblies where the most important concerns are adjusted, leaving the general assembly little business other than to take care of common bailages.

[19] Opposing Foreign Alliances

The consequence of that separation merits attention. It produced opposite alliances with foreign powers. Berne, the head of the Protestant association, is allied with the United Provinces. Luzerne, head of the Catholic association, with France.

PUBLIUS

20: United Netherlands: Failure of Legislation for States

The United Netherlands is an interesting confederacy of aristocracies, yet it confirms the lessons derived from others we have reviewed.

[2] Equal States; Equal, Independent Cities

The United Netherlands has seven equal sovereign provinces. Each province is composed of equal, independent cities. In all important issues, both the provinces and the cities must be unanimous.

[3] States-General: Terms Vary Widely

The sovereignty of the union is represented by the States-General, consisting usually of about 50 deputies appointed by the provinces. They hold their seats, some for life and some for one, three, or six years. From two provinces, their appointment continues at the state's pleasure.

[4] Authorities of States-General

The States-General can enter into treaties and alliances, make war and peace, raise armies and equip fleets, determine quotas and quotes, and demand contributions. In each case, however, unanimity and the sanction of their constituents are requisite.

They have authority to appoint and receive ambassadors, execute treaties and alliances already formed, provide for collection of duties on imports and exports, regulate the mint with a saving to the provincial rights, and govern the dependent territories as sovereigns.

Without general consent, the provinces are restrained from entering into foreign treaties and establishing duties injurious to others or higher than that charged their own subjects.

A council of state and a chamber of accounts, with five colleges of admiralty, aid and fortify the federal administration.

[5] Stadholder: National Executive and Provincial Ruler

The stadholder (executive magistrate of the United Provinces of the Netherlands) is a hereditary prince. His principal weight and influence derive from his independent title, his family connections with some of the chief potentates of Europe, and, most of all, his being stadholder (viceroy, governor) in several provinces in addition to the union.

As a provincial stadholder, he appoints town magistrates under certain regulations, executes provincial decrees, presides when he pleases in the provincial tribunals, and has throughout the power of pardon.

[6] Stadholder: Authorities

As stadholder of the union, he has many prerogatives.

[7] Political Executive

In his political capacity, he settles disputes between provinces when other methods fail, assists at the deliberations of the States-General and their particular conferences, meets with foreign ambassadors, and keeps agents for his particular affairs at foreign courts.

[8] Military Commander

In his military capacity, he commands the federal troops, provides for posts and garrisons in fortified towns, and confers military ranks.

[9] Naval Admiral-General

In his marine capacity, he is admiral-general. He directs everything relative to naval forces and affairs, presides in the admiralties in person or by proxy, appoints lieutenant-admirals and other offices, and establishes councils of war, whose decisions are not executed until he approves them.

[10] Salary; Standing Army

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

[11] Theoretical Organization Only

This is the nature of the celebrated Belgic confederacy as spelled out on paper. How has it functioned in reality? Imbecility in the government. Discord among provinces. Foreign influence and indignities. Precarious existence in peace and the calamities accompanying war.

[12] Hatred Keeps Netherlands Whole

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

[13] Jealousy Among Provinces

Another respectable writer says the union has enough authority in the States-General to secure harmony, but jealousy in each province renders reality very different from theory.

[14] Inland Provinces Can't Pay Taxes

Another says the constitution obliges each province to levy contributions. But this article never could, and probably never will, be executed because inland provinces, which have little commerce, cannot pay an equal quota.

[15-16] Military Used to Collect Tax Quotas

In practice, the articles of the constitution relating to contribution are waived. The consenting provinces are obliged to furnish their quota without waiting for the others, then obtain reimbursement from the others anyway they can.

The great wealth and influence of Holland enable her to do both.

More than once, deficiencies were ultimately collected at bayonet point. Although practical, this is a dreadful solution in a confederacy where one member is stronger than the rest and several are too small to offer any resistance. And this solution is utterly impractical in a confederacy composed of several members of equal strength, resources, and defenses.

[17] Foreign Ministers Overstep Authority

Former foreign minister Sir William Temple says foreign ministers avoid matters taken *ad referendum* by tampering with the provinces and cities. In 1726, the treaty of Hanover was delayed this way for a year. Similar instances are numerous and notorious.

[18] States-General Oversteps Authority

In critical emergencies, the States-General are often compelled to overstep their constitutional bounds. In 1688, they concluded a treaty themselves at the risk of their heads. In 1648, the treaty of Westphalia, formalizing their independence, concluded without the consent of Zealand. Even as recently as the last peace treaty with Great Britain, the constitutional principle of unanimity was ignored.

[18a] Weak Constitution Leads to Tyranny

A weak constitution must end in dissolution either from a deficiency in power or the usurpation of powers necessary for the public safety. Whether the usurpation, when once begun, will stop at a healthy point or go forward to a dangerous extreme, depends on the circumstances at the time. Tyranny more frequently grows out of the assumptions of power needed in an emergency by a defective constitution, than out of the full exercise of the largest constitutional authorities.

[19] Stadholder's Influence

Despite the calamities produced by the stadholdership, it has been assumed that without his influence in individual provinces, the causes of anarchy manifest in the confederacy would have dissolved it long ago.

The Abbe Mably says under such a government, the Union could not have survived without a motivator from within the provinces, capable of quickening their tardiness and compelling them to the same way of thinking. This motivator is the stadholdership.

Sir William Temple said that during vacancies in the stadholdership, Holland, with her riches and authority, drew others into dependence, supplying the role.

[20] Influence of Surrounding Nations

Other circumstances have also controlled the tendency to anarchy and dissolution. The surrounding foreign powers make union absolute necessity. At the same time, their intrigues nourish the constitutional vices, keeping the republic to some degree always at their mercy.

[21] Can't Agree How to Fix Problems

True patriots have long bewailed the fatal tendency of these vices and have convened four *extraordinary assemblies* for the special purpose of finding a remedy. But even with their enthusiasm, they have found it impossible to *unite the public councils* in reforming the known, acknowledged, fatal evils of the existing constitution.

Let us pause for one moment, my fellow citizens, over this melancholy and monitory lesson of history. Let's shed a tear for the calamities brought on mankind by their adverse opinions and selfish passions. Then let our combined praise of gratitude for the auspicious amity distinguishing our political counsels rise to Heaven.

[22] Federal Tax Plan Failed

A design establishing a general tax administered by the federal government was also conceived. It had adversaries and also failed.

[23] Maybe Crises Will Form Stronger Union

This unhappy people seem to currently suffer from popular convulsions, dissentions among states, and foreign invasion, crises that will determine their destiny. The eyes of all nations are fixed on the awful spectacle.

Humanity's first wish is that this severe trial will create a governmental revolution that will strengthen their union, making it the parent of tranquillity, freedom, and happiness. Our next wish is that the speed with which our country secures these blessings will comfort them after the catastrophe of their own.

[24] Fatal Flaw: Gov't Governing Gov't

I don't apologize for dwelling so long on the study of these federal precedents. Experience is the oracle of truth. When its lessons are unambiguous, they should be regarded as absolutely conclusive.

The important truth that experience unequivocally pronounces in this present case is that just as a sovereignty over sovereigns, a government over governments, a legislation for communities—as distinguished from a government over individuals—is illogical in theory, in practice it subverts order and ends civility by substituting *violence* in place of *law*, or the destructive *coercion* of the *sword* in place of the mild and solitary *coercion* of the *magistracy*.

PUBLIUS

21: Defects of United States Articles of Confederation

Having summarized the roots and fates of other confederate governments in the last three papers, I will now proceed to enumerate the most important and disappointing defects in our system. To decide a safe and satisfactory remedy, we absolutely must become well acquainted with the extent and malignity of the disease.

[2] No Power to Enforce Federal Laws

An obvious defect of the existing Constitution is the total lack of sanction to its laws. Currently, the United States has no power to demand obedience or punish disobedience to their resolutions either by fines, by suspension or divestiture of privileges, or by any other constitutional mode. The federal government is not expressly given the authority to use force against delinquent members.

If we say that, from the nature of the social compact between the States, the right to enforce federal resolutions exists, the assumption is contrary to the wording in the *States' rights* clause, Article Two, Articles of Confederation: "that each State shall retain every power, jurisdiction, and right, not *expressly* delegated to the United States in Congress assembled."

To suppose this federal right does not exist seems absurd. But we are faced with the dilemma of either accepting this preposterous supposition, or violating or explaining away the provision in Article Two.

Recently, the lack of a States' rights clause in the new Constitution has been the subject of severe criticism, opponents arguing that this will cause it to fail. However, if we are unwilling to weaken the force of this praised provision, the United States will become the extraordinary spectacle of a government without even the shadow of constitutional power to enforce the execution of its own laws. From the historical examples cited, the America Confederacy appears different in this area from every similar federation. It will become a unique, new phenomenon in the political world.

[3] No Federal, State Mutual Guaranty

The lack of a mutual guaranty of the State governments is another major imperfection in the federal plan. The Articles say nothing on this subject. To suggest the guaranty exists simply because it's useful would be an even more flagrant departure from the above quoted clause than to imply a tacit power of coercion. The consequences of not having a guaranty may endanger the Union, but it isn't as dangerous to its existence as the lack of a constitutional sanction to its laws.

[4] U. S. Can't Defend State Constitutions

Without a guaranty, the Union cannot assist in repelling domestic dangers that may threaten State constitutions. Usurpation may arise and trample upon liberties in each State, while the national government could legally do nothing more than watch its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while the Union could not constitutionally help the friends and supporters of the government.

Concrete evidence of this danger is the recent tempestuous situation that Massachusetts barely survived. Who can say what might have happened if the malcontents had been led by a Caesar or by a Cromwell? Who can predict the effect of despotism, if established in Massachusetts, on the liberties of New Hampshire, Rhode Island, Connecticut, or New York?

[5] Mutual Guaranty: Advantage of Unity

Some people, influenced by exaggerated State pride, object to a federal government guaranty. They say it would involve an objectionably aggressive and undesired interference in the internal concerns of States.

They would deprive us of important advantages expected from union because they misunderstand the provision. It could not impede reforming State constitutions by a majority of the people in a legal and peaceful mode. This right would remain undiminished. The guaranty could only operate when violence was used to force changes.

Too many checks cannot be provided against calamities of this kind. The peace of society and the stability of government depend absolutely on the efficacy of precautions in this area.

[5a] People Hold Governmental Authority

When the people hold the whole power of the government, fewer pretenses to use violence to remedy partial or occasional distempers will appear. In a popular or representative government, the natural cure for poor administration is changing men. A national authority guaranty would as often be leveled against the usurpations of rulers as against the ferments and outrages of faction and sedition in the community.

[6] Taxation by State Quotas

Regulating State contributions to the national treasury by quotas is another fundamental error in the Confederation. It has already been pointed out that the national

financial needs haven't been met during this trial period, with plenty of examples. Now I will address it as it relates to equality among the States.

People who study the circumstances that produce and constitute national wealth must agree that no common standard or barometer exists to measure the degrees of it. Neither land values nor population numbers, both proposed as the rule for State contributions, are just representations.

For example, if we compare the wealth of the United Netherlands with that of Russia, Germany, or even France with their land value and aggregate population, we immediately discover no comparison between the proportion of either of these and the relative wealth of those nations. The United Netherlands has the higher wealth; the three other nations have immense land and much larger populations.

The same analysis between several American States would furnish a similar result. Contrast Virginia with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey and we will be convinced that the respective revenue abilities of those States bear little or no analogy to their comparative stock in lands or comparative population. A similar process between counties in the same State illustrates the same thing. Any man acquainted with New York State will not doubt that the active wealth of King's County is in much greater proportion than that of Montgomery if either total land value or total number of people is used as a criterion.

[7] No Measurement of Wealth Accurate

A nation's wealth depends on an infinite variety of causes. Situation, soil, climate, type of productions, nature of government, genius of the citizens, the amount of information they possess, the state of commerce, arts, industry—these circumstances, and many more too complex, minute, or adventitious to quantify, create differences in the relative opulence and riches of different countries.

There clearly can be no common measure of national wealth and, of course, no general or stationary measurement to determine a State's ability to pay taxes. Therefore, trying to regulate State contributions to the confederacy by any such rule cannot fail to be glaringly unequal and extremely oppressive.

[8] Quotas and Requisitions, States Unequal

If a way of enforcing compliance with federal requisitions could be devised, the inequality between States' wealth, alone, would be sufficient to eventually destroy the American Union. Suffering States would soon refuse to remain associated on a principle that so unequally distributes public burdens and is calculated to impoverish and oppress citizens of some States while citizens of others are scarcely conscious of the small proportion of the weight they are required to sustain. However, this evil is inseparable from the principle of quotas and requisitions.

[9] Nat'l Gov't Must Raise Revenue—"Consumption" Taxes

The only method of avoiding this inconvenience is by authorizing the national government to raise its own revenue in its own way.

Imposts, excises and, in general, all duties on articles of consumption may be compared to a fluid that will, in time, find its level with the means of paying them. Each citizen's contribution will be, to a degree, his own option, regulated by attention to his resources. The rich may be extravagant. The poor can be frugal. And private oppression may be avoided by a judicious selection of objects proper for such taxes. If inequalities arise in some States from duties on particular objects, these will probably be counterbalances by proportional inequalities in other States from duties on other objects. In time, an equilibrium, as far as it is attainable in so complicated a subject, will be established everywhere. Or, if inequalities continue to exist, they will not be in so great a degree, so uniform, or so odious in appearance as those that would spring from quotas.

[10] Limited Tax Revenue Limits Federal Authority

The advantage of taxes on articles of consumption is that their nature contains a security against excess. They prescribe their own limit. And it cannot be exceeded without defeating the end proposed—increasing government's revenue.

[10a] Excessive Taxes Decrease Revenue

When applied to taxation policy, the saying is as true as true as it is witty that, "in political arithmetic, 2 and 2 do not always make 4." If duties are too high, they lessen consumption, collection is eluded, and the product to the treasury is less than when taxes are confined within proper and moderate bounds. This forms a complete barrier against any significant oppression of citizens by taxes of this kind. And it naturally limits the power of the imposing authority.

[11] Indirect vs. Direct Federal Taxes

This kind of imposition is usually called indirect taxes. For a long time, this must be the chief way of raising revenue in this country.

Direct taxes principally relate to land and buildings and may be appropriate for the rule of apportionment. Either the land value or the

number of people may serve as a standard. The states of agriculture and population density of a country are considered co-related. For the purpose intended, numbers are usually preferred because of their simplicity and certainty.

In every country, land valuation is a herculean task. In a country imperfectly settled and constantly being improved, the difficulties make it more impractical. In all situations, the expense of an accurate valuation is a formidable objection.

Direct taxes, by their nature, have no limits to the discretion of the government. Therefore the establishment of a fixed rule, compatible with its purpose, may have fewer inconveniences than to leave that discretion unbound.

Publius

Articles of Confederation references:

Article 2	States' rights clause
Article 8	`federal taxation by quotas

22: Defects in Articles of Confederation

In addition to the defects in the existing federal system already discussed, others, just as important, make it completely unfit to administer the affairs of the Union.

[2] No Federal Regulation of Commerce

One is the lack of power to regulate commerce. We have discussed the importance of this power. For this reason, as well as common knowledge on the subject, little needs to be said here.

Even the most superficial view shows no area of trade or finance that more strongly demands federal authority than regulation of commerce. The absence of that authority has barred the formation of beneficial treaties with foreign powers. Occasionally, disputes between the States have arisen. No nation aware of our political association would be unwise enough to enter into stipulations that cede privileges to the United States, because they know arrangements made with the Union may, at any time, be violated by its members. Besides, they enjoy every advantage they desire in our markets without granting us any in return except what is momentarily convenient.

So, it isn't a big surprise that when Mr. Jenkinson introduced a bill in the British House of Commons for temporarily regulating intercourse between our two countries, he declared that similar provisions in former bills had answered every need of Great Britain's commerce and they should continue their plan until it appeared the American government was likely or not to acquire greater consistency.[7]

[3] Uniform Foreign Commerce Authority

Several States have endeavored, through separate prohibitions, restrictions, and exclusions, to influence the conduct of Great Britain. But without the consistency of a uniform federal authority, clashing and dissimilar State views frustrate every experiment and will continue to do so as long as obstacles to uniform measures continue to exist.

[4] Uniform Interstate Commerce Laws

Contrary to the true spirit of the Union, interfering and unneighborly regulations of some States have given other States good cause for umbrage and complaints. It is feared that, if these policies are not restrained by a national control, they will multiply and extend, becoming both serious sources of animosity and injurious impediments to commerce between different parts of the Confederacy.

"The commerce of the German empire is in continual trammels from the multiplicity of the duties which the several princes and states exact upon the merchandises passing through their territories, by means of which the fine streams and navigable rivers with which Germany is so happily watered are rendered almost useless."[8]

This description may not ever be strictly applicable to us, yet we may reasonably expect, from gradually conflicting State regulations, that eventually citizens will treat other citizens in no better light than foreigners and aliens.

[5] Quotas, Requisitions to Raise Armies

By the most obvious interpretation of the Articles of Confederation, the power of raising armies is limited to requisitioning quotas of men from the States. During the recent war, this policy created many obstructions to a vigorous and economical system of defense.

Competition between States became a kind of auction for men. To furnish their required quotas, States outbid each other until bounties grew to an enormous and insupportable size. Hoping to receive a larger inducement, men who wanted to serve procrastinated their enlistment, postponing military service for considerable periods.

The result? Scant and short enlistments at an unparalleled expense during critical emergencies. Continual fluctuations in troops ruined their discipline. The public safety frequently was threatened by the perilous crisis of a disbanded army. Additionally, the occasional forced enlistment only worked because the enthusiasm for liberty induced people to endure them.

[6] Unfair, States Not Compensated

This method of raising troops is both unfriendly to the economy and an unequal distribution of the burden. The States near the heart of the war, influenced by self-preservation, tried to furnish their quotas, even exceeding their abilities. States more distant from danger were, for the most part, as remiss in their exertions as the others were diligent.

In this case, unlike disproportionate monetary contributions, States have no hope of a final liquidation. States that didn't pay their proportions of money might, at least, be charged with their deficiencies. But it would be impossible to supply delinquent deficiencies of men.

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7 As nearly as I can recollect, this was the sense of his speech on introducing the bill. –PUBLIUS

8 Encyclopaedia, article "Empire." –PUBLIUS

However, delinquent States probably won't make compensation for their pecuniary failures. Whether it is applied to men or money, the system of quotas is, in every view, a system of imbecility in the Union and of inequality and injustice among the members.

[7] Problems from States' Equal Suffrage

The right of equal suffrage among the States is another difficulty in the Confederation. Every rule of proportion and fair representation conspires to condemn the principle that gives Rhode Island equal power with Massachusetts or Connecticut or New York. That gives Delaware an equal voice in national deliberations as Pennsylvania or Virginia or North Carolina. This contradicts the fundamental maxim of republican government, which is, the will of the majority should prevail.

Sophistry may reply that sovereigns are equal and a majority of the votes of States will be a majority of confederate America. But this kind of logical sleight of hand will never counteract the plain dictates of justice and common sense. It may happen that a majority of States is a small minority of people of America.[9]

And two-thirds of the people of America could not long be persuaded, based on artificial distinctions and syllogistic subtleties, to allow their interests to be managed by the one third. After a while, the larger States would revolt against the idea of living under the law of the smaller. Giving up their political majority rights would be not only contrary to the love of power but even a sacrifice of equality. It is neither rational to expect the first, nor just to require the last.

The safety and welfare of the smaller States depends on union. They should readily renounce a pretension that, if not relinquished, would prove fatal to that union.

[8] *2/3* of States Doesn't Assure Majority

It may be proposed that not seven but nine States, two-thirds of the whole number, must consent to the most important resolutions. The inference is that nine States would always include a majority of the Union. But this doesn't change the impropriety of an equal vote between States of unequal dimensions and populations. Besides, it is possible to have nine States that together have less than a majority of the people. And it is constitutionally possible that these nine may win the vote.[10]

Further, a bare majority may decide significant issues. Other matters for which doubts exist could evolve into the first magnitude of importance if the vote of seven States were a sufficiency. Additionally, the number of States will probably increase and there is no provision for a proportional augmentation of the ratio of votes.

[9] 2/3 Majority, Actually, Minority Control

But this is not all. What may at first be seen as a remedy, is, in reality, a poison. Giving a minority a negative over the majority (the consequence of requiring more than a majority for a decision), tends to subordinate the feelings of the greater number to those of the lesser.

Because a few States have been absent, Congress has frequently been in the situation of the Polish assembly where a single vote has been sufficient to stop all business. A sixtieth part of the union, which is about the size of Delaware and Rhode Island, has several times barred the operation of Congress.

In practice, this refinement has the reverse effect of what is expected from the theory. The necessity of unanimity in public bodies, or something approaching it, was based on the supposition that it would contribute to security. But in reality, it embarrasses the administration, destroys the government's energy, substituting the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junta to the regular deliberations and decisions of a respectable majority.

In national emergencies, when the goodness or badness, the weakness or strength of government is of the greatest importance, action is commonly necessary. Public business must, one way or another, go forward. If a stubborn minority controls the opinion of a majority about the best way of conducting business, to get something done, the majority must conform to the views of the minority; thus, the smaller number will overrule the greater and set a tone to the national proceedings. The reality will include tedious delays, continual negotiation and intrigue, and contemptible compromise of the public good.

In such a system, it is good when compromises are possible. But some occasions won't permit accommodation, leaving legislative solutions injuriously suspended or fatally defeated. The inability to obtain the necessary number of concurring votes often maintains a state of governmental inaction. The situation creates weakness, sometimes bordering on anarchy.

[10] Foreign, Domestic Corruption Easier

It's easy to see that this principle provides greater opportunity for both foreign corruption and domestic faction than having a majority

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

10 Add New York and Connecticut to the foregoing seven and they will be less than a majority. –PUBLIUS

decide, even though the opposite has been assumed. This mistake arises from not carefully considering the consequences from obstruction of governmental progress on certain critical issues.

While it's true that when the constitution requires the concurrence of a large number to pass any national act, we may be satisfied that nothing improper will be likely *to be done*. But we forget how much good may be prevented and ill produced because doing what may be necessary is hindered, keeping affairs in the same unfavorable positions.

[11] Simple Majority More Difficult to Corrupt

For instance, suppose we were allies with one foreign nation against another. Suppose our situation demanded peace but the interest or ambition of our ally promoted war, possibly justifying our making separate terms. In this situation, it would be easier for our ally to use bribes and intrigues to tie the hands of our government from making peace if a vote of two-thirds were required rather than a simple majority. In the first case, a smaller number (34%) would need to be corrupted; in the latter, a greater number (51%).

By the same principle, a foreign power at war with us could perplex our councils and embarrass our exertions.

Commercially we may suffer similar inconveniences. We might have a commerce treaty with a nation, who could easily prevent our forming a connection with her trade competitor, even though such a connection would be beneficial to us.

[12] Republics and Foreign Corruption

These kinds of evils are not imaginary. A weak side to republics, among their many advantages, is that they allow easy access to foreign corruption. Although a monarch often sacrifices his subjects to his ambition, his personal interest in both the government and the external glory of his nation make it difficult for a foreign power to make a bribe large enough to sacrifice his state. So the world has seen few examples of this type of royal prostitution, even though there have been abundant examples of every other kind.

[13] Foreign Corruption of Republics

In a republic, people are elected from and by their fellow-citizens to stations of great pre-eminence and power. They may be offered adequate compensations to betray their trust that only the most virtuous can resist. Others may find that their personal interest over-rides their obligations to duty.

Hence, history furnishes us with many mortifying examples of foreign corruption in republican governments. The amount this contributed to the ruin of ancient commonwealths already has been delineated.

It is well known that the emissaries of neighboring kingdoms have, at various times, purchased the deputies of the United Provinces. If my memory serves me right, the Earl of Chesterfield wrote his court, suggesting that his success in an important negotiation depended on his getting a major's pay for one of those deputies.

In Sweden, the parties were alternately bought by France and England in such an open, notorious manner that it excited universal disgust in the nation. It was a principal cause for the most limited monarch in Europe to become one of the most uncontrolled within a single day without tumult, violence, or opposition.

[14] Lack of Federal Supreme Court

The crowning defect of the Confederation is the lack of a judiciary power. Laws are pointless without courts to interpret and define their true meaning and operation.

To have any force at all, treaties of the United States must be considered as part of the law of the land. Their effect on individuals must, like all other laws, be ascertained by judicial decisions. To produce uniformity in these decisions, as a last resort they should be submitted to one supreme tribunal. This tribunal should be instituted under the same authority that forms the treaties themselves. Both ingredients are indispensable.

If each State has a court of final jurisdiction, there may be as many different final decisions on an issue as there are courts. Men hold endless diversities in opinions. We often see not only different courts, but judges of the same court, differing from each other. Confusion is the unavoidable result of contradictory decisions of a number of independent judiciaries. To avoid this, all nations have established one court of last resort, paramount to the rest and authorized to settle a uniform rule of civil justice.

[15] State Courts Will Not Always Agree

This is more necessary when a government's structure is such that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if State or regional tribunals possess the right of ultimate jurisdiction, besides producing the contradictions expected from different opinions, there will be much to fear from bias of local views and prejudices and from the interference of local regulations. A fear that previsions of local laws may be preferred to those of the federal laws is reasonable. Men in office naturally defer towards the authority to which they owe their official existence.

13 Courts of Final Jurisdiction

Under the present Constitution, the treaties of the United States are liable for the infractions of thirteen different legislatures, with many different courts of final jurisdiction, acting under the authority of those legislatures. Thus the faith, reputation, and peace of the whole Union are continually at the mercy of the prejudices, passions, and interests of every member. Is it possible that foreign nations can either respect or trust such a government? How long will Americans entrust their honor, happiness, and safety to so precarious a foundation?

[16] Articles: Amendments Won't Cure Flaws

In this review of the Confederation, I confined myself to exhibiting the most material defects, passing over the details of those imperfections that make its intended power largely impotent. By this time, all men of reflection, who are able to divest themselves of preconceived opinions, must realize that it is a system so radically vicious and unsound that it cannot be cured by amendments. It requires an entire change in its important features and characters.

[17] One Congress: Inadequate/Dangerous

The organization of Congress is utterly incapable of exercising the powers that need to be deposited in the Union. A single assembly may be the proper receptacle for the slender, or rather fettered, authorities currently delegated to the federal government. But it is inconsistent with all the principles of good government to entrust it with additional powers that, even moderate and rational adversaries of the proposed Constitution admit, should reside in the United States.

If the new Constitution is not adopted and if the Union could withstand the ambitious aims of men who may indulge in magnificent schemes of personal aggrandizement from its dissolution, we would probably end up conferring supplementary powers upon Congress, as now constituted. Then either the "machine" will disintegrate from its intrinsic feebleness in spite of our ill-judged efforts to prop it up or, by successive injections of force and energy as necessary, we well eventually accumulate in a single body all the prerogatives of sovereignty, laying on our posterity one of the most utterly detestable forms of government humans have ever contrived. Thus we would create that very tyranny that adversaries of the new Constitution either are, or pretend to be, solicitous to avert.

[18] People Didn't Ratify Articles

The fact that the people never ratified the existing federal system adds to its infirmities. Its only foundation is the consent of the legislatures, which has exposed it to frequent and probing questions about the validity of its powers. These have given birth to the outrageous doctrine of the right of legislative repeal. It is rationalized that since it was ratified by the State, the same authority can repeal it. However gross the heresy that a *party* to a *compact* has a right to revoke that *compact*, the doctrine itself has respectable advocates.

Questions of this nature prove the necessity of laying the foundation of our national government deeper than in the mere sanction of delegated authority.

The American empire should rest on the solid basis of the consent of the people. The streams of national power should flow immediately from that pure, original fountain of all legitimate authority.

Publius

Constitutional references:

Article 1, Section 8	taxes, duties, imposts, excises
Article 1, Section 8	taxes uniform throughout United States
Article 1, Section 8	make "necessary and proper" laws
Article 1, Section 9	no export tax
Article 1, Section 9	no federal commercial State preference
Article 1, Section 9	no State duties: to other States
Article 1, Section 10	no State duties on imports, exports
Article 1, Section 8	military: raise, support, regulate
Article 1, Section 2	apportionment of Representatives
Article 1, Section 2	treaties
Article 1, Section 10	treaties, no State can make
Article 1, Section 1	Congress, two houses
Article 3, Section 1	Supreme Court
Article 3. Section 2	Supreme Court, treaties
Article 7	ratification of Constitution

23: Federal Responsibilities, Powers, Organization

Our examination now focuses on the necessity of an energetic Constitution to preserve the Union.

[2]Our inquiry divides itself naturally into four topics:

1. The objectives of the federal government.
2. The quantity of power necessary to fulfill its purposes.
3. The persons who should control that power.
4. The organization of the federal government.

[3]The principal purposes of union are:

1. The common defense of the members.
2. The preservation of public peace against both internal convulsions and external attacks
3. The regulation of commerce with other nations and between the States.
4. The supervising of our political and commercial intercourse with foreign countries.

[4] Powers Essential for Defense

The authorities essential to common defense are: to raise armies, build and equip fleets, prescribe rules to maintain both, direct their operations, and provide their support.

These powers should exist without limitation, because it's impossible to foresee the extent and variety of national emergencies, or the size and type of force that may be necessary to solve them.

An infinite number of circumstances endanger the safety of a nation. For this reason, constitutional limits on the power to protect it are unwise. This power should equal the strength of all possible circumstances. And it should be under the direction of the same councils that preside over the common defense.

[5] Defense Needs Unlimited Authority

To a rational, unprejudiced mind, this truth carries its own evidence. It may be obscured, but argument or reasoning cannot make it plainer. It rests on axioms as simple as they are universal. The *means* ought to be proportionate to the *end*; the persons charged with attaining the *end* ought to possess the *means* for attaining it.

[6] Form, Direct, Support National Army

The first question is whether a federal government should be entrusted with the care of the common defense. Once decided in the affirmative, it follows that the government needs the power required to execute that trust. And unless circumstances effecting public safety can be reduced to within certain determinable limits, authority to provide for the defense and protection of the community can not be limited. Any matter essential to its efficacy should not be limited; that is, any matter essential to the *formation, direction,* or *support* of the NATIONAL FORCES.

[7] Defense: States Requisitioned

Despite the present Confederation's defects, the framers apparently recognized this principle, even though they made no adequate provisions for its implementation. Congress has unlimited discretion to requisition men and money, govern the army and navy, and direct their operations. Since requisitions by Congress are constitutionally binding on the States, who are obligated to furnish the required supplies, it was evidently intended that the United States command whatever resources they judged necessary for the "common defense and general welfare." It was presumed that States, being aware of their best interests and duty to the Union, would punctually respond to federal requisitions.

[8] Union: Direct Authority Over Citizens

However, experience has demonstrated that this expectation was ill founded and illusory. I imagine the observations in the last paper convinced impartial, discerning people that an entire change in the first principles of the system is absolutely necessary. If we are earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon States in their collective capacities and extend federal laws to individual citizens. We must discard the fallacious scheme of quotas and requisitions as equally impractical and unjust.

The Union should have the full power to levy troops, build and equip fleets, and raise the revenues required to form and support an army and navy in the same way as other governments.

[9] Government Needs Power to Fulfill Responsibilities

If the circumstances of our country demand a compound or confederate government instead of a simple, single government, then the essential remaining determination is what the RESPONSIBILITIES of the different parts and branches of power will be, delegating to each ample authority to fulfill the responsibilities committed to its charge.

Shall the Union be constituted the guardian of the common safety? Are fleets, armies and

revenues necessary for this purpose? The government of the Union must be empowered to pass all laws and regulations in relation to them.

The same must be true for commerce and every other matter to which its jurisdiction is permitted to extend.

Is the administration of justice between citizens of the same State properly the jurisdiction of local government? They must possess the authority for this and every other responsibility allotted to them.

Not to confer the degree of power needed to obtain each end would violate the most obvious rules of prudence and propriety and would improvidently trust the great interests of the nation to disabled hands.

[10] Federal Gov't Needs Defense Authority

Who would make more suitable provisions for public defense than the body charged with guarding public safety? At the center of information, it will best understand the extent and urgency of threats. Representing the WHOLE, it will be deeply interested in the preservation of every part. It will accept the responsibility of necessary actions. And with the extension of its authority throughout the States, it can establish uniform plans to secure the common safety.

Isn't there an obvious inconsistency in giving the federal government the responsibility of general defense, but leaving the *effective* power of providing for it with the State governments? Isn't lack of cooperation the inevitable consequence of such a system? Will not weakness, disorder, and unequal distribution of the burden and calamities of war, and an unnecessary and intolerable increase of expense, naturally and inevitably accompany it? Didn't we have unambiguous experience of these effects during the revolution we have just achieved?

[11] Proposed Powers = Federal Goals

As we candidly seek the truth, every view of the subject serves to convince us that it is both unwise and dangerous to deny the federal government full authority over those objects entrusted to its management. The people must be vigilant in seeing that it is modeled in a manner so that it is safely vested with the necessary powers. If any plan is, or may be, offered for our consideration that, after a dispassionate inspection, doesn't answer this description, it should be rejected.

A government formed under a constitution that makes it unfit to be entrusted with all the powers a free people *ought to delegate to any government* would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever these interests can properly be confided, the coinciding powers can safely accompany them. This is the conclusion drawn from a careful examination of the subject.

Adversaries of the Constitution would have seemed more sincere if they had confined their arguments to showing that the internal structure of the proposed government is unworthy of the people's confidence. They shouldn't have wandered into trivial and pointless rhetoric about the extent of the powers.

The POWERS are not too extensive for the OBJECTS of federal administration; or, in other words, for the management of our NATIONAL INTERESTS. Nor can any satisfactory argument be made showing it has excess powers. If there are, as insinuated by some writers on the other side, then the difficulty stems from the nature of government. If the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, then we should downsize our ideas and simply form the more practical separate confederacies.

The absurdity of entrusting the national interests to a government without the authority to properly and efficiently manage them is obvious. Let's not try to reconcile contradictions, but firmly embrace a rational alternative.

[12] Energetic Gov't to Preserve Union

I trust, however, that one general system cannot be proven impractical. I don't think any significant argument has shown this. And I also flatter myself that the ideas presented in these papers have shown the reverse as clearly as is humanly possible. In all events, it must be evident that the size of the country is the strongest argument in favor of an energetic government. No other could preserve the Union of so large an empire.

If we embrace the arguments of those opposing the proposed Constitution as our political creed, we will verify the gloomy predictions of the impracticality of a national system spread across the entire area of the present Confederacy.

Publius

Constitutional references:

Article 1, section 8 defense, regulate commerce, raise and support armies, navy, militia
Article 1, section 10 no State international commitments

24: Standing Armies During Times of Peace

Only one specific objection has been raised to giving the federal government the power to create and direct the national armed forces. If I understand the objection correctly, it is that the Constitution contains no provision against the existence of standing armies in time of peace. I shall now endeavor to show that this objection rests on weak and insubstantial foundations.

[2] Objection to Standing Armies

The objection is vague and generalized, supported by nothing but loud assertions without logical argument or a base in theoretical opinions. The objection contradicts the general feelings in America and the practice of other free nations, as expressed in their constitutions. Remember that the objection stems from the apparent need to restrain the LEGISLATURE from establishing national military bases, a principle rejected under all but one or two State constitutions.

[3] Armies Not Mandatory

A stranger to our politics, who reads current newspapers without studying the proposed Constitution, would be led to one of two conclusions: either the Constitution says that standing armies should be kept up in time of peace or it vests in the EXECUTIVE the whole power of raising troops without subjecting his decision, in any way, to legislative control.

[4] Only Legislature Can Raise Army

After studying the Constitution, he would be surprised to discover that neither the one nor the other was true. The *legislature*, not the *executive*, has the power to raise armies. The legislature will consist of periodically elected representatives of the people.

Instead of a provision favorable to standing armies, he'd find an important limitation to even the legislature discretion in this area. A clause forbids the appropriation of money to support an army for any period longer than two years. This precaution becomes security against keeping troops when unnecessary.

[5] Do Constitutions Ban Armies in Peace?

Disappointed by his first assumption, my hypothetical person might pursue his conjectures a little further. Naturally he would think that there must be some colorful pretext for the vehement and pathetic declamations. He might assume Americans are so jealous of their liberties that all preceding established constitutional models contain precise and rigid precautions on this point and that its omission in the new Constitution has given birth to all this apprehension and clamor.

[6] Most States Allow Peacetime Armies

If this assumption leads him to review the State constitutions, he would be disappointed to find that only *two* of them prohibit standing armies in peacetime. The other eleven are either silent on the subject or expressly allow the legislature to authorize their existence.[11]

[7] Do Articles Ban Peacetime Armies?

However, he would continue to believe that there must be some plausible foundation for the cry raised on this subject. As long as any source of information remained unexplored, he would never assume that the outcry is only an experiment on the public's credulity, either dictated to deliberately deceive or by an over flowing zeal too excessive to be honest. He would expect to eventually find a solution to the enigma.

Next he would probably assume the precautions he was searching for were in the Articles of Confederation. No doubt, he would say to himself, the existing Confederation must contain explicit provisions against military establishments in peacetime. And that a departure from this model has caused the discontent that is influencing these political champions.

[8] No Prohibition; Opposition Specious

After a careful and critical study of the Articles of Confederation, his astonishment would increase. And he would become indignant that instead of containing the prohibition he expected, the Articles jealously restrict the authority of State legislatures on this subject but do not impose a single restraint on the United States.

If he was a sensible, rational man, he would start regarding the clamors as dishonest

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[11] This is taken from the printed collection of State constitutions. Pennsylvania and North Carolina are the two that contain the interdiction in these words: "As standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This is, in truth, rather a CAUTION than a PROHIBITION. New Hampshire, Massachusetts, Delaware, and Maryland have, in each of their bills of rights, a clause to this effect: "Standing armies are dangerous to liberty, and ought not to be raised or kept up WITHOUT THE CONSENT OF THE LEGISLATUREG," which is a formal admission of the authority of the LEGISLATURE. New York has no bills of rights, and her constitution says not a word about the matter. No bills of rights appear annexed to the constitutions of the other States, except the foregoing, and their constitutions are equally silent. I am told, however, that one or two States have bills of rights that do not appear in this collection and those also recognize the legislative authority in this respect. –PUBLIUS

artifices of a sinister, unprincipled opposition to a plan that should at least receive a fair and candid examination from all sincere lovers of their country! Why else, he would ask, would the authors of the objections so harshly criticize a part of the Constitution that seems to reflect the general feelings of America as seen in its different forms of government? It even has a new, powerful guard not seen in any of the State constitutions.

If he was a calm, dispassionate man, he would sigh at the frailty of human nature and lament that, in a matter so important to the happiness of millions, the true merits of the question is entangled by unfriendly expedients to an impartial and right determination. Even such a man could hardly help but remark that the objections appear intended to mislead the people by alarming their passions rather than convince them with arguments addressed to their reason.

[9] If Ban Existed, Probably not Observed

But however unacceptable the argument against a standing army may be, even by precedents among ourselves, it could be helpful to study its intrinsic merits. A close examination shows restraining legislative discretion in respect to military establishments in peacetime would be an improper imposition, and if imposed because society demands it, it probably would not be observed.

[10] Europe, Indians Potential Dangers

Although a wide ocean separates the United States from Europe, circumstances warn us against being over-confident of our security. British settlements are growing and stretching to our rear. Spanish settlements are on the other side and extend to meet the British settlements. This situation and the vicinity of the West India Islands, belonging to these two powers, create, in respect to us, a common interest. The savage tribes on our Western frontier should be regarded as our natural enemies and their natural allies because they have the most to fear from us and the most to hope from them.

Improvements in navigation have so facilitated communication that many distant nations seem more like neighbors. Britain and Spain are maritime powers in Europe. A future agreement between them seems probable.

The family compacts between France and Spain are becoming more distant every day. Politicians, with good reason, consider blood ties feeble and precarious links in the political chain.

These combined circumstances warn us not to be over confident, believing we are entirely out of the reach of danger.

[11] Protection Needed on Borders

Since before the Revolution, small garrisons on our Western frontier have been necessary. No one doubts that they will continue being indispensable, if only for protection against the ravages and plundering of the Indians. Occasionally, these garrisons must be supplemented by either the militia or by permanent corps in the pay of the government.

Using militia members is impractical. And even if it was practical, it would be dangerous. The militia would not long, if at all, submit to being dragged from their occupations and families to perform the most disagreeable duty in times of peace. Even if they could be prevailed upon or compelled, the increased expense of frequent service rotation and individuals' loss of labor on industrious pursuits would form conclusive objections to the scheme. It would be as burdensome and injurious to the public as it would be to private citizens.

A permanent corps paid by the government amounts to a standing army in peacetime–a small one, indeed, but no less real for being small.

This simple view of the subject clearly shows the impropriety of a constitutional prohibition of a standing army and the necessity of leaving the matter to the discretion and prudence of the legislature.

[12] Future Border Needs Will Increase

As our strength increases, it is probable—no, it may be certain—that Britain and Spain will augment their military establishments in our neighborhood. If we are unwilling to be exposed—naked and defenseless—to their encroachments, it will be expedient to increase our frontier garrison as the need to protect our Western settlements increases. Some military posts will service large districts of territory and facilitate future invasions of the remainder. Some posts will also be important to the trade with the Indian nations.

Can any man think it would be wise to leave such posts vulnerable to seizure by one or the other of two neighboring and formidable powers? This would be against all normal maxims of prudence and policy.

[13] Navy will Replace Some Garrisons

If we expect to be commercial, or even secure on our Atlantic side, as soon as possible we must form a navy. Dockyards and arsenals will need to be defended by fortifications and, probably, garrisons. When a nation becomes powerful enough to protect its dockyards by its sea fleets, garrisons for that purpose are not necessary. But where naval establishments are in their infancy, moderate garrisons will, in all likelihood, be found an indispensable security against destructive attacks on arsenals and dockyards, and sometimes the fleet itself.

Publius

25: Defense: Federal, Not State, Responsibility

It may be argued that the State governments, under the direction of the Union, should provide the objectives listed in the preceding paper. But this would invert the primary principle of our political association, transferring the responsibility for common defense from the federal government to the States—a situation oppressive to some States, dangerous to all, and harmful to the Confederacy.

[2] Danger of Making Defense State Duty

The territories of Britain, Spain, and the Indian nations do not border on particular States but encircle the Union from Maine to Georgia. The danger, to differing degrees, is common. In like manner, the means of guarding against it should be the responsibility of common councils and a common treasury.

Some States are more directly exposed. New York is in this group. If the States had to make separate provisions, New York would sustain the whole burden of her immediate safety and, ultimately, the protection of her neighbors. This would be neither equitable for New York nor safe for other States.

Various inconveniences would accompany such a system. The States who need to support military establishments would be neither willing nor able to bear the burden of competent provisions for a long time to come. Therefore, the security of all would be subject to the stinginess, lack of foresight, or inability of one State.

On the other hand, if the resources of such a State became abundant and extensive, its military spending would increase proportionately. Then the other States would be alarmed that the whole military force of the Union would be in the hands of two or three of the most powerful States. They would want to take counter measures, and justifications could easily be contrived.

In this situation, military establishments, nourished by mutual jealousy, would probably swell beyond their natural or proper size. Created and controlled by separate States, they would become the instruments of abridgment or demolition of the national authority.

[3] State Military a Danger to Liberty

Reasons have been given as to why State governments are natural rivals with the Union. The foundation is the love of power. And in any dispute between the federal government and one of its States, people will be more apt to unite with their local government. If you add to this advantage State supported military forces, there would be a strong temptation and a great facility to challenge and, finally, subvert the constitutional authority of the Union.

The liberty of the people would be less safe under these circumstances than if national forces are in the hands of the national government. If an army is a dangerous weapon of power, it is better to be controlled by the targets of envy than the least likely targets of jealousy. History proves that people are in the most danger when the capability of injuring their rights is in the possession of those who they least suspect.

[4] State Military Would Be Dangerous

The framers of the existing Confederation, fully aware that States with separate military forces are a danger to the Union, expressly prohibited them from having either ships or troops, unless with Congressional consent. The truth is, the existence of both a federal government and State sponsored armies are as incompatible with each other as the debts due to the federal treasury and the system of quotas and requisitions.

[5] Peacetime Military Ban Unenforceable

Improper restraints on the discretion of the national legislature will manifest in additional ways. As mentioned, the objection is to ban standing armies in time of peace. But we have not been informed how far the prohibition should extend. Will it ban raising armies as well as to *keeping them up* in time of tranquility?

If the prohibition is limited to keeping them up, it isn't specific and will not fulfill the purpose intended. Once armies are raised, what does the constitution mean by "keeping them up"? What time frame will constitute a violation? A week, a month, a year?

Or may they continue as long as the danger that occasioned their being raised continues? This would admit that they can be kept up *in time of peace*, against threats or impending danger, a deviation from the literal meaning of the prohibition and introduces an extensive latitude of discretion. Who will judge that the danger continues? This must undoubtedly be decided by the national government. To provide against a possible danger, the national government can first raise troops, then keep them as long as the peace or safety of the community was in any degree of jeopardy. It is easy to see that such a latitude of discretion would give ample room for eluding the force of the provision.

[6] Excuses to Fortify Military

The supposed utility of a provision against peacetime armies can only be based on the assumption, or at least the possibility, that the executive and legislative could conspire in a usurpation scheme. However, if they did conspire, it would be easy to fabricate pretenses of approaching danger! Indian hostilities, instigated by Spain or Britain, would always be an available excuse. Or a foreign power could be provoked to produce the desired threatening appearance, then appeased again by timely concessions. If such a conspiracy happened and seemed likely to succeed, the army could be raised—using any pretext—and applied to the usurpation scheme.

[7] Peacetime Army Ban, Union Defenseless

If, to avoid this consequence, the prohibition is extended to the *raising* of armies in time of peace, the United States would be in the most extraordinary situation the world has yet seen—a nation incapacitated by its Constitution to prepare for its defense before it was actually invaded.

Since formal declarations of war have fallen into disuse, an enemy would have to be physically within our territories before the government could begin drafting men for the protection of the state. We must receive the blow before we can even prepare to return it. A national policy of anticipating and preparing to meet a danger, could not be done, because it is contrary to the genuine maxims of a free government. Therefore, we would expose our property and liberty to the mercy of foreign invaders, our weakness inviting them to seize the naked and defenseless prey because we were afraid that rulers—elected by us and ruling according to our will—might endanger our liberty by abusing the means necessary for its preservation.

[8] Militia Insufficient National Defense

Here, I expect, we'll be told that the country's militia is its natural bulwark and will always be equal to the national defense. The substance of this doctrine nearly lost us our independence. It cost the United States millions that could have been saved.

The facts from our recent experience forbid our being duped into reliance on this suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Economic considerations, no less than considerations of stability and vigor, confirm this.

The American militia's valor on numerous occasions during the recent war erected eternal monuments to their fame, but the bravest of them know that they could not have established the liberty of their country alone, however great and valuable they were. Like most things, war is a science to be acquired and perfected by diligence, perseverance, time, and practice.

[9] Penn, Massachusetts Peacetime Military

Since they are contrary to the natural experience of human affairs, all distorted policies defeat themselves. Pennsylvania affords a current example. Its Bill of Rights declares that standing armies are dangerous to liberty and should not be kept up in peacetime. Nevertheless, during this time of profound peace, Pennsylvania has used disorders in one or two counties as an excuse to raise a body of troops and, in all probability, will keep them up as long as there is any appearance of danger to the public peace.

The conduct of Massachusetts affords a lesson on the same subject, though on different ground. That State (without waiting for Congressional sanction, as the Articles of the Confederation require) raised troops to quell a domestic insurrection and still keeps a corps to prevent a revival of the spirit of revolt. The Massachusetts constitution has no obstacle to this but it still is instructive of cases likely to occur under our government—as well as under those of other nations—which will sometimes make a military force essential to the security of society in peacetime. Therefore, it is improper to control legislative discretion in this respect.

It also teaches us, as applied to the United States, how little the rights of a feeble government are likely to be respected, even by its own constituents. Additionally, it teaches us that the struggle between written provisions and public necessity is very unequal.

[10] Ignoring Laws Weakens Government

It was a fundamental maxim of the ancient Lacedaemonian commonwealth that the post of admiral should not be conferred twice on the same person. After the Peloponnesian confederates suffered a severe defeat at sea from the Athenians, they demanded that Lysander, previously a successful admiral, command the combined fleets. The Lacedaemonians, to gratify their allies and yet preserve the semblance of an adherence to their ancient institutions, resorted to the flimsy subterfuge of giving Lysander the power of an admiral under the nominal title of vice-admirals.

This example is selected from a multitude that could be cited to confirm the truth already illustrated by domestic examples, the truth that nations basically ignore rules and maxims that,

in their very nature, run counter to the necessities of society.

Wise politicians will be cautious about fettering the government with restrictions that cannot be observed. They know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence that rulers ought to maintain towards the constitution of their country. And it forms a precedent for other breaches where the same plea of necessity does not exist at all or is less urgent and palpable.

Publius

Articles of Confederation:

Article 8	State supported military
Article 6	military

Constitutional reference:

Article 1, section 8 army, navy, militia

26: Legislative Military Authority

One can hardly expect that during a popular revolution men would stop at the proper boundary between POWER and PRIVILEGE. That is, the balance between a strong government and secure private rights.

Our present inconveniences result from a failure on this delicate and important point. In our future attempts to correct and improve our system, we must be careful and not repeat this error. Otherwise, we may go from one unrealistically utopian plan to another. We may try change after change. But will probably never make any material change for the better.

[2] Balancing Liberty, Public Safety

Limiting legislative authority to provide for the national defense is one of those refinements that originate from a zeal for liberty and is more ardent than enlightened.

So far, there hasn't been widespread support for limiting the legislature's power to authorize armed forces. Since the concept first appeared, only Pennsylvania and North Carolina have implemented it to any degree. The other States refuse to even consider it, wisely judging that confidence must be placed somewhere. The very act of delegating power implies this necessity. It is better to hazard the abuse of that confidence than embarrass the government and endanger the public safety with impractical restrictions on the legislative authority. In this respect, the opponents of the proposed Constitution oppose the view held by a majority of Americans.

Instead of learning from experience how to safely correct extreme imbalances in our system, the opponents seem determined to lead us into others still more dangerous and extravagant. As if the government's structure was too powerful or rigid, they promote doctrines designed to depress or relax it, using methods already rejected or condemned. We may safely say without fear of denunciation that, if the principles they repeatedly support became popular creed, they would make the people of this country utterly unfit for any type of government whatever.

But there is no need to fear that danger. The citizens of America are too intelligent to be persuaded into anarchy. Unless I'm really out of touch, experience has produced in the public mind a deep and solemn conviction that greater government energy is essential to the welfare and prosperity of the community.

[3] Origin of No Military During Peacetime

This might be the place to discuss the origin and progress of the idea of excluding military establishments during peacetime. Some may speculate that it arises from the historical nature and tendencies of such institutions. But as an American sentiment, it can be directly traced back to England, the country of origin of most Americans.

[4] England Decreased Military

For a long time after the Norman Conquest [1066], the English monarch's authority was almost unlimited. Gradually, liberty made inroads into the monarch's power, first by barons and later by the people, until the majority of the monarch's formidable pretensions became extinct. Finally, after the revolution in 1688, which elevated Prince William of Orange to the throne of Great Britain, English liberty was completely triumphant.

As an extension of the crown's power to make war, Charles II [1661-1685] kept a body of 5,000 troops during peacetime. James II [1685-1688] increased the number to 30,000, paid out of his civil list. To abolish so dangerous an authority, after the revolution it became an article of the Bill of Rights that "the raising or keeping a standing army within the Kingdom in time of peace, *unless with the consent of Parliament*, was against the law."

[5] Power Must Equal Possible Emergencies

Although the pulse of liberty was at its highest peak in that kingdom, the only security against the danger of standing armies thought required was the prohibition against the executive magistrate to raise and keep them.

The revolutionary patriots were too temperate, too well informed to restrain legislative discretion. They were aware that a certain number of troops were indispensable. No precise limits could be set to national emergencies. A power equal to every possible scenario must exist somewhere in the government. They gave the discretion to use that power to the judgment of the legislature. By giving the legislature this power, they had arrived at the ultimate point of precaution reconcilable with the safety of the community.

[6] States: Legislatures Raise Military

The people of America derived from the same source an hereditary impression of the danger to liberty from standing armies in peacetime. The revolution heightened the public sensibility to the security of popular rights. In some instances, our zeal went further than is practical. The attempt of two States to restrict legislative authority over military establishments are examples.

The principles that taught us to be jealous of an hereditary monarch's power were, by an injudicious over-reaction, extended to the people's representatives in their popular

assemblies. Even some States that didn't adopt this error have unnecessary declarations that standing armies are not to be kept up in peacetime WITHOUT THE CONSENT OF THE LEGISLATURE.

I call them unnecessary because the reason for a similar provision in the English Bill of Rights is not applicable to any of the State constitutions. Under those constitutions, the power of raising armies only resides in the legislatures. So, it was superfluous, if not absurd, to declare that the matter should not be done without the consent of a body, which alone had the power of doing it. Accordingly, other constitutions, including New York's, have been justly celebrated both in Europe and America as the best forms of government established in this country and have total silence on the subject.

[7] No State Prohibits Military in Peacetime

Remarkably, even in the constitution of the two States that seem to have intended to prohibit military establishments in time of peace, the mode of expression is more cautionary than prohibitory. It says they *ought not* be kept up, not that armies *shall not be* kept up in time of peace. This ambiguity seems to be the result of a conflict between jealousy and conviction, between totally excluding them and the belief that an absolute exclusion would be unwise and unsafe.

[8] Precaution Ignored If Need Arises

Can it be doubted that when a situation arises requiring a departure, the legislature will interpret the clause as a mere admonition and yield to the necessities, or supposed necessities, of the State? Let the Pennsylvania example, already mentioned, decide. What then (it may be asked) is the use of such a provision if it ceases to operate the moment there is an inclination to disregard it?

[9] State Restrictions v New Constitution

Let us compare the efficacy between the provision alluded to [i.e., ban on all peacetime federal military] and that contained in the new Constitution, restraining military appropriations to a two-year period. The former, by aiming at too much, is calculated to effect nothing; the latter, by steering clear of an imprudent extreme and being perfectly compatible with a proper provision for emergencies, will provide a powerful remedy.

[10] Politicians, States Guard Against Abuse

With this provision, at least once in every two years the legislature of the United States will be *obliged* to deliberate on the propriety of keeping a military force, come to a new decision, and declare their position by a formal, public vote. Even if they were incautious enough to want to give the executive branch permanent funds for the support of an army, they are not *at liberty* to do so.

A partisan spirit, in different degrees, must be expected to infect all political bodies. Some people in the national legislature will find fault with the measures and incriminate the views of the majority. The provision for support of a military force will always be a favorite topic to denounce. As often as the question arises, public attention will be roused and attracted to the subject by the opposition party. If the majority party really wants to exceed the proper limits, the community will be warned of the danger and have an opportunity to take measures to guard against it.

People other than representatives in the national legislature will also join the debate. State legislatures will always be not only vigilant but suspicious and jealous guardians of citizens' rights against encroachments from the federal government. They will constantly be attuned to the conduct of the national rulers and ready, if anything improper appears, to sound the alarm to the people. State legislatures will not only be the VOICE but, if necessary, the ARM of the people's discontent.

[11] Subvert: Executive, Legislative Collusion

Schemes to subvert the liberties of a great community *require time* to mature before execution. An army large enough to seriously menace those liberties could only be formed by progressive augmentations. This suggests not merely a temporary collusion between the legislature and executive but a continued conspiracy over a period of time.

Is such a combination probable at all? Would its perseverance through a succession of new representatives, produced by biennial elections to the national legislature, be probable? Can we presume that every man seated in the national Senate or House of Representatives would instantly become a traitor to his constituents and his country? Would not one man be discerning enough to detect so atrocious a conspiracy, or bold, or honest enough to tell his constituents of their danger?

If such presumptions are possible, there should be an immediate end to all delegated authority. The people should resolve to take back the powers already given the government and divide themselves into as many States as there are counties so they can manage their own concerns in person.

[12] Military Expansion in Peace Noticed

Even if such suppositions could be reasonably made, concealing the design for any duration would be impractical. The intentions would be telegraphed by the reality of

a fast growing army during peacetime. What excuse could be given for such vast augmentation of the military force? People could not be deceived for long; destruction of the project and its sponsors would quickly follow the discovery.

[13] Reason Needed to Build Military Force

Some say the provision limiting military appropriations to the period of two years would be ineffectual because once the Executive possessed a large enough force to awe the people into submission, the force would also be large enough to no longer need to depend on legislative acts for supplies.

But the question recurs, what pretense could the President use to build a force of that magnitude in peacetime? If it was created in response to some domestic insurrection or foreign war, then it is not a situation within the principles of the objection because the objection is against the power of keeping up troops in peacetime. Few people will be so visionary as to seriously contend that military forces should not be raised to quell a rebellion or resist an invasion. If defense of the community makes it necessary to have an army large enough to threaten its liberty, this is one of those calamities that can't be prevented or cured. No form of government can provide against this. It might even result from a simple league offensive or defensive, if it's ever necessary for the confederates or allies to form an army for common defense.

[14] Military Expansion If States Not United

But it is an evil infinitely less likely to happen to us if united than disunited. It isn't easy to imagine dangers formidable enough to attack the whole nation, demanding a force large enough to place our liberties in the least jeopardy, especially when we remember that the militia should always be counted on as a valuable and powerful auxiliary. But in a state of disunion (as has been fully shown in another place)[see *disunited States*], the contrary of this supposition would become not only probable, but almost unavoidable.

PUBLIUS

Constitutional references:

Article 1 Section 8	Congress provides for common defense
Article 1 Section 8	military authority, militia
Article 1 Section 10	no State troops, ships

Articles of Confederation:

Article 6	peacetime army
Article 6	militia

27: Federal Constitutional Authority Over Individual Citizens
Military Not Needed to Enforce Federal Laws

The argument, in various forms, has been made that the proposed Constitution cannot operate without the aid of a military force to execute its laws. However, like most things alleged by the opposition, it rests on a general assertion, unsupported by any foundation of precise, intelligible reasons.

As I understand the opposition's reasoning, it is based on the assumption that people dislike the use of federal authority in any internal matter. Putting aside exceptions caused by inaccuracy or inexplicitness of the distinction between internal and external, let us look into the grounds for this assumption.

Unless we presume that the federal government will be administered worse than State governments, there's no reason to presume ill-will, disaffection, or opposition by the people. I believe that, as a general rule, their confidence in and obedience to a government will be proportionate to the goodness or badness of its administration.

Admittedly, there are exceptions to this rule. But the exceptions depend so entirely on accidental causes, they cannot be considered to have any relation to the intrinsic merits or demerits of a constitution. Constitutions can only be judged by general principles and maxims.

[2] Quality of Federal Administration

These papers suggest reasons why the national government under the proposed Constitution will probably be better administered than the State governments. The principal reason is that the larger area will give voters greater options and choices.

The elected State legislators will appoint the members of the national Senate Senators will generally be selected with care and judgment. This method promises great knowledge and information in the national Senate. Members will be less apt to be tainted by faction. And they will be further from the reach of those occasional ill-humors, temporary prejudices and propensities that, in smaller societies, frequently contaminate the public councils, produce injustice and oppression, and engender schemes that gratify a momentary inclination or desire, but end in general distress, dissatisfaction, and disgust.

When we direct a critical eye on the interior structure of the edifice we are invited to erect, several additional and important reasons will strengthen this position. For now, it is sufficient to say that until satisfactory reasons are given to justify the opinion that the federal government administration will be odious or contemptible to the people, there is no reason to suppose that federal laws will meet with any greater obstruction from the people or will need any additional method of enforcement than State laws.

[3] State Factions More Successful Than Federal

The hope of immunity is a strong incitement to sedition. The dread of punishment provides a proportionately strong discouragement. If it has adequate power, will not the national government, using the collective resources of the whole Confederacy, be more likely repress *tendencies toward sedition* and inspire the *dread of punishment*, than a single State with only the resources within itself?

A turbulent faction in a State may think it can make deals with friends in the State government. But it won't be so foolish as to imagine itself a match for the combined efforts of the Union. If this conclusion is reasonable, there is less possibility of opposition to federal authority from dangerous coalitions of individuals than to the authority of a single State.

[4] Federal Government Will Seem Normal

I will hazard an observation that is no less true because to some people it may appear new. The attachment and respect of the community towards the national authority will increase as the federal government becomes more involved in ordinary governmental operations. Citizens will grow accustomed to the common occurrences of political life as it becomes a familiar part of their daily lives and touches the most sensible chords of the human heart.

Man is a creature of habit. A thing that rarely strikes his senses will usually have only a little influence on his mind. A remote government can hardly be expected to be of large interest to the people. By inference, the authority of the Union and the affections of the citizens towards it will be strengthened, not weakened, as it effects matters of internal concern.

At the same time, the union will have proportionately fewer reasons to use force as citizens become more familiar with its functions. The more it circulates through those channels and currents of mankind's natural passions, the less it will need the aid of violent and perilous expedients.

[5] Legislation for States Dangerous

In any event, one thing must be evident. The proposed governmental structure would be less likely to need to use force than the type of government promoted by its opponents. Its authority would only operate on the States in their political or collective capacities. It has been shown that such a confederacy has no sanction for its laws but force. Frequent delinquencies by members naturally result from the very structure of the government. And as often as they happen, they can only be redressed, if at all, by war and violence.

[6] Constitution: Courts Enforce Laws

The new Constitution, by extending the federal government's authority to the individual citizens of the States, allows the government to use State courts to execute its laws. This will give the federal government the same advantage for securing obedience to its authority that is now enjoyed by the government of

each State. In addition, public opinion will be influenced by the important fact that the State has the power to call on the resources of the whole Union for assistance and support.

It merits particular attention, at this time, to note that the laws of the Union, as to the *enumerated* and *legitimate* objects of its jurisdiction, will become the **SUPREME LAW** of the land. All officers—legislative, executive, and judicial—in each State, will be bound by the sanctity of an oath. Thus the legislatures, courts, and executives of the States will be incorporated into the operations of the national government *as far as its just and constitutional authority extends* and will be rendered auxiliary to the enforcement of its laws.*

Any man who reflects on the consequences of this situation, will understand that there is good reason to expect regular and peaceable executions of the laws of the Union, if its powers are administered with a common share of prudence.

If we arbitrarily suppose the contrary, we may deduce any inferences we please from the supposition. An injudicious exercise of the authority of even the very best government can provoke and precipitate the people into the wildest excesses. But even if the adversaries of the proposed Constitution presume that the national rulers would be indifferent to the motives of public good or the obligations of duty, I would still ask: How could the interests of ambition or the views of encroachment be promoted by such conduct?

PUBLIUS

Constitutional references:

Article 6 Constitution supreme law of the land
Article 6 governmental officers bound by oath

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* The sophistry employed to show this will tend to destruct State governments will, in its proper place, be fully detected. –PUBLIUS

28: National Force May Be Used Against Citizens

It cannot be denied that sometimes the national government may need to use force. Our own experience corroborates the lessons taught by the examples of other nations.

Emergencies sometimes arise in all societies, however constituted. Revolts and rebellions are, unhappily, diseases as inseparable from the political body as tumors and rashes from the natural body.

The idea of governing at all times solely by the force of law (which, we have been told, is the only admissible principle of republican government) has no place but in the daydreams of those political pundits who intellectually disdain the warnings of experience.

[2] Local Force Responds to Local Danger

Should such emergencies happen under the national government, there could be no remedy but force. The type of force used must be proportionate to the extent of the mischief.

If it is a slight commotion in a small part of a State, the militia from other parts of the State would adequately suppress it. And the natural presumption is that they would be ready to do their duty. An insurrection, whatever its immediate cause, eventually endangers all government. Respect for public peace, if not the rights of the Union, would engage citizens who are not involved to oppose the insurgents. And if the national government is found conducive to the prosperity and happiness of the people, it would be irrational to believe that the people would not support it.

[3] More than Militia Might Be Needed

`If, on the contrary, the insurrection spread throughout a whole State or a majority of it, employing a different kind of force might become unavoidable. It appears that Massachusetts found it necessary to raise troops for repressing the disorders within the State. Pennsylvania, fearing commotions from some of her citizens, thought it proper to do the same thing.

Suppose the State of New York decided to reestablish lost jurisdiction over the inhabitants of Vermont, could she have hoped for success from the efforts of the militia alone? Would she not have been compelled to raise and maintain a more regular force for the execution of her design?

If State governments need a force other than the militia in cases of this extraordinary nature, why should the possibility that the national government might need one during similar emergencies be an objection to the national government's existence? Isn't it surprising that men who declare an attachment to the Union in the abstract should urge, as an objection to the proposed Constitution, what applies tenfold to the plan they support? And what, in truth, is an inevitable consequence of a large civil society? Who would not prefer the use of force to the unceasing agitation and frequent revolutions that are the continual scourges of petty republics?

[4] Confederacies Sometimes Need Force

Let's look at this in a different way. Suppose that instead of one general system, two, three, or even four American confederacies were formed. Wouldn't the operations of these confederacies be exposed to the same casualties? When these happened, wouldn't the confederacies use the same methods for upholding their authority that are objected to in a government for all the States?

Continuing this supposition, would the militia be more ready or able to support the confederate authority than in the case of one general union? After consideration, all candid, intelligent men must acknowledge that the objection is equally applicable to either case. Whether we have one government for all the States, or different governments for different parcels of them, or if there should be as many unconnected governments as there are States, sometimes a force other than the militia may be necessary to preserve the peace of the community and maintain the lawful authority against violent invasions of them that amount to insurrections and rebellions.

[5] People Control Government, Military

People who require a more decisive provision against military establishments in peacetime need to be reminded that the whole power of the proposed government will be in the hands of the representatives of the people. In civil society, this is the essential, and only effective, security for the rights and privileges of the people.*

[6] Blocking Usurpation in One State Difficult

If the elected representatives of the people betray their constituents, the only resource left is self-defense, the most important right in every positive form of government. It may be used against the usurpations of national rulers with infinitely better expectation of success than against rulers of an individual State.

If the rulers of a single State become usurpers, the different subdivisions of districts don't have distinct governments able to defend the people. The citizens must rush tumultuously without plan, without system, without resource except in their courage and despair. Because they are cloaked in legal authority, the usurpers can too often crush the opposition in embryo. The smaller the territory, the more difficult it will be for the people to organize a systematic plan of opposition and the easier it will be to defeat their efforts. Intelligence of their preparation and movements would be speedily obtained. The military force, under the command of the usurpers, can rapidly deploy against the district where the opposition has begun. In this situation, only lucky coincidences will insure the success of the popular resistance.

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* Its full efficacy will be examined later. –PUBLIUS

[7] Obstacles to Usurpation, Tyranny

The obstacles to usurpation and the ability to resist increase with the increased size of the state, provided the citizens understand their rights and want to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small and, of course, more competent to struggle with the attempts of the government to establish a tyranny.

In a confederacy the people are, without exaggerating, entirely the masters of their own fate. Since power is almost always the rival of power, the national government will always stand ready to check the usurpations of the State governments. And the States will be in the same position towards the national government.

Whichever side [State or national government] the people support will infallibly be the stronger. If their rights are invaded by either, they can use the other as the instrument of redress. How wise the people will be to cherish the Union, preserving to themselves an advantage that can never be too highly prized!

[8] States Protect Citizen's Liberty

It may be safely said as an axiom in our political system that the State governments will, in all situations, provide complete security against invasions of liberty by the national authority.

Usurpation projects cannot be masked under pretenses likely to escape the notice of the people's representatives, as of the people at large. The legislatures will have better sources of information. They can discover the danger in its infancy. Since they possess the structure of civil power and the confidence of the people, they can immediately adopt a plan of opposition using the combined resources of the community. They can easily communicate with each other in the different States and unite their common forces for the protection of their common liberty.

[9] Armed Force against Government

The large size of the country is further security. We have already experienced its benefits in protecting against the attacks of a foreign power. It would have precisely the same effect against the enterprises of ambitious rulers in the national councils.

If the federal army quelled the resistance of one State, distant States would raise fresh forces. The advantages obtained by the usurpers in one place would be abandoned to subdue the opposition in others. The moment the area reduced to submission was left to itself, it would renew its efforts, reviving its resistance.

[10] State Forces Better Than National

We must remember that the military force is regulated by the resources of the country. For a long time to come, maintaining a large army will be impossible. As our ability to enlarge the military increases, so will the proportionate population and strength of the community. Therefore, when will the federal government be able to raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are, through the medium of their State governments, able to defend themselves, with the swiftness, regularity, and organization of independent nations?

The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning.

Publius

29: Militia Not Threat to Liberty

The power of regulating the militia and commanding it in times of insurrection and invasion is a natural part of superintending the common defense and watching over the internal peace of the Confederacy.

[2] National Control Assures Uniformity

It requires no skill in the science of war to know that when called into service for the public defense, uniformity in the organization and discipline of the militia creates the most beneficial effects. It could discharge its duties with mutual intelligence and concert—always an advantage in an army. It would quickly acquire military proficiency.

This uniformity can only be accomplished by national regulation of the militia. Therefore, the Constitution properly proposes to empower the Union "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.*"

[3] Militia: Less Need for Standing Army

Of the reasons for opposing the Constitution, none have been less expected or more untenable than the attack of this provision.

If a well-regulated militia is the most natural defense of a free country, it certainly should be regulated and at the disposal of the authority that the Constitution makes the guardian of national security.

If standing armies endanger liberty, then when the non-military body committed to protect the country, the national government, has authority over the militia, it takes away the inducements and pretexts, as far as possible, for the unfriendly institutions of standing armies. If the federal government can command the militia in emergencies when civil authorities need military support, it won't use the army. If it can't use the militia, it will be obliged to resort to the army. Making an army unnecessary is a more certain method of preventing its existence than a thousand prohibitions on paper.

[4] No Ban of Posse Comitatus

To discredit the power to use the militia to execute the laws of the Union, opponents say the Constitution has no provision for calling out the POSSE COMITATUS to assist the chief executive in his duty. From this, it has been inferred that military force is the only alternative.

Objections have been strikingly incoherent, sometimes even from the same people. They don't inspire a very favorable opinion of the sincerity or fairness of their authors. The same people tell us with one breath that the federal government's power will be despotic and unlimited, then next say it doesn't even have the authority to call out the POSSE COMITATUS. Fortunately, the latter is as much short of the truth as the former exceeds it.

Since the government has the right to pass all laws *necessary and proper* to execute its declared powers, it is absurd to doubt that it has the authority to require citizens to assist officers entrusted with the execution of those laws. This is just as absurd as believing that a right to enact laws necessary and proper for the imposition and collection of taxes would include changing the rules of descent and alienating landed property. Or as absurd as abolishing trial by jury in cases relating to it.

Clearly, supposing there is no power to require the aid of the POSSE COMITATUS is implausible. Therefore, the conclusion drawn from it, its application to the authority of the federal government over the militia, is as uncandid as it is illogical. Why infer that force is intended to be the sole instrument of authority, merely because there is a power to use it when necessary? What motives could induce sensible men to reason in this manner? How can we prevent a conflict between charity and judgement?

[5] Illogical Fear of Militia

In a curious twist of republican jealousy, we are even taught to fear the militia itself, if it is in the hands of the federal government. It is said that select corps of the young and ardent may be formed, then become subservient to the views of arbitrary power.

How the national government will regulate the militia is impossible to be foreseen. But I wouldn't view the subject in the same way as people who object to a select corps as dangerous. If the Constitution was ratified and I delivered my sentiments on the subject of a militia establishment to a member of the federal legislature from my State, I would essentially say:

[6] Citizen-Soldiers: Productivity Lost

"Trying to discipline all the militia of the United States is as impossible as it would be injurious. Being an expert in military movements requires time and practice. A day, or even a week, isn't sufficient to attain it. To oblige all the farmers, and every class of citizen, to go through military exercises as often as necessary to acquire the degree of perfection that would give them the character of a well regulated militia, would be a real grievance to the people and a serious public inconvenience and loss. It would annually deduct from the productive labor of the country an amount that, calculating from the present number of people, would not be much less than the whole expense of the civil governments of all the States.

"To attempt something so injurious to labor and industry would be unwise. And if it was tried, it couldn't succeed, because it wouldn't be endured long. With respect to the people at large, little more can be attempted than to have them properly armed and equipped. And in order that this is not neglected, it will be necessary to assemble them once or twice every year.

[7] Militia Security against Standing Army

"Although the idea of disciplining the whole nation must be abandoned as mischievous or impractical, yet it is very important that as soon as possible a well-

formed plan to establish a militia should be adopted. The government should form a moderate number of select corps, using principles that will fit them for service in case of need. With a well-defined plan, it will be possible to have an excellent body of trained militia ready whenever the defense of the States requires it. This will not only lessen the call for military establishments, but if circumstances should ever force the government to form an army of any size, that army can never be a formidable threat to the liberties of the people while there is a large body of citizens who are little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow citizens. This appears to me the only substitute that can be devised for a standing army, and the best security against it, if it should exist."

[8] I See Safety; Critics See Danger

Thus I reason differently on the same subject than the adversaries of the proposed Constitution. I deduce arguments of safety from the very sources that they represent as fraught with danger and perdition. But how the national legislature may reason on the point is something that neither they nor I can foresee.

[9] How Can Militia Endanger Liberty?

There is something so far-fetched and extravagant in the idea that the militia will endanger liberty, one is at a loss whether to treat it with gravity or ridicule. Should it be considered cleverly constructed paradoxes of rhetoricians, as a disingenuous artifice to instill prejudices at any price, or as the serious offsprings of political fanaticism?

Where, in the name of common sense, are our fears to end if we can't trust our sons, our brothers, our neighbors, our fellow citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen, and who join with them in the same feelings, sentiments, habits, and interests?

What can reasonably cause apprehension from the Union having the power to prescribe militia regulations and command its services when necessary, when the States have the *sole and exclusive appointment of the officers*? If it was possible to seriously worry about a militia under the federal government, having the officers appointed by the States should extinguish it at once. This circumstance will guarantee that the States have the greatest influence over the militia.

[10] Constitution Distorted into Monster

In reading many of the publications against the Constitution, a man might imagine he is perusing some ill-written tale or romance that, instead of having natural and agreeable images, exhibits nothing but frightful and distorted shapes—

Gorgons, hydras, and chimeras dire;

discoloring and disfiguring whatever it represents, transforming everything it touches into a monster.

[11] Outrageous Uses of Militia Imagined

A sample of this is the exaggerated and improbable suggestions in respect to the power of calling for the services of the militia. That the New Hampshire militia is to be marched to Georgia, Georgia to New Hampshire, New York to Kentucky, and Kentucky to Lake Champlain. The debts due to the French and Dutch are to be paid in militiamen instead of louis d'ors and ducats.

At one moment, there will be a large army to lay prostrate the liberties of the people. At another moment, the militia of Virginia are to be dragged from their homes 500 or 600 miles to tame the republican rebels of Massachusetts, and that of Massachusetts is to be transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians.

Do the people who rave to this extent imagine that their eloquence can convince the people of America that any conceits or absurdities are infallible truths?

[12] Tyrannical Use of Militia Illogical

If an army is going to be used as the engine of despotism, why is a militia needed? If there was no army, where would the militia, irritated by being called upon to undertake a distant and hopeless expedition to rivet chains of slavery on some of their countrymen, direct their course but to the seat of the tyrants who had so foolishly and wickedly begun the project, to crush them in their imagined entrenchment? Do rulers begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually start their career by wanton, disgusting acts of power, calculated to answer no end, but will draw upon themselves universal hatred?

Is this sort of supposition the sober admonition of discerning patriots to a discerning people? Or is it the inflammatory ravings of incendiaries or distempered enthusiasts?

Even if we suppose that the national rulers were actuated by the most ungovernable ambition, it is impossible to believe they would employ such preposterous means to accomplish their designs.

[13] Militia Used for Insurrections, Invasions

In times of insurrection or invasion, it would be natural and proper that the militia of a neighboring State should be marched into another to resist a common enemy or to guard the republic against the violence of faction or sedition. The first frequently happened during the course of the recent war and this mutual security is, indeed, a principal goal of our political association. If the power to do this is under the direction of the Union, there will be no danger of a supine, listless inattention to the dangers of a neighbor until its near approach had added the incitements of self-preservation to the too feeble impulse of duty and sympathy.

PUBLIUS

Article 1, Section 8 militia

Published in newspapers as Number 35, then changed to Number 29 in the first edition of 1788.

30: Taxation: Revenue Source to Support National Government

It has been said that the federal government should have the power to support the national army. This includes the expenses of recruiting troops, building and equipping fleets, and all expenses connected with military operations.

However, the Union must be empowered to raise revenue for other reasons as well. It must support national civil employees, pay current and future national debts, and make appropriate disbursements from the national treasury.

Therefore, the government must have some sort of power of taxation.

[2] Need for Regular, Adequate Revenue

Money, properly, is vital to the government. It sustains its life and enables it to perform its most essential functions. Therefore, the complete power to procure a regular and adequate supply of revenue, as far as community resources will permit, is an indispensable ingredient in every constitution.

One of two evils will ensue from a deficiency of money—either the people will be continually plundered, as a substitute for a legitimate method of supplying the public wants, or the government will sink into a fatal atrophy and, in a short time, perish.

[3] Inability to Tax => Pillaging or Decay

Although the sovereign of the Ottoman [Turkish] empire is absolute master of the lives and fortunes of his subjects, he has no right to impose a new tax. As a consequence, the bashaws [province governors] pillage the people without mercy, squeezing from them the money the emperor needs to satisfy his own needs and those of the state.

From a similar cause, the American Union has gradually dwindled into a state of decay, approaching annihilation. The people's happiness in both countries would be promoted by the proper authority to provide the revenue for pubic necessities.

[4] State Requisitions => Bad Situation

The present Confederation, feeble as it is, intended to give the United States unlimited power to provide for the financial needs of the Union. But operating under an erroneous principle, it has been done in such a way as to entirely frustrate the intention.

As has been stated, the Articles of Confederation authorize Congress to determine and call for any sums of money necessary, in their judgment, to the service of the United States. If their requisitions conform to the rule of apportionment, they are constitutional obligations of the States. The States have no right to question the propriety of the demand. The States' only discretion is in devising the ways and means of furnishing the sums demanded.

Though this is strictly the case, though the assumption of such a right would be an infringement of the Articles of the Union, and though it may have seldom or never been avowedly claimed, it has been constantly exercised in practice and will continue to be so long as the revenues of the Confederacy remain dependent on the intermediate agency of its members. Every man knowledgeable about our public affairs knows the consequences of this system, which have been amply detailed in different parts of these papers. This is the chief reason we have been reduced to a situation that supplies mortification to ourselves and triumph to our enemies.

[5] Remedy: Directly Raise Revenues

The remedy for this situation is to change the system that has produced it, change the fallacious and delusive system of quotas and requisitions. What substitute can be imagined for this *ignis fatuus* in finance but to permit the national government to raise its own revenues by the ordinary methods of taxation, as authorized in every well-ordered constitution of civil government? Clever men can plausibly declaim on any subject, but no human ingenuity can point out any other way to rescue us from the inconveniences and embarrassments resulting from limited supplies in the public treasury.

[6] Opponents: Tax Only Imports

The more intelligent adversaries of the new Constitution admit the force of this reasoning. But they qualify their admission by distinguishing between what they call *internal* and *external* taxation. They reserve the former to State governments, the latter, which are duties on imported articles, they declare themselves willing to concede to the federal government.

[6a] Power Proportionate to Objective

This distinction, however, violates the maxim of good sense and sound policy. Every POWER ought to be in proportion to its OBJECT. The limitation would still leave the federal government in a kind of tutelage to the State governments, inconsistent with every idea of strength or efficiency. Who can pretend that commercial imports are, or would be, by themselves, equal to the present and future revenue requirements of the Union? Considering what must be included in any plan to extinguish the existing foreign and domestic debt for it to be approved by any man who believes in the importance of public justice and public credit, in addition to the federal agencies that everyone acknowledge as necessary, we could not reasonably flatter ourselves that import duties alone, even the most optimistic estimate, would even suffice for present necessities.

Government's future necessities cannot be calculated or limited. And under the principle, mentioned several times, it must have the equally unconfined power to make provision for them.

I believe history proves 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.

[7] Banning Internal Tax => Union Weak

Saying that deficiencies will be made up by State requisitions exposes an inherent flaw in the system of using import taxes, alone, for federal revenue. This argument acknowledges that deficiencies will occur so it cannot be depended upon, yet it depends on it for all revenue needed beyond a certain limit. Those aware of the vices and deformities of using State requisitions, either from experience or reading these papers, must feel invincible repugnancy towards the idea of trusting the national interests, in any way, to its operation. Whenever used, it will inevitably enfeeble the Union, sowing seeds of discord and conflict between the federal government and the States, and between the States themselves.

Can we expect that deficiencies will be covered any better than the wants of the Union have been up until now? It should be remembered that if less is required from the States, they will have proportionately less means to answer the demand. If it was true the deficiencies could be provided for by requisition on the States, one must conclude that at some known point in the economy of national affairs it would be safe to stop and say: this is the limit of where public happiness will be promoted by supplying the wants of government and everything beyond this point is unworthy of our care or anxiety.

How can a government, half supplied and always in need, 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 anything else than a succession of expedients temporizing, impotent, disgraceful? How will it avoid frequent sacrifices of commitments to immediate necessity? How can it undertake or execute any liberal or enlarged plans for pubic good?

[8] War Funding Nearly Impossible

Let's examine the effects of this situation during our very first war. We will presume, for argument's sake, that import duties cover the cost of both debt payments and the peacetime federal government. Then, under this circumstance, a war breaks out. How would the government probably act in such an emergency?

Taught by experience that State requisitions can't be depended on, without the authority to get fresh resources and motivated by national danger, would not the federal government be driven to the expedient of diverting funds already appropriated from their proper objects to the defense of the States?

During a modern war, even the wealthiest nations need large loans. For a country as poor as ours, loans are absolute necessities. But who would lend to a government that has demonstrated it has no reliable method of raising repayment funds. The loans it could get would be the same that loan sharks commonly lend to bankrupt and fraudulent debtors—with a sparing hand and at enormous premiums.

[9] Internal Taxes: Emergencies Met

Because the country has few resources, some people might fear that allocated funds will be diverted during such a crisis, even if the national government has the unrestrained power of taxation. But two considerations will quiet these apprehensions: (1) during a crisis we are sure the full resources of the community will be brought into activity for the benefit of the Union and (2) any deficiencies, without difficulty, can be supplied by loans.

[10] Internal Taxes Protect Union's Credit

If the national government had the authority to raise money through new taxes, it would be able to borrow as much as its necessities might require. Both Americans and foreigners could confidently lend to it. But to depend on a government that must, itself, depend on thirteen other governments for the means to fulfill its contracts—once this situation is clearly understood—would require a degree of credulity rarely seen in the pecuniary transactions of mankind and unreconcilable with the usual sharp-sightedness of avarice.

[11] Taxation Issue Needs Attention

This discussion may seem unimportant to men who envision a poetic, utopian America. But to those who believe we are likely to experience our share of the vicissitudes and calamities that have fallen to other nations, they appear entitled to serious attention. Such men must see the actual situation of their country with painful solicitude and deprecate the evils that ambition or revenge, too easily, inflict upon it.

PUBLIUS

Articles of Confederation

Article 8	assessment, payment of taxes to confederate gov't

Constitutional references:

Article 1, Section 2	apportionment for direct taxes
Article 1, Section 2	taxes, duties, imposts
Article 1, Section 2	borrow money

31: Federal Tax Authority Won't Usurp State Powers

In a serious discussion on any subject, there are certain basic truths, or first principles, on which all subsequent reasonings must depend. These basic truths contain obvious internal evidence that verifies their truth. People to whom the truth is not obvious must have defective perception or be influenced by some strong interest, passions, or prejudice.

Geometry maxims are of this nature: "the whole is greater than any of its parts; things equal to the same are equal to one another; two straight lines cannot enclose a space; all right angles are equal to each other."

Ethics and politics also have basic maxims: Every effect has a cause. The means ought to be proportional to the end. Every power ought to be commensurate with its objective. There should be no limitation of a power meant to fulfill a purpose that can't be limited.

Other truths in ethics and politics are, if not axioms, such direct inferences and so obvious—such common sense—they challenge a sound and unbiased mind to concur with an irresistible degree of force and conviction.

[2] Theorems May Conflict with Common Sense

Although provable, not all geometry theorems conform with common sense. But geometry is not a subject that stirs up the passions of the human heart. Therefore, people not only accept simple geometric theorems, but even those abstruse paradoxes that, even though they may appear able to be proved through demonstration, vary with the natural conceptions that the mind, without the aid of philosophy, would be led to entertain upon the subject.

For example, mathematicians agree on the INFINITE DIVISIBILITY of matter. In other words, the INFINITE divisibility of a FINITE thing, down to even the minutest atom. Yet this is no more comprehensible to common sense than religious mysteries that non-believers have worked so hard to debunk.

[3] Objective Morals, Ethics Exist

But in the behavioral and social sciences of morals and politics, men are far less easily convinced. To a certain degree, this is right and useful. Caution and investigation are necessary armor against error and deception. But this intractableness may be carried too far, deteriorating into obstinacy, perverseness, or disingenuity.

Although we can't pretend that moral and political principles are as objective as those of mathematics, they are far more objective than, to judge from the conduct of men, we might suppose. The obscurity usually exists in the passions and prejudices of the reasoner, not in the subject. Too often, men do not consult their own common sense. Rather, they yield to some unfavorable bias, entangling themselves in words and confounding themselves in subtleties.

[4] Biased Opposition to Union Taxation

How else can we explain (if we assume that the critics are sincere and men of discernment) the position against the Union needing the general power of taxation?

Although previously discussed, it won't hurt to summarize the positions here, as an introduction to an examination of objections. They are, basically, as follows:

[5] Power Must Equal Responsibility

A government should have every power required to fully accomplish the objectives committed to its care and completely execute its responsibilities, free from every control except a regard for the public good and the will of the people.

[6] National Defense Can't Be Limited

The government has a duty to supervise the national defense and secure the public peace against foreign or domestic violence.

Only two things can limit the governmental power of providing for casualties and dangers: the needs of the nation and the resources of the community.

[7] Revenue to Fulfill Responsibilities

Since revenue is essential for answering the national needs, the government must also have the power to procure revenue to provide for those exigencies.

[8] Revenue from States Hasn't Worked

Theory and practice have shown that the power of procuring revenue from the States doesn't work. The federal government must have the unqualified power of ordinary taxation.

[9] Despite Facts, Opposition to Union Tax

These basic truths seem to validate the proposition that the national government needs the general power of taxation, and that no additional arguments or illustrations are required. But we find, in fact, that rather than accepting their legitimacy, opponents of the proposed Constitution argue most ardently and zealously against this part of the plan. Therefore, it may be a good idea to analyze their arguments.

[10] Union May Usurp State Tax Authority

The opponents seem to be saying: "Just because the financial needs of the Union may not be limited, doesn't mean its power to tax ought to be unlimited. Local government requires revenue as much as the Union; and the former are at least of equal importance to the people's happiness as the latter. Therefore, State governments should be as able to collect the revenue for supplying their wants as the national government possesses the same ability in respect to the wants of the Union. But if the *national government* has an indefinite power to tax, in time it would probably deprive the *States* of the means of providing for their

own necessities. It would subject the States entirely to the mercy of the national legislature.

"As the laws of the Union will become the supreme law of the land, as it will have the power to pass all the laws that may be NECESSARY to execute the duties proposed for it, the national government might, at any time, abolish State taxes on the pretense that they interfere with its own. It might allege this is necessary to give efficacy to the national revenues. So all tax resources might, by degrees, become a federal monopoly, to the entire exclusion and destruction of the State governments."

[11] "Federal Usurpation" Poor Argument

This reasoning sometimes seems based on the supposition that the national government will usurp State powers.

At other times, the reasoning seems to be a deduction of what will happen as a result of the constitutional operation of the national government's intended powers.

Only the latter has any pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal government, we fall into an unfathomable abyss, out of the reach of all reasoning. Imagination may wander until it gets lost in the labyrinths of an enchanted castle, with no idea how to extricate itself from the perplexities into which it has so rashly ventured. No matter how the powers of the Union may be limited or modified, it's easy to imagine an endless train of possible dangers. And by indulging in excesses of jealousy and timidity, we may bring ourselves to a state of absolute skepticism and irresolution.

I repeat here what I've said before, that all arguments based on the danger of usurpation of power ought to refer to the composition and structure of government, not to the nature or extent of its powers. The State governments, by their original constitutions, are invested with complete sovereignty. What is our security against State usurpation? Their structure formation and the dependence of State administrators on the people. If after an impartial examination, the proposed construction of the federal government is found to have the same type of security, all apprehensions on the score of usurpation ought to be discarded.

[12] States Might Encroach On Union

Remember that States encroaching on the rights of the Union is as probable as the Union encroaching on the rights of the State governments. The winning side in such a conflict depends on what means the contending parties employ towards insuring success. Because in republics strength is always on the side of the people and there are weighty reasons to believe that the State governments will usually possess the most influence over them, it is natural to conclude that such contests will probably end to the disadvantage of the Union. There is greater probability of encroachments by the States on the federal government, than by the federal government on the States.

However, these conjectures are extremely vague and fallible. By far the safest course is to lay them aside and confine our full attention to the nature and extent of the powers as they are delineated in the Constitution. Everything beyond this must be left to the prudence and firmness of the people. They hold the scales and, it is hoped, they will always take care to preserve the constitutional equilibrium between the federal and the State governments. On this ground, which is clearly how it should be judged, the objections to an indefinite power of taxation in the United States can be anticipated and countered.

PUBLIUS

Constitutional reference:

Article 1, Section 8	federal government's tax power
Article 6	supreme law of land
Article 1, Section 8	pass necessary laws

32: Union Tax Authority Doesn't Limit State Authority

I believe that giving the Union power to control levies of money would not create the dangerous consequences feared by the State governments. I am persuaded that the people's good sense, the extreme hazard of provoking the resentments of the State governments, and a conviction that the utility and necessity of local administrations for local purposes, would be a complete barrier against the oppressive use of such a power.

However, I admit there are just reasons for the States to possess an independent and uncontrollable authority to raise their own revenues to supply their wants. By making this concession, I affirm that (with the sole exception of duties on imports and exports) they would, under the Constitution, retain that authority in the most absolute and unqualified sense. A national government attempt to abridge their exercise of it would be a violent assumption of power, unwarranted by any article or clause of the Constitution.

[2] Only 3 Exceptions to States Sovereignty

An entire consolidation of the States into one national sovereignty would imply an entire subordination of the parts. And any powers kept by the States would be completely dependent on the general will.

But since the Constitution is only a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty they had before and are not, by the Constitution, *exclusively* delegated to the United States.

This exclusive delegation, or transfer, of State sovereignty to the Union would only exist in three cases: (1) where the Constitution expressly grants exclusive authority to the Union; (2) where it grants a specific authority to the Union and prohibits the States from exercising the same authority: (3) and where it grants an authority to the Union, to which similar authority in the States would be absolutely and totally *contradictory* and *repugnant*.

This last case is different from another that might appear to resemble it, but that would, in fact, be essentially different. I mean where the exercise of a concurrent jurisdiction might produce occasional interference in the *policy* of an administration branch, but would not imply any direct contradiction of repugnancy in point of constitutional authority.

These three cases of exclusive jurisdiction in the federal government may be exemplified by the following instances:

1) The next-to-the-last clause of article one, section eight, provides that Congress will exercise "*exclusive legislation*" over the area appropriated as the seat of government. This answers the first case.

2) The first clause of article one, section eight empowers Congress "*to lay and collect taxes, duties, imposts, and excises*;" and the second clause of article one, section ten 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."

Therefore, the Union would have exclusive power to lay duties on imports and exports, with the specific exception mentioned. But this power is abridged by another clause that declares that no tax or duty shall be laid on articles exported from any State. This qualification limits it to *duties on imports*. This answers the second case.

3) The third will be found in the clause that declares the Congress shall have power "to establish a UNIFORM RULE of naturalization throughout the United States." This must be exclusive because if each State had power to prescribe a DISTINCT RULE, there could not be a UNIFORM RULE.

[3] Opposition Arguments Illogical

The question currently under consideration may resemble the latter, but is widely different. I refer to the power to impose taxes on all articles other than exports and imports. This, I contend, is clearly a concurrent and coequal authority in both the United States and the individual States.

The pertinent clause does not give the Union *exclusive* power. No independent clause or sentence prohibits States from exercising it. This is far from being the case. A plain, conclusive argument to the contrary is deduced from the State ban on laying duties on imports and exports. This restriction implies that, without the specific restriction, the States would possess the power it excludes. And it also implies that, as to all other taxes, the authority of the States remain undiminished.

Concluding anything else from the restriction clause would be both unnecessary and dangerous. It would be unnecessary because if the Union's power to charge duties implied the exclusion of the States, the specific restriction would not be needed. It would be dangerous because it leads directly to the conclusion mentioned. Therefore, if the reasoning of the objectors is just, it was not what the authors intended, meaning—that the States, in all cases not restricted, 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 *affirmation* of another—a negation of State authority to impose taxes on imports and exports and an affirmation of their authority to impost them on all other articles. It would be mere sophistry to argue that it was meant to exclude States *absolutely* from duties and allows them to lay others *subject to the control* of the national legislature.

The restraining, or prohibitory, clause only says that States shall not, *without the consent of Congress,* lay such duties. If we are to understand this in the sense last mentioned, the Constitution would need a formal provision to support a very absurd conclusion: that the States, *with the consent* of the national legislature, might tax imports and exports, and tax

every other article, *unless controlled* by the same body.

If this is the intention, why not leave it to what is alleged to be the natural operation of the original clause, that is, conferring a general power of taxation on the Union? It is evident that this could not have been the intention and will not bear this interpretation.

[4] Union, States May Tax Same Objects

The supposition of incompatibility between the States' and the Union's power of taxation, that it automatically excludes the States' power to tax, cannot be supported. Indeed, perhaps a State tax on a particular article will make it *inexpedient* for the Union to tax the same article. But it doesn't imply a further tax is unconstitutional.

The size of the tax, the expediency or inexpediency of an increase on either side, are questions of prudence, but there is no direct contradiction of power involved. The specific policies of the national and the State systems of finance might now and then not exactly coincide and might require reciprocal forbearances. An inconvenience in the exercise of powers does not imply a constitutional repugnancy that extinguishes a preexisting right of sovereignty.

[5] Tax Clause: Constitutional Interpretation

The necessity of joint jurisdiction in certain cases results from dividing sovereign power. The rule that all authorities, except those the States explicitly relinquished to the Union, remain fully with the States, is not a theoretical consequence of that division. Rather, it is the clear meaning of the proposed Constitution. In spite of the affirmative grants of general authority, we find that in cases where it was deemed improper that the same authorities should reside in the States, the Constitution has negative clauses prohibiting the exercise of them by the States.

Article one, section ten consists altogether of such provisions. This clearly indicates the sense of the convention and furnishes a rule of interpretation out of the body of the act, which justifies the position I've advanced and refutes every hypothesis to the contrary.

Publius

Constitutional references:

Article 1, Section 8	national capital
Article 1, Section 8	Congress taxes imports and exports
Article 1, Section 10	no State taxes on imports, exports
Article 1, Section 9	no taxes on State exports
Article 1, Section 8	naturalization rule

33: Union's Power to Tax: "Necessary and Proper," "Supreme Law of the Land"

The last argument against the Constitution's taxation provisions rests on the following clause. The Constitution authorizes the national legislature "to make all laws which shall be *necessary* and *proper* for carrying into execution the foregoing *powers*, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." and "the Constitution and the laws of the United States which shall be made *in pursuance thereof* and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the land; . . . anything in the constitution or laws of any State to the contrary notwithstanding."

[2] Federal Power Implies Power to make Federal Laws

These two clauses have been the source of much vehement denunciation and petulant declarations against the Constitution. Through exaggeration and misrepresentation opponents have said that they will destroy local governments and exterminate liberties. They are seen as a hideous monster with devouring jaws that will spare no one—not sex or age, high or low, sacred or profane.

Yet after all this clamor, and as strange as it may seem to people who haven't thought about it, the constitutional operation of the proposed government would be precisely the same if the clauses were removed or if they were repeated in every article. They only declare a truth. The act of constituting a federal government and vesting it with specified powers implies the necessity of these clauses. This is so obvious that even moderate people can't help getting upset over the copious railings against this part of the plan.

[3] Legislature = Power to Make Laws

Doesn't power mean having the ability to do a thing? What is the ability to do a thing but the power to employ the *means* necessary to execute it? What is a LEGISLATIVE power but the power to make LAWS? How is LEGISLATIVE power executed but by LAWS? What is the power of laying and collecting taxes but a *legislative power*, that is, a power to *make laws* about taxes? What are the proper means of executing such a power but *necessary* and *proper* laws?

[4] Federal Taxation Requires Tax Laws

This simple train of thought furnishes us with a test to judge the true nature of the controversial clause. It leads us to this obvious truth: the power to lay and collect taxes includes all laws *necessary* and *proper* for the execution of that power.

The unfortunate, much slandered clause in question declares the same truth—that is, that the national legislature, which already has the power to lay and collect taxes, might, in the execution of that power, pass all laws *necessary* and *proper* to carry it out.

I'm using the taxation example because it is our current subject and because taxation is the most important authority proposed to be conferred on the Union. But the same process will lead to the same conclusion about every power declared in the Constitution. And it is *expressly* to execute these powers that the "sweeping clause," as it has been frequently called, authorizes the national legislature to pass all *necessary* and *proper* laws.

If there is anything objectionable, it must be looked for in the specific powers upon which this general declaration is based. The declaration itself, though it may be accused of being redundant, is at least perfectly harmless.

[5] Clause Affirms Federal Authority

But SUSPICIOUS people may ask, then why was it written? The answer: it must have been added to guard against frivolous refinements by people who might want to limit and evade the legitimate authorities of the Union. The convention probably foresaw the danger most threatening to our political welfare and the principal aim of these papers to inculcate against, that the State governments will eventually sap the foundations of the Union. Therefore, the convention might have thought it necessary, on such an important point, to leave nothing to interpretation.

Whatever the inducement, the wisdom of the precaution is evident from the cry being raised against it. In fact, this cry shows us that some people question the great and essential truth, the reason that this provision has been included.

[6] Laws Judged Against Constitution

But it may be again asked, who judges whether laws passed for executing the powers of the Union are necessary and proper?

I answer, first, that this question would be asked about the powers themselves even without the declaratory clause. In the second place, the national government, like every other government, must judge the proper exercise of its powers, as must its constituents.

If the federal government should overreach the just bounds of its authority, making tyrannical use of its powers, the people, who created it, must appeal to the standard they have formed and correct the injury done to the Constitution as needs may suggest and prudence justify. The constitutional propriety of a law must always be determined by the nature of the powers upon which it is founded.

Suppose, by some forced interpretations of its authority (that, indeed, cannot easily be imagined), the federal legislature attempts to vary the law of descent in any State. Would not such an attempt clearly exceed its jurisdiction and infringe upon the authority of the State?

Suppose, again, that the federal government tries to abolish a State's property tax, using the excuse that it interferes with federal revenues. Isn't it equally evident that this would be an invasion of the concurrent tax jurisdiction that the constitution clearly

supposes to exist in the State governments? If there ever is a doubt in this area, it will result from people who, in their imprudent zeal, fueled by their animosity to the convention's plan, have tried to envelope the Constitution in a fog calculated to obscure the plainest and simplest truths.

[7] By Definition, National Law Supreme

It is said that the laws of the Union are to be the *supreme law* of the land. But what inference can be drawn from this? What would the laws of the Union amount to if they were not supreme? Clearly, they would amount to nothing. A LAW, by definition, includes supremacy. A law is a rule that those to whom it is prescribed are bound to observe. This results from every political association.

If individuals form a governed society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies combine into a larger political society, the laws enacted by the latter, in accordance with its constitutional powers, must necessarily be supreme over those societies and the individuals in them. Otherwise it would be a mere treaty, which is dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY.

But it doesn't follow from this doctrine that acts of the larger society that are *not among* its constitutional powers, acts that invade the authority of smaller societies, will become the supreme law of the land. These will be acts of usurpation and deserve to be treated as such.

Hence we see that the clause that declares the supremacy of the laws of the Union, like the earlier one, only repeats a truth that flows 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.* I mention this merely as an example of caution by the convention since the limitation would have been understood even if it had not been expressed.

[8] State, Federal Taxation

Therefore, although a United States tax law would be supreme in its nature and couldn't be legally opposed or controlled, a law abolishing or preventing collection of State taxes (unless on imports and exports), would not be the supreme law of the land. It would be a usurpation of power not granted by the Constitution.

As far as an improper collection of taxes on the same object might tend to render the collection difficult or precarious, this would be a mutual inconvenience—not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interest would dictate cooperation to avoid any material inconvenience.

The proposed Constitution infers that individual States can keep an independent, uncontrollable authority to raise revenue by every kind of taxation, except duties on imports and exports, to the extent of their need. The next paper shows that this CONCURRENT JURISDICTION in the realm of taxation was the only admissible substitute for an entire subordination, in respect to this power, of the State authority to that of the Union.

PUBLIUS

Constitutional references:

Article 1, Section 8	Congress empowered to make laws
Article 6	US Const/laws/treaties supreme law
Article 1, Section 8	Congress empowered to tax

34: Union, States Concurrent Taxation Jurisdiction

I flatter myself that it was clearly shown in my last paper that the States, under the proposed Constitution, would have COEQUAL authority with the Union in respect to revenue, except as to duties on imports. Since this leaves the greatest part of the community resources to the States, there is no reason to say that the States won't possess abundant taxation methods to supply their own wants, independent of external control. When we discuss the small share of the public expenses for which the State government will be responsible, it will be clear that the field is sufficiently wide.

[2] If Something Exists, Reject Arguments That It Can't Exist

To argue, using abstract principles, that this shared authority cannot exist, argues supposition and theory against fact and reality. However clearly arguments show that something *ought not to exist*, they should be completely rejected when evidence proves that it does exist.

For example, in the Roman republic, legislative authority resided in two different political bodies. These were not houses of the same legislature, but different and independent legislatures with opposite interests: the patrician in one and the plebian in the other. Many arguments may have been made to prove the unfitness of two such seemingly contradictory authorities, with each having the power to *annul* or *repeal* the acts of the other. But a Roman would have been regarded as insane if he attempted to disprove their existence.

Of course, I'm referring to the COMITTA CENTURIATA and the CONITTIA TRIBUIA. In the former, in which the people voted by centuries [citizen-voters met specific property qualifications], the patrician interest was superior. In the latter, population numbers prevailed, so the plebeian interest predominated. Yet these two legislatures coexisted for ages and the Roman republic attained the utmost height of human greatness.

[3] Coequal Authority Less Contradictory

The case under consideration holds no such contradiction as the Roman example. No power on either side can annul the acts of the other. Additionally, there is little reason to worry about any inconvenience because, in a short time, the States' needs will naturally reduce themselves within a *very narrow compass*. In the interim, the United States will probably not tax the objects that States would be inclined to tax.

[4] Union Revenue Needs Unlimited

To judge the true merits of this question, we must look at what will require federal revenue and what will require State revenue. The former is unlimited and the latter is restricted within very moderate bounds.

In pursuing this inquiry, we must remember to look forward into the remote future. Constitutions of civil government are not framed to meet existing needs; they combine existing needs with the probable future needs, according to the natural and tried course of human affairs. Nothing, therefore, is more deceptive than to infer, from an estimate of immediate necessities, the extent of power it is proper to lodge in the national government. The national government should have a CAPACITY to provide for future contingencies as they may happen. Since these are boundless in their nature, it is impossible to safely limit that capacity. Perhaps a sufficiently accurate computation could determine the revenue needed to discharge the existing obligations of the Union, and maintain those establishments which, for some time to come, would suffice in time of peace.

But would it be unwise or extreme folly to stop at this point, leaving the government entrusted with the care of the national defense and absolutely incapable of providing for the protection of the community against future invasions of the public peace by foreign war or domestic convulsions?

If, on the contrary, we should exceed this point, where can we stop, short of an indefinite power to provide for emergencies as they arise?

Though it is easy to say that it is possible to calculate what revenue might be needed against probable danger, we can safely challenge those who make the assertion to bring forward their data. It would be found as vague and uncertain as any data produced to establish the duration of the world.

Observations about the prospect of internal attacks deserve no weight, although even those cannot be satisfactorily calculated. But if we are to be a commercial people, part of our policy must include being able to one day defend that commerce. The support of a navy and naval wars will involve contingencies that baffle all efforts of political arithmetic.

[5] Revenue Always Needed for Defense

Even if we agree to try the novel and absurd political experiment of tying the hands of government from offensive war founded upon reasons of State, we certainly ought not disable it from guarding the community against the ambition or enmity of other nations. For some time a cloud has been hanging over Europe. If it should break into a storm, who can insure that as it progresses a part of its fury would not be spent on us? No reasonable man would hastily pronounce us entirely out of its reach.

Or if the current combustible materials should dissipate without coming to maturity or if a flame is kindled without extending to us, what security can we have that our tranquility will remain undisturbed from another cause or quarter? Let us remember that peace or war will not always be left to our option. However moderate or unambitious we may be, we can't count on 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, would so soon look with hostility on each

other? Judging from history, we must 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. Modeling our political systems on speculations of lasting tranquility is to calculate on the weaker springs of the human character.

[6] Defense Largest Expense

What are the chief sources of expense in every government? What caused the European nations to accumulate enormous and oppressive debts? Wars and rebellions. Supporting institutions are necessary to guard against these two most mortal diseases of society.

The expenses from institutions needed by domestic police, to support the legislative, executive, and judicial branches with their different appendages, and the encouragement of agriculture and manufactures (in other words, almost all state expenditures), are insignificant compared with national defense expenses.

[7] England: Defense vs. Executive Expense

In the kingdom of Great Britain, only one-fifteenth part of the nation's annual income goes towards providing for the ostentatious apparatus of the monarchy. The other fourteen-fifteenths pays the interest on debts contracted during wars and to maintain fleets and armies.

Someone could observe that the expenses incurred from supporting the ambitious enterprises and vainglorious pursuits of a monarchy are not a proper standard to judge what revenues a republic might need. In response, it could be said that there should be as big a disproportion between the profusion and extravagance of maintaining a domestic monarch's administration in a wealthy kingdom, and the frugality and economy of maintaining the modest simplicity of the executive branch of republican government. If we balance a proper deduction from one side against what ought to be deducted from the other, the proportion may still stand.

[8] Union vs. States Revenue Needs

But let us focus on the large debt we contracted in a single war. When we calculate our share of future disturbances of the peace of nations, we well instantly perceive, without the aid of any elaborate illustration, that there must always be an immense disproportion between federal and State expenditures. Several States are encumbered with excessive debts because of the war. But if the proposed system is adopted, this cannot happen again. After these debts are discharged, State governments will only need revenue to support their respective civil lists. If we add all contingencies, the total amount needed in every State ought to fall considerably short of 200,000 pounds.

[9] Future Revenue Needs Unlimitable

In framing a government for both posterity and ourselves, we ought to calculate the expense of permanent provisions. If this is a sound principle, the State governments will need an annual sum of about 200,000 pounds. At the same time, the Union's requirements can not be limited, even in imagination.

From this view of the subject, what logic can maintain that local governments should perpetually command an EXCLUSIVE source of revenue for any sum beyond 200,000 pounds? To extend State power further, in *exclusion* of the Union's authority, would take the resources of the community out of the hands that need them for the public welfare, to put them into other hands that have no just or proper use for them.

[10] Current State Debts > Future Needs

Suppose the convention had proceeded on the principle of distributing revenue sources between the Union and its members in *proportion* to their comparative needs. What fund for the States could have been selected that would not have been too much or too little—too little for their present, too much for their future wants?

Separating external and internal taxes would leave to the States roughly two thirds of the community resources to defray a tenth to a twentieth part of its expenses, and the Union, one third of the resources of the community to defray from nine tenths to nineteen twentieths of its expenses.

If we leave this boundary and give the States an exclusive power of taxing houses and lands, there would still be a great disproportion between the *means* and the *end,* with the possession of one third of the community resources to supply, at most, one tenth of its wants.

If any fund equal to and not greater than State needs could have been selected and appropriated, it would have been inadequate to the discharge of existing debts, leaving them dependent on the Union for a provision for this purpose.

[11] Solution: Concurrent Tax Jurisdiction

The preceding train of thought will justify the position 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."

Separating objects of taxation would have amounted to sacrificing 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. A few other points about this important subject of taxation deserve further consideration.

Publius

35: Representatives Should Understand Tax Policy Effects

Before we proceed to examine any other objections to the Union having an indefinite power of taxation, I will make one general remark: If the national government is restricted as to what objects it may tax, it would put an undue proportion of public burden on those objects. Two evils would spring from this source: the oppression of specific parts of industry and an unequal tax burden among States as well as among the citizens within a State.

[2] High Taxes Create Severe Problems

Some people argue that the federal taxation power should be confined to duties on imports. Because it would have no other resources under this policy, the government would frequently be tempted to increase these duties to an injurious excess. Some people imagine duties can never be too high, alleging that the higher they go, the more they will tend to discourage extravagant consumption, producing a favorable balance of trade and promoting domestic manufactures.

But all extremes cause harm. Exorbitant duties on imported articles would increase smuggling, which hurts the fair trader and eventually decreases tax revenue. Exorbitant duties tend to give people who manufacture goods within the country a premature market monopoly, able to charge higher prices than in an open market. These duties sometimes force industry out of its more natural channels into less advantageous areas.

And in the last place, they oppress the merchant and, sometimes, exhaust his profits and eat into his capital. The cost of the duty is often divided between the seller and the buyer. It is not always possible to raise the price of a commodity in exact proportion to every additional tax on it. The merchant, especially in a country with small commercial capital, often must keep prices down to promote sales.

[3] High Duties Effect States Differently

The maxim that the consumer pays the tax duties is more often true than the reverse of the proposition. Therefore, it is more equitable that the duties on imports should go into a common stock rather than be used exclusively by the importing States. But it is not fair that duties should form the only national fund.

When duties are paid by the merchant, they become an additional tax on the importing State, whose citizens, as consumers, pay the duties. They would produce an inequality among the States that would increase as duties increased.

Confining national revenues to import duties would produce another inequality, between the manufacturing and the non-manufacturing States. The States that can supply most of their own wants by their own manufacturers will not consume so great a proportion (in numbers or wealth) of imported articles as States not in the same favorable situation. They would not, therefore, contribute to the public treasury in a ratio to their abilities. Excises would be necessary to increase their contribution, targeting specific kinds of manufacturers.

Citizens of New York who fight for limiting the Union to external taxation may not be aware of how important the subject is to their State. New York is an importing State and, because of the disproportion between her population and territory, is not likely to soon become a manufacturing State, to any great extent. She would, of course, suffer in a double light from restraining the jurisdiction of the Union to commercial taxes.

[4] Increase Taxes ≠ Increase Revenue

These observations warn of increasing import duties to an injurious extreme. As mentioned in another paper, the desire to collect tax revenue should be a sufficient guard against such an extreme. And it would be, as long as other resources were available. But if other taxation avenues were closed, HOPE, stimulated by necessity, would beget experiments. Rigorous precautions and additional penalties would increase tax revenues, but only until people had enough time to contrive ways to elude the new taxes. The higher tax revenues at first would probably inspire false impressions, requiring a long course of subsequent experience to correct. Necessity, especially in politics, often occasions false hopes, false reasoning, and a system of measures correspondingly erroneous.

But even if excess is not a consequence of limiting the federal power of taxation, the inequalities delineated earlier would still exist, though from other causes and not in the same degree.

Let us now return to the examination of objections.

[5] Critics: Too Few Representatives

One frequent objection is that there are not enough members of the House of Representatives to represent all different classes of citizens, the interests and feelings of every part of the community, and to produce a sympathy between the representative body and its constituents. This is a very specious and seducing argument. It is calculated to lay hold of the prejudices of those to whom it is addressed. But when we carefully study it, we'll see it is composed of nothing but fair-sounding words. It is both impractical and unnecessary to accomplish the goal it supposedly supports.

I reserve for another place the discussion about whether there is a sufficient number of members in the representative body.

I will examine it here as it relates to the subject of this paper.

[6] Mechanics, Manufacturers will Elect Merchants

The idea that every class of people will be represented by people in each class is a Utopian fantasy. Unless the Constitution expressly says that each different occupation should send one or more members, it will never happen.

Mechanics and manufacturers will be inclined, with few exceptions, to give their votes to merchants rather than persons in their own professions or trades. Those discerning citizens understand that the mechanic and manufacturing arts furnish the materials of

mercantile enterprise and industry. Many of them 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 feel in their own good sense, their interests can be more effectually promoted by the merchant than by themselves. They know that their life habits haven't given them those acquired endowments, without which, in a deliberative assembly, the greatest natural abilities are, for the most part, useless. The merchants' influence, weight, and superior acquirements render them more equal to a contest with any spirit unfriendly to the manufacturing and trading interests that might become a part of public councils. These considerations, and many others, prove what experience confirms, that artisans and manufacturers will commonly vote for merchants or the people who merchants recommend. Therefore, merchants are the natural representatives of all these classes of the community.

[7] Many Will Elect Learned Professionals

With regard to the learned professions, little need be said. They truly form no distinct interest in society. According to their situation and talents, they will be indiscriminately the objects of the confidence and choice of each other and of other parts of the community.

[8] Property Owners' Common Interests

Lastly, the landed interest. This group, in a political view and particularly in relation to taxes, I believe are perfectly united, from the wealthiest landlord down to the poorest tenant. No property tax will not affect the proprietor of millions of acres as well as the proprietor of a single acre. Every landholder, therefore, will have a common interest to keep the taxes on land as low as possible. And common interests is always the surest bond of sympathy.

But even if we could imagine a distinction of interest between the opulent landholder and the middling farmer, why would we conclude that the first would stand a better chance of being elected to the national legislature than the last? If we take facts as our guide and look into the New York senate and assembly, we'll find that moderate proprietors of land prevail in both. This is no less the case in the senate, which has a smaller number than the assembly. Where voters' qualifications are the same, whether they have to choose a small or large number, their votes will go to men in whom they have the most confidence, whether they happen to have large fortunes, moderate property, or no property at all.

[9] Group Usually Elected Representatives

It is said that every class of citizen should have some member of their class in the representative body, so that their feelings and interests are 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 landlords, merchants, and men of the learned professions.

Why is there a fear that the interest and feelings of the different classes of citizens won't be understood by these three descriptions of men?

Will not the landlord know and feel whatever will promote or insure the interest of landed property? And will he not, from his own interest in property, be sufficiently prone to resist every attempt to prejudice or encumber it?

Will not the merchant understand and 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 feel neutrality towards the rivalships between different branches of industry, be an impartial arbiter between them, ready to promote either, as it should appear to him conducive to the general interests of the society?

[10] Elected Officials Inform Themselves

If we take into the account the momentary temperments or dispositions that may prevail in particular parts of society, to which wise administrators will never be inattentive, is the man who needs extensive inquiry and information a less competent judge of their nature, extent, and foundation than someone who has never traveled beyond his circles of neighbors and acquaintances? Isn't it natural that a candidate, who depends on the votes of his fellow citizens to continue his public job, will inform himself of their dispositions and inclinations, and be willing to allow a proper degree of influence on his conduct? This dependence on the citizens, and his necessity of binding himself and his posterity by the laws he approves, create strong cords of sympathy between the representative and the constituent.

[11] Knowledge Needed For Good Tax Policy

No part of governmental administration requires more extensive information or thorough knowledge of political economic principles as taxation. The man who best understands these principles will be least likely to resort to oppressive taxes or sacrifice any particular group of citizens to the procurement of revenue.

It might be demonstrated that the most productive system of obtaining governmental revenue will always be the least burdensome. In order to judiciously tax, the person with the power to tax should be acquainted with the general characteristics, habits, and modes of thinking of the people at large and resources of the country. This is what can be reasonably be meant by a knowledge of the interests and feelings of the people. Any other interpretation of the proposition has either no meaning or an absurd one. And in that sense, let every thinking citizen judge for himself who has the required qualification. Publius

36: Internal Taxation by Federal Government

The observations of the previous paper show that through the natural operation of the different interests within the community, the representatives, whether more or less numerous, will consist almost entirely of property owners, merchants, and members of the learned professions, who will truly represent all those different interests and views.

If someone disagrees, pointing out that local legislatures have other descriptions of men, I admit that 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 who will rise above the disadvantages of their situation, commanding the tribute due to their merit, not only from the classes to which they belong, but from society in general. The door ought to be equally open to all. To the credit of human nature, I believe we will see examples of such vigorous plants flourishing in the soil of federal, as well as, State legislatures. But having this occasionally happen, doesn't make the reasoning, based on the general course of things, less conclusive.

[2] Representatives: Merchants, Property Owners, Academicians

Several views of the subject all lead to the same conclusion. Specifically, it might be asked, what great affinity or relationship exists between the carpenter and blacksmith, the linen manufacturer and stocking-weaver, than between the merchant and any of them? Everyone knows that great rivalships between different branches of the mechanic or manufacturing arts arise as often as between any of the departments of labor and industry. So, unless the representative body was bigger than consistent with having regular, wise deliberations, it seems impossible that the spirit of the objection we've been considering will ever be realized in practice.

But I refuse to dwell any longer on a matter that has, until now, worn too loose a garb to allow an accurate inspection of its real shape or tendency.

[3] Representatives Bring Local Knowledge

Another more precise objection claims our attention. It has been asserted that a national power of internal taxation can never be exercised successfully, not just because there isn't a sufficient knowledge of local circumstances, as from an interference between the revenue laws of the Union and specific States.

The supposition of a lack of proper knowledge seems entirely destitute of foundation. If a State legislature has a question about one of the counties, how is knowledge of local details acquired? No doubt from citizens of the county. Cannot similar knowledge be obtained by the national legislature from the representatives of each State? And isn't it presumed that the men generally sent to Congress will possess the necessary degree of intelligence to be able to communicate that information?

Does knowledge of local circumstances, as applied to taxation, mean being topographically familiar with every mountain, river, stream, highway, and by-path in each State? No. It means a general acquaintance with its situation and resources, the state of its agriculture, commerce, manufacturers, the nature of its products and consumption, the different degrees and kinds of wealth, property, and industry.

[4] Small Councils Prepare Tax Plans

Nations in general, even the more popular type governments, usually commit financial administration to single men or boards composed of a few people who digest and prepare taxation plans. These are then passed into laws by the authority of the sovereign or legislature.

[5] Statesmen Select Objects Taxed

Inquisitive, enlightened statesmen are believed, everywhere, best qualified to make a judicious selection of the proper objects of taxation. As far as the sense of mankind can have weight in the question, this is a clear indication of the type of knowledge of local circumstances required for the purpose of taxation.

[6] Indirect, Excise Taxes

The general category of internal taxes may be subdivided into *direct* and *indirect* taxes. Though the objection is made to both, the reasoning of it seems confined to direct taxes.

It is hard to conceive of the difficulties feared from indirect taxes, that is, duties and excises on articles of consumption. Knowledge about them must either be that suggested by the nature of the article itself or can be procured from any well-informed man, especially of the mercantile class. The circumstances distinguishing an article's situation in one State from that in another must be few, simple, and easy to comprehend. The principle point would be to avoid those articles already taxed by a State. The revenue system of each could be determined from the respective codes of law and the State representatives.

[7] Direct, Property Taxes

The objection appears to have, at first sight, more foundation when applied to real property, houses, or land. But even in this view, it will not bear close examination.

Land taxes are commonly laid in one of two modes, either by *actual* valuations, permanent or periodical, or by *occasional* assessments, according to the best judgment and discretion of officers whose duty it is to make them. In either case, knowledge of local details is only needed in the EXECUTION of the duty, which will be carried out by commissioners or assessors, elected by the people or appointed by the government for the purpose. All the law can do is

prescribe the manner the persons will be elected or appointed, fix their numbers and qualifications, and draw the general outline of their powers and duties.

What, in all this, cannot be as well performed by the national legislature as by a State legislature? Either can only regulate the general principles. As already observed, local details must be referred to those who execute the plan.

[8] State Collection System May Be Used

But there is a simple point of view that puts this matter into a satisfactory light. The national legislature can make use of the *system of each State within that State.* Each State's method of laying and collecting this type of tax can be adopted and employed by the federal government.

[9] Taxes Uniform Throughout Nation

Remember, the proportion of these taxes is not left to the discretion of the national legislature, but is to be determined by each State's population, as described in Article one, Section two. An actual census will furnish the rule, a circumstance effectually shutting the door to partiality or oppression. The abuse of the taxation power seems to have been carefully provided against. In addition to the precaution just mentioned, there is a provision that "all duties, imposts, and excises shall be UNIFORM throughout the United States."

[10] State Requisitions Still Possible

Different speakers and writers on the side of the Constitution properly remind us that if the experiment of internal taxation by the Union is really inconvenient, the federal government may stop using it and use State requisitions instead.

As an answer to this, it has been triumphantly asked, why not just omit the ambiguous power and rely on the latter resource?

Two solid answers may be given. First, if the power can be conveniently exercised, it is preferable because it will be more effective. And it is impossible to prove in theory, or by any way other than experiment, that it cannot be advantageously exercised. Indeed, the contrary appears most probable.

Second, the existence of such a power in the Constitution will have a strong influence in giving efficacy to requisitions. When the States know that the Union can apply directly to the people without their agency, it will be a powerful motive for exertion on their part.

[11] Federal, States Tax Different Objects

As to Union revenue laws interfering with State laws, we have seen that there can be no clashing or contradictions of authority. Therefore, legally, the laws cannot interfere with each other. However, interference between the policies of their different systems does happen. An effective solution will be to mutually abstain from those objects that either side may have had first recourse to. As neither can *control* the other, each will have an obvious and sensible interest in this reciprocal forbearance. And where these is an immediate common interest, we may safely count upon its operation. When the current State debts are paid off and their expenses become limited within their natural compass, the possibility of interference will almost vanish. A small land-tax will fulfill State needs, becoming their most simple and fit resource.

[12] Fears about Internal Taxation

Many specters have been raised out of this power of internal taxation to make the people apprehensive. Double sets of revenue officers, a duplication of their burdens by double taxation, and the frightful forms of odious, oppressive poll-taxes have been played off with all the ingenious dexterity of political legerdemain.

[13] Double Sets of Revenue Officers

As to the first point, there are two cases when there is no room for double sets of officers. The first is when the Union has exclusive right to impose the tax, for instance, duties on imports. The other, when the object to be taxed hasn't fallen under a State regulation or provision.

In other cases, the United States probably will either totally abstain from the objects taxed for local purposes or will use State officers and State regulations for collecting the additional tax. This will save collection expense and best avoid any occasion of disgust to the State governments and the people.

Anyway, these are practical solutions to avoid such inconveniences. Nothing more can be required than to demonstrate that the predicted evils do not necessarily result from the plan.

[14] State Influences Federal Government

As to any argument about a possible system of influence, it is sufficient to say that it shouldn't be presumed. However, there is a more precise answer. If such a spirit should infest the councils of the Union, the most certain road to accomplish its aim would be to employ State officers as much as possible, attaching them to the Union through their compensation. This would 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 should be banished from the consideration of the great question before the people. They serve no other end than to cast a mist over the truth.

[15] Federal or State, Total Taxes Same

The answer to the double taxation suggestion is plain. The wants of the Union are to be supplied in one way or another. If fulfilled under the authority of the federal government, they will not be done by the State government. The quantity of taxes paid by the community must be the same in either case.

If the federal government supplies the provision, it can use commercial taxes, the most convenient source of revenue. This revenue source can be prudently improved to a much greater extent under federal than State regulation, making more inconvenient methods less necessary.

There is a further advantage. If there is any real difficulty in the exercise of the power of internal taxation, the federal government will be disposed to take greater care in the choice and arrangement of the means. It will naturally tend to make a fixed policy in the national administration, making the rich pay as much as is practical to the public treasury, diminishing the necessity of impositions that might create dissatisfaction in the poorer and most numerous classes of society. It is a happy circumstance when the government's interest in self-preservation coincides with a proper distribution of public burdens, and tends to guard the least wealthy part of the community from oppression!

[16] Poll Taxes Bad, But May Be Needed

As to poll-taxes, without scruple I confess my strong disapproval of them. And although they have prevailed from an early period in those States* that have uniformly been the most tenacious of their rights, I would lament to see them introduced into practice under the national government.

But does it follow that just because there is a power to lay them that they will actually be laid? Every State in the Union has the power to impose taxes of this kind. 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, how can a similar power justify such a charge against the national government, or even be urged as an obstacle to the adoption of the Constitution?

As unfriendly as I am to this type of taxes, I still feel a thorough conviction that the power of having recourse to it ought to exist in the federal government. Nations have emergencies in which expedients that ordinarily should be forborne become essential to the public well being. Because emergencies are possible, the government should always have the option of making use of them.

The real scarcity of objects in this country that may be considered as productive sources of revenue is a reason itself for not limiting the discretion of the national councils in this respect. And since I know of nothing to exempt this part of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to everything that disarms the government of a single weapon that in any possible contingency might be usefully employed for the general defense and security.

[17] Essential Powers of Federal Government

I have gone through an examination of the powers proposed to be vested in the United States that relate to the energy of government and endeavored to answer the principal objections to them. I have passed over minor authorities that are either too inconsiderable to have been thought worthy of the hostilities of the opponents of the Constitution or too manifestly proper to be controversial.

Judicial power might have been investigated under this topic. But its organization and the extent of its authority is more advantageously considered together. Because of this, I refer it to the next of branch of our inquires.

PUBLIUS

Constitutional references:

Article 1, Section 8	congressional power to tax
Article 1, Section 8	taxes uniform throughout U.S.
Article 1, Section 9	direct tax proportionate to census
Article 1, Section 9	no tax on State exports
Article 1, Section 2	proportionate direct taxes

* The New England States. –Publius

37: Difficulties Faced by Constitutional Convention

We have reviewed the defects of the existing Confederation and showed that they cannot be corrected by a government with less energy than the one now being considered. And we have looked at several important principles of the new Constitution.

But the ultimate object of these papers is to determine clearly and fully the merits of this Constitution and the expediency of adopting it. We should now take a critical and thorough survey of the Constitution drafted by the convention—examining all its sides, comparing all its parts, and calculating its probable effects.

So that this task may be executed under impressions conducive to a just and fair result, candor suggests that some reflections must be made.

[2] Target Audience: People Objectively Evaluating Constitution

It is unfortunate, but a part of human nature, that public policy is rarely investigated with the spirit of moderation that is essential to judge whether it has the tendency to advance or obstruct the public good. And on the occasions when it is most important, objectivity is more apt to be diminished than promoted.

To people who have thought about this subject, it shouldn't be surprising that the Constitution excites dispositions unfriendly to a fair discussion and objective judgment of its merits. It recommends many important changes and innovations that may be viewed in many lights and relations, touching many passions and interests on both sides of the issues.

It is obvious from what they have written that some people scanned the proposed Constitution not with just a predisposition to censure, but with a predetermination to condemn.

The language of other people betrays an opposite predetermination or bias, which makes their opinions of little moment in the question.

By giving equal weight to the opinions of both people predetermined to condemn the new Constitution and people predetermine to praise it, however, I don't want to insinuate that there may not be a material difference in the purity of their intentions. Since our situation is universally admitted to be critical and something must be done for our relief, we could honestly say that the patron writing favorably may have taken his bias from the weight of these considerations, as well as from considerations of a sinister nature. On the other hand, the predetermined adversary can be guided by no venial motive whatever.

The intentions of the first may be upright while also being culpable. The views of the last cannot be upright, and must be culpable.

But the truth is, these papers are not addressed to people in either category. They solicit the attention of people who add to their sincere zeal for the happiness of their country the ability to objectively judge the way to promote it.

[3] Constitution Not Faultless

These people will examine the Constitution not only without a disposition to focus on or magnify faults, but the good sense to not have expected a faultless plan. Nor will they barely make allowances for the errors that may be chargeable on the fallibility to which the convention, as a body of men, were liable. They will keep in mind that they, themselves, are only men and should not assume an infallibility as they judge the fallible opinions of others.

[4] Drafting Good Constitution Difficult

Besides these inducements to candor, they will quickly perceive and make allowances for the difficulties inherent in the nature of the convention's work.

[5] Precedents Show Errors to Avoid

The novelty of the undertaking immediately strikes us. These papers show that the existing Confederation is founded on fallacious principles. Consequently, we must change both the foundation and the superstructure resting on it.

It has been shown that other confederacies, which could have been consulted as precedents, are impaired by the same erroneous principles. They furnish only beacons that warn which course to shun without pointing to which should be pursued. In this situation, the convention could only avoid the errors suggested by the experience of other countries, as well as our own, and provide a convenient way through amendments of rectifying the convention's errors, as future experience may expose them.

[6] Balance Stable Government, Liberty

Among the difficulties encountered by the convention must have been the very important one of combining the required stability and energy in a government with the inviolable attention due liberty and the republican form. Without substantially accomplishing this, both their objective and the public's expectation would have been very imperfectly fulfilled. Yet no one who is unwilling to betray his ignorance of the subject, will deny that it could not be easily accomplished.

Energy in government is essential to secure against external and internal danger and to the prompt salutary execution of the laws that are a part of good government.

Stability in government is essential to national character with its advantages, as well as the repose and confidence it gives the people, one of the chief blessings of civil society. Irregular and mutable legislation is not so much evil in itself as it is odious to the people. Since the people of this country are enlightened as to the nature and interested in the effects of good government, it may be said with confidence that they will never be satisfied until some remedy is applied to the vicissitudes and uncertainties that characterize the State administrations.

However, when comparing stability and energy with the vital principles of liberty, we must see the difficulty of combining them in their proper proportions.

Inherently, republican liberty seems to demand on the one side that all power should be derived from the people and those entrusted with it should be kept in dependence on the people by a short duration of their appointments. And, even during this short period, the trust should be placed not in a few, but a number of hands.

Stability, on the other hand, requires that officials continue in office for a longer time.

Frequent elections create a frequent change in men. A frequent change of men creates a frequent change of policies. However, energy in government requires both duration of power and the execution of it by a single hand.

[7] Did Convention Achieve Balance?

Whether the convention succeeded in this part of their work will become clearer after a more accurate view. From this cursory view, it clearly appears to have been an arduous task.

[8] State vs. Federal Authority

Determining the proper line between the authority of the federal and State governments was no less difficult a task. Each person will understand this difficulty to the degree that he has spent time contemplating and discriminating between objects extensive and complicated in their nature.

The abilities of the mind, itself, have never been classified and precisely defined, despite all the efforts of the most acute, metaphysical philosophers. The mental activities of sense, perception, judgment, desire, volition, memory, and imagination are separated by such delicate shades and minute gradations that their boundaries have eluded the most subtle investigations and continue to be a fertile source of intelligent, systemic inquires and controversy.

The boundaries within the great kingdom of nature and, more importantly, between the various genuses and species, afford another illustration of the same important truth. The most sagacious and laborious naturalists have not yet succeeded in tracing, with certainty, the line separating vegetable life from the neighboring region of unorganized, non-organic matter, or what marks the termination of the former and the commencement of the animal empire. An even greater obscurity lies in the distinct characteristics by which the objects in each category of nature have been arranged and sorted.

[9] Politics Inexact Science

In nature, objective delineations do exist. They are unclear only because of our inability to make perfect observations.

When studying the institutions of man, obscurity arises from both the subject itself and the imperfections of the humans who contemplate it. We must see the necessity of further moderating our expectations and hopes for the efforts of human sagacity. Experience shows that political science hasn't been able to discriminate and define, with sufficient certainty, its three great provinces—the legislative, executive, and judiciary—or even the privileges and powers of the different legislative branches. Daily, questions appear that prove the obscurity of these subjects and puzzle the greatest political science experts.

[10] Ideas Clear, Words Ambiguous

The experience of the ages and the continuing studies by the most enlightened legislators and jurists have been equally unsuccessful in delineating the objectives and limits of different codes of laws and different tribunals of justice.

The precise extent of common law, statute law, maritime law, ecclesiastical law, corporate law, and local laws and customs, still isn't clearly defined in Great Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of Great Britain's general and local courts, law, equity, admiralty, etc., is a source of frequent and intricate discussions, denoting the indeterminate limits by which they are respectively circumscribed.

All new laws, although written with the greatest technical skill and passed after the fullest, most mature deliberation, are considered as more or less obscure and equivocal until their meaning is ascertained by a series of particular discussions and adjudications.

Besides the obscurity arising from the complexity of the subjects and the imperfection of the human faculties, the medium [i.e. words, sentences, language] used to convey men's conceptions adds a fresh embarrassment.

Words are used to express ideas. Clear expression, therefore, requires not only distinctly formed ideas, but they must be expressed by words distinctly and exclusively appropriate for those ideas. But no language is so copious as to supply words and phrases for every complex idea. Nor are the words so precise as not to include many equivocal words that denote several ideas.

Hence, it happens that however accurately subjects may be discriminated within themselves and however accurately the discrimination is, the definition may be rendered inaccurate by the inaccuracy of the terms. And this unavoidable inaccuracy must be, more or less, according to the complexity and novelty of the objects defined.

When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated.

[11] Sources of Ambiguity

Here, then, are three sources of vague and incorrect definitions: (1) indistinctness of the subject, (2) imperfection of the organ of conception, and (3) inadequateness of the vehicle of ideas.

Any one of these will produce a degree of obscurity. The constitutional convention, in delineating the boundary between the federal and State

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

[12] States: Conflicting Demands

Added to these difficulties were the conflicting demands of the larger and smaller States. We can suppose that larger States argued to have power equivalent to their superior wealth and importance. The smaller States argued, no less tenaciously, for continued equality. We may suppose that neither side would entirely yield to the other and, consequently, the struggle could be terminated only by compromise.

It is extremely probable, also, that after the ratio of representation had been adjusted, the compromise must have produced a fresh struggle between the same parties, each wanting to organize government and distribute its powers, increasing the importance of branches so that they respectively obtained the greatest share of influence.

Features in the Constitution warrant each of these suppositions. And so far as either of them is well founded, it shows that the convention must have been compelled to sacrifice theoretical perfection to the force of extraneous considerations.

[13] States: Other Conflicting Interests

Nor could it have been only the large and small States in opposition to each other on various points. States with different local positions and policies must have created additional difficulties.

Every State is divided into different districts and its citizens into different classes giving birth to competing interests and local jealousies. The different parts of the United States are also distinguished from each other by a variety of circumstances, producing a similar effect on a larger scale.

Although this variety of interests, for reasons explained in an earlier paper, may have a healthy influence on the administration of the government once it is formed, everyone must be aware of the conflicting influences that must have been experienced during the task of forming it.

[14] Drafting Constitution

Would it be surprising that the pressure of these difficulties forced the convention into deviations from the artificial structure and regular symmetry that an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination?

The real wonder is that so many difficulties were surmounted and surmounted with a unanimity almost as unprecedented as it must have been unexpected. Any man of candor must reflect on this circumstance with astonishment. Any man of pious reflection must perceive in it a finger of that Almighty hand that has so frequently and singly extended to our relief in the critical stages of the revolution.

[15] Opinions Sacrificed for Public Good

In a previous paper, we mentioned that the United Netherlands repeatedly and unsuccessfully tried to reform the ruinous and notorious vices of their constitution. [Number 20]

The history of almost all the great councils called to reconcile discordant opinions, assuage mutual jealousies, and adjust respective interests, is a history of factions, contentions, and disappointments. They are dark and degraded pictures, displaying the infirmities and depravities of the human character. The few scattered instances of cooperation only serve as exceptions to caution us about the general truth. Their luster darkens the gloom of the adverse prospect to which they are contrasted.

When considering the causes from which these exceptions result and applying them to our situation, we are led to two important conclusions. First, the convention must have enjoyed, to a very singular degree, an exemption from the pestilential influence of party animosities—the disease most incident to deliberative bodies and most apt to contaminate their proceedings.

The second conclusion is that all the delegations composing the convention were either satisfactorily accommodated by the final act or were induced to accede to it because they felt a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by the fear of seeing this necessity diminished by delays or by new experiments.

Publius

38: Ancient Republics Structured by Individuals
Objections to Constitution: Wide Variety, Little Agreement

Of every government established with deliberation and consent reported by ancient history, none were framed by an assembly of men, but by some individual citizen of preeminent wisdom and proven integrity.

[2] Authors of Ancient Republics

Minos founded the primitive government of Crete. Zaleucus founded Locrians. Theseus, then Draco and Solon, instituted the government of Athens. Lycurgus was the lawgiver of Sparta.

The foundation of the original Roman government was laid by Romulus. The work was completed by two of his elective successors, Numa and Tulius Hostilius. Brutus abolished royalty, substituting a reform that he said was prepared by Tulius Hostilius. It obtained the assent and ratification of the senate and people.

The same applied to confederate governments, too. Amphictyon, we are told, was the author of that which bore his name. The Achaean league received its first birth from Achaeus and its second from Aratus.

[3] Some Governmental Architects Authorized by Citizens

To what degree these lawgivers were responsible for their respective governments, or how much legitimate authority they had from the people, cannot be verified in every instance. In some, however, the proceeding was strictly regular.

The people of Athens apparently entrusted Draco with unlimited power to reform its government and laws. And Plutarch says Solon was given, by the universal vote of his fellow-citizens, the absolute power of remodeling the constitution.

The proceedings under Lycurgus of Sparta were less regular. The advocates for regular reform, rather than seeking revolution through the intervention of a deliberative body of citizens, turned their eyes towards the single efforts of that celebrated patriot and sage.

[4] Protection of Liberty vs. Reforms

How did it happen that a people as jealous of their liberty as the Greeks abandoned the rules of caution and placed their destiny in the hands of a single citizen?

To protect their liberty, the citizens of Athens demanded that a minimum of ten generals command an army. And they felt the illustrious merit of a fellow-citizen was a danger to their liberties. So why did they place their fortunes and their posterity in the hands of one illustrious citizen rather than a selected group of citizens from whose common deliberation more wisdom, as well as safety, might have been expected?

We must assume that the fears of discord and disunion exceeded the apprehension of treachery or incapacity in a single individual. Additionally, history shows the difficulties these celebrated reformers confronted and the expedients necessary to put their reforms into effect.

Solon, who apparently authored a compromise policy, confessed he had not given his countrymen the government best suited to their happiness, but most tolerable to their prejudices.

And Lycurgus, more true to his objective, mixed some violence with the authority of superstition, then voluntarily renounced his country, then his life, to secure his final success.

If these lessons teach us, on the one hand, to admire America's improvement on the ancient mode of preparing and establishing a constitutional government, they also admonish us, on the other hand, about the hazards and difficulties inherent to such experiments and the great imprudence of unnecessarily multiplying them.

[5] U. S. Constitution Historically Unique

Is it unreasonable to suggest that the errors that may be in the new Constitution have resulted from a lack of historical experience on this complicated and difficult subject, rather than from a lack of accuracy or care in researching the subject? And consequently, the errors will not be found until actual trial points them out?

Both logical reasoning and our experience with the Articles of Confederation render these conjectures probable. Remember that of all the numerous objections and amendments suggested by States during the ratification process [Articles of Confederation], not one alluded to the great and radical error that actual trial uncovered. And if we leave out the observations made by New Jersey, made because of her local situation not through keen foresight, it may be asked whether any single suggestion was important enough to justify a revision of the system.

Nevertheless, there is abundant reason to believe that, although the objections were immaterial, some States would have adhered to them with a very dangerous inflexibility if their zeal for their opinions and interests had not been stifled by the more powerful sentiment of self-preservation. Although the enemy remained at our gates or, rather, in the very bowels of our country, remember that one State refused her concurrence for several years. Her pliancy, in the end, was the result of the fear of being charged with protracting the public calamities and endangering the outcome of the war. Every candid reader will make the proper reflections on these important facts.

[6] Medical Allegory

Let's study the case of a person who grows sicker daily until he decides that he cannot postpone an efficacious remedy without extreme danger. After coolly evaluating his situation and the reputations of different physicians, he selects and calls in those who he judges most capable of administering relief and

best entitled to his confidence. The physicians arrive. The patient is carefully examined. The doctors consult. They unanimously agree that the symptoms are critical but that the case, with proper and timely care, is far from being desperate and may even result in an improvement of his health. They also unanimously agree on the prescribed remedy that will produce this happy effect.

The prescription is no sooner made known, however, than a number of persons interpose and, without denying the reality or danger of the disorder, tell the patient that the prescription will poison him and forbid him, under pain of certain death, to make use of it. Might not the patient reasonably demand, before he followed this second advice, that they should at least agree among themselves on some other remedy to be substituted? And if he found them differing as much from one another as from his first doctors, would he not act prudently in trying the experiment unanimously recommended by the first physicians, rather than listen to the people who neither deny the necessity of a speedy remedy nor agree in proposing one?

[7] Criticisms: Irreconcilable Wide Variety

This patient mirrors America's current situation. She realizes her malady. She has obtained unanimous advice from men of her own deliberate choice. Then others warn her against following this advice under the pain of fatal consequences.

Do the new monitors deny the reality of the danger? No.

Do they deny the necessity of some speedy and powerful remedy? No.

Are they agreed, do any two of them agree on what is wrong with the proposed remedy or the proper substitution? Let them speak for themselves:

One tells us the proposed Constitution should be rejected because it's **not a confederation of the States, but a government over individuals.**

Another admits it should be a government over individuals to a certain extent, but **not to the extent proposed.**

A third doesn't object to the government over individuals, even to the extent proposed, but wants a **bill of rights.**

A fourth concurs in the absolute necessity of a bill of rights but contend that it should be declaratory, not of the personal rights of individuals, but the **rights reserved to the States** in their political capacity.

A fifth believe that a bill of rights of any sort would be superfluous and misplaced, and that the Constitution wouldn't be criticized but for the fatal power of **regulating the times and places of election.**

An objector from a large State exclaims loudly against the unreasonable **equality** of representation in the **Senate**. An objector from a small State is equally loud against the dangerous **inequality** in the **House of Representatives.**

This quarter is alarmed with the **amazing expense** arising from the number of persons who are to administer the new government. From another quarter, and sometimes from the same quarter on another occasion, the cry is that Congress will only be a shadow of a representation and that the government would be far **less objectionable if** the number and the **expense were doubled.**

A patriot in a State that doesn't import or export discerns insuperable objections against the power of **direct taxation.** The patriotic adversary in a State of great exports and imports is not less dissatisfied that the whole burden of **taxes** may be thrown **on consumption**.

This politician discovers in the Constitution a direct and irresistible **tendency to monarchy**. That one is equally sure it will end in **aristocracy**. Another is puzzled over which of these shapes it will ultimately assume, but sees clearly it must be one or the other.

A fourth is no less confident that the Constitution is so far from having a bias towards either of these dangers that the weight on that side will not be sufficient to keep it upright and firm against its **opposite propensities.**

Another class of adversaries to the Constitution say the **intertwining of legislative, executive, and judiciary** departments contradicts all the ideas of regular government and all the requisite precautions in favor of liberty. While this objection circulates in vague and general expressions, only a few people sanction it.

Two people rarely agree on a specific objection.

In the eyes of one, having the Senate with the president jointly responsible for **appointing to offices** instead of vesting this executive power in the Executive alone, is the vicious part of the Constitution. To another, the exclusion of the House of Representatives, whose numbers alone could provide security against corruption and partiality in the exercise of such a power, is equally obnoxious.

With another, giving the **President** any **power** is always dangerous and an unpardonable violation of the maxims of republican jealousy.

No part of the arrangement, according to some, is more inadmissible than the **trial of impeachments** by the Senate, which alternates between the legislative and executive departments, when this power so clearly belongs to the judiciary.

"We concur fully," reply others, "in the objection to this part of the Constitution, but we can never agree that referring impeachments to the **judiciary** would amend the error. Our principal objection arises from the **extensive powers** already lodged in that department.

Even the zealous patrons of a **council of state** cannot agree on how it should be constituted. One gentleman demands that the council should consist of a small number, appointed by the most numerous branch of the legislature. Another prefers a large number and considers it a fundamental condition that the appointment should be made by the President himself.

[8] If Critics Wrote Constitution, Never Agree

Let's look at the situation from a different perspective. Since it can't offend the critics of the proposed federal Constitution, let us assume that their zealousness is matched with sagacity, making them

the most discerning and farsighted of the people who think the delegates to the recent convention were not up to the task assigned them and a wiser and better constitution might and should be substituted.

Let us further assume that the country concurs, both in the favorable opinion of their qualifications to judge the issues and in their unfavorable opinion of the convention. And the country forms them into a second convention with full powers and for the express purpose of revising and remolding the work of the first.

If the experiment was seriously tried, although it requires some effort to view it seriously even in fiction, I leave it to you to decide, from the sample of opinions just stated and the enmity they've shown towards their predecessors, whether they would ever depart from the discord and ferment that would mark their own deliberations. Wouldn't the currently proposed Constitution stand as fair a chance of immortality—as Lycurgus gave to Sparta's constitution by making its change depend on his own return from exile and death—if the United States immediately adopted this Constitution and let it continue in force, not until a BETTER but until ANOTHER is agreed upon by this new assembly of lawgivers?

[9] New Constitution Better than Articles

It is a matter both of wonder and regret that those who raise so many objections against the new Constitution never call to mind the defects of that which is to be exchanged for it. It is not necessary that the new Constitution is perfect; it is sufficient that the Articles of Confederation are more imperfect.

No man would refuse to exchange brass for silver or gold, because the latter had some alloy in it. No man would refuse to leave a shattered, tottering habitation for a firm, commodious building because the latter had no porch, or because some of the rooms might be a little larger or smaller, or the ceiling a little higher or lower than his fancy would have planned them.

But waiving illustrations of this sort, isn't it clear that the primary objections against the new system lie with tenfold weight against the existing Confederation?

Is an **indefinite power to raise money** dangerous in the hand of the federal government? The present Congress can make requisitions of any amount they please and the States are constitutionally bound to furnish them. It can emit bills of credit as long as it can pay for the paper. It can borrow both abroad and at home as long as a shilling will be lent.

Is an indefinite power to **raise troops** dangerous? The Confederation also gives Congress that power and it has already begun to make use of it.

Is it improper and unsafe to **intermix** the different **powers** of government in the same body of men? Currently Congress, a single body of men, is the sole depository of all the federal powers.

Is it particularly dangerous to give the keys of the **treasury and** command of the **army** into the same hands? The Confederation places them both in the hands of Congress.

Is a **bill of rights** essential to liberty? The Confederation has no bill of rights.

Is there an objection because the new Constitution empowers the Senate with the concurrence of the President to make **treaties** that are to be the **laws** of the land? Without any such control the existing Congress can make treaties that it declares and most States recognize as the supreme law of the land.

Is the **importation of slaves** permitted by the new Constitution for 20 years? By the old, it is permitted forever.

[10] Congress Wielding Great, But Not Authorized, Powers

I will be told that however dangerous the Confederation's mixture of powers may be in theory, it is rendered harmless because Congress is dependent on the States for the means of carrying them into practice, that however large the mass of power may be, it is in fact a lifeless mass.

Then, say I, the Confederation can be charged with the greater folly of declaring certain powers in the federal government to be absolutely necessary and, at the same time, render them absolutely worthless. And if the Union is to continue with no better government substituted, effective powers must either be granted to, or assumed by, the existing Congress. In either event, the contrast will continue.

But this is not all. An excessive increase in power has already grown out of this lifeless mass. All the dangers from a defective construction of the supreme government of the Union seem to be realized.

It is no longer speculation and hope that the Western territory is a mine of vast wealth to the United States. It won't produce the kind of wealth that could extricate the States from present problems or yield any regular revenue for public expenses for some time to come. But, eventually, under proper management, it will be able to both gradually discharge the domestic public debt and furnish, for a certain period, liberal tributes to the federal treasury. A very large proportion of this fund has been already surrendered by individual States. And we may expect the remaining States will not continue to withhold similar proofs of their equity and generosity.

Therefore, we can calculate that a rich, fertile territory, equal in size to the inhabited area of the United States, will soon become part of the nation. Congress has assumed its administration. It has begun to make it productive. Congress has undertaken to do more, forming new States, erecting temporary governments, appointing officers for them, and prescribing the condition by which the States will be admitted into the Confederacy.

All this has been done, and done without the least constitutional authority. Yet no blame has been whispered; no alarm has been sounded.

A GREAT AND INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men, who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to support them for an INDEFINITE PERIOD OF TIME. Yet there are men who have not only been silent spectators of this, but who advocate for this

system while, at the same time, urging against the new system using the objections presented here. Wouldn't they be more consistent to urge the adoption of the new Constitution as no less necessary to guard the Union against future powers and resources of a body constructed like the existing Congress, than to save it from the dangers threatened by the present impotency of that Assembly?

[11] Must Have Powers to Achieve Objectives

I don't mean, by anything said here, to throw censure on the measures pursued by Congress. I know they could not have done otherwise. The public interest, the necessity of the case, imposed upon them the task of overlapping their constitutional limits. But is not this fact an alarming proof of the danger resulting from a government that doesn't possess regular powers commensurate to its objectives? A dissolution or usurpation is the dreadful dilemma to which it is continually exposed.

PUBLIUS

Constitutional references:

Article 1, section 4	elections, times and places
Article 1, section 3	equal representation in Senate
Article 1, section 2	unequal representation in House of Rep
Article 1, section 8	taxation
Article 1, section 3	Senate sole power to try impeachments
Article 1, section 8	raise troops
Article 1, section 8	end slave importation in 20 year
Article 2, section 2	Pres appoints w/ advice, consent of Senate
Article 2, section 2	Pres treaties w/ advice, consent of Senate
Article 5	equal representation in Senate

Amendments:

Articles 1-10	bill of rights
Article 10	States' rights

Articles of Confederation:

Article 8; Article 9	States' tax quotas
Article 9	raise troops
Article 5	one Congress administers government

39: National vs. Federal Republic

The last paper concluded the introductory observations. We will now proceed to a candid study of the proposed Constitution

[2] Is Proposed Government Republic?

The first question is whether the general form and appearance of the proposed government is strictly republican.

Clearly, no other form would be reconcilable with the nature of the American people, with the fundamental principles of the Revolution, or with that honorable purpose—to base our political experiment on the ability for self-government—that animates every ardent advocate of freedom.

Therefore, if the Constitution is discovered to not be of the republican form, its advocates must abandon it because it is no longer defensible.

[3] Erroneously Called "Republics"

What are the distinctive characteristics of the republican form of government? We must seek the answer in defined principles. If we looked for the answer by studying the interpretations of political writers as contained in the constitutions of different countries, no satisfactory one would ever be found.

Holland, where none of the supreme authority is derived from the people, is almost universally called a republic. So is Venice, where absolute power over the people is exercised by a small group of hereditary nobles. Poland, a mixture of aristocracy and monarchy in their worst forms, has been dignified with the same name.

The government of England, with only one republican branch combined with an hereditary aristocracy and a monarch, has been, with equal impropriety, frequently placed on the list of republics.

These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political discussions.

[4] Republic = *All* Power From People

If we look at the principles used to establish different forms of government for a criterion, we may define a republic, or give that name to, a government that derives all its powers directly or indirectly from the people and is administered by persons holding their offices—through election or appointment—at the people's pleasure for a limited period or during good behavior.

It is *essential* that a republican government spring from the great body of society, not from a small proportion or a favored class. Otherwise, a few tyrannical nobles, exercising their oppressions by a delegation of their powers, might call themselves republicans and claim for their government the honorable title of republic.

It is *sufficient* that the persons administering such a government are appointed, either directly or indirectly, by the people and that they hold their appointments by either of the tenures just specified.

Otherwise, every government in the United States and every well-organized or well-executed popular government could be called a republic, degrading the term.

According to the constitution of every State, one or another of the officers of government are only appointed indirectly by the people. In most of them, the chief magistrate [executive] is so appointed. In one, this mode of appointment extends to one of the houses of the legislature.

According to all the constitutions, the tenure of the highest offices is extended to a definite period. And in many instances, the legislative and executive department tenures are a specified period of years. Most of the constitutions, and most respectable opinions on the subject, state that members of the judiciary department retain their offices by the firm tenure of good behavior.

[5] Constitution: Republic Form

On comparing the Constitution with the republican form as described here, we immediately see it conforms in the most rigid sense. The House of Representatives, like at least one branch of each State legislature, is elected directly by the great body of the people. The Senate, like the present Congress and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly elected by the people, like the example in most of the States. As in the States, even the judges, and all other officers of the Union, will be the choice, though a remote choice, of the people.

The duration of appointments also conforms to the republican standard and the model of State constitutions. The House of Representatives is periodically elected, as in all the States, and for the period of two years, as in South Carolina. The Senate is elected for the period of six years, only one year more than the Maryland senate and two more than the senates of New York and Virginia.

The President is to continue in office for the period of four years. In New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. The other States have annual elections. Several States, however, have no constitutional provision for impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable until out of office. The President of the United States is impeachable at any time during his continuance in office.

The tenure of judges is based on good behavior, as it unquestionably should be.

The tenure of the ministerial offices, generally, will be a subject of legal regulation, conforming to the reason of the case and the example of the State constitutions.

[6] Absolute Prohibition of Nobility Titles

If further proof is required of the republican complexion of this system, the most decisive might be its absolute prohibition of titles of nobility under both

the federal and State governments, and its express guarantee of the republican form.

[7] Convention's Authority, Objective

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They should have preserved, with equal care, the *federal* form, which regards the Union as a *Confederacy* of sovereign States. Instead, they have framed a *national* government, which regards the Union as a *consolidation* of the States.

And they ask, by what authority was this bold and radical innovation undertaken? This objection requires some precise examination.

[8] Analyzing Convention's Work

Without looking into whether their distinction between a federal and national government is accurate, their objection should be assessed. We need to:

(1) determine the real character of the proposed government,

(2) inquire whether the convention was authorized to propose such a government, and

(3) determine how far that duty to their country replaced their lack of regular authority.

[9] Character of Proposed Government

First. The real character of the government may be determined through studying:

the foundation on which the government is to be established,

the sources of its ordinary powers,

the operation of those powers,

the extent of the government's powers, and

the authority by which future changes in the government are to be introduced.

[10] Foundation

It appears that the Constitution is founded on the assent and ratification of the American people through deputies elected for the special service. This assent and ratification is not to be given by individuals composing one entire nation, but as composing distinct, independent States to which they respectively belong. The States are to assent and ratify, based on the authority of the people. Therefore, ratifying the Constitution will be a *federal,* not a *national*, act.

[11] Ratification: Federal Form

As defined by the people objecting to the Constitution, this will be a federal and not a national act. The people act as citizens of independent States, not as citizens of one aggregate nation. This is obvious because the decision isn't made by a *majority* of the people nor by a *majority* of the States.

The States must *unanimously* ratify the Constitution, not by the legislative authority but by the authority of the people themselves. If in this transaction the people were regarded as forming one nation, the will of the majority of all people of the United States would bind the minority, in the same way that the majority in each State must bind the minority. Determining the will of the majority means either a majority of individual votes or a majority of States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted.

Each State, in ratifying the Constitution, is considered a sovereign body, independent of all others, and bound only by its own voluntary act. In its foundation, then, the new Constitution will be, if established, a *federal*, not a *national,* constitution.

[12] *Power Source*: Federal, National Features

Next we'll look at the source of the ordinary powers of government. [Do the people (national) or the States (federal) elect/appoint officials?]

The House of Representatives will derive its powers from the American people. The people will be represented in the same proportion and on the same principle as they are in the legislature of each State. In this, the government is *national,* not *federal.*

The Senate, on the other hand, will derive its powers from the States as political, coequal societies. These will be represented on the principle of equality in the Senate, as they are in the existing Congress. In this, the government is *federal,* not *national.*

The executive power will derive from a compound source. The final election of the President is to be made by the States as political units. Their allotted votes are based on a compound ratio, considering each partly as distinct, coequal societies, and partly as unequal members of the same society. The eventual election, again, is made by that branch of the legislature consisting of national representatives but, in this particular act, they are thrown into the form of individual delegations, from so many distinct, coequal political bodies.

As to its source of powers, the government appears to be of mixed character, presenting at least as many *federal* as *national* features.

[13] Government *Operation*: National Form

Adversaries to the proposed Constitution define the difference between a federal and national government, as it relates to the operation of the government, as this:

A federal government operates on the political bodies [States] composing the Confederacy. A national government operates on the individual citizens composing the nation.

Following this criteria, the Constitution falls under a *national,* not *federal*, character, but perhaps not as completely as has been believed. In several cases, particularly in the trial of controversies between States, States must be viewed in their collective, political capacities only.

The operation of the government on individual citizens in ordinary and the most essential proceedings will designate it, in this relation, a *national* government.

[14] Extent of Powers: Federal Form

But if the government is national in the *operation* of its powers, it changes its aspect again when we contemplate the extent of its powers.

The concept of a national government involves not only an authority over the individual citizens, but an indefinite supremacy over all persons, things, and issues that can be objects of lawful government.

When people consolidate into one nation, supremacy is completely vested in the national legislature. When communities unite for particular purposes, some supremacy is vested in the united body and some in the local legislatures.

In the former case, all local authorities are subordinate to a national legislature that can control, direct, or abolish local authority at its pleasure.

In the latter, local or municipal authorities form distinct, independent portions of the supremacy. These are no more subject, within their sphere, to the federal authority than the federal authority is subject to them within its own sphere.

In the extent of its powers, the proposed government cannot be deemed a national one, since its jurisdiction extends to specific, enumerated objectives only, leaving to the States a residuary and inviolable sovereignty over all other issues.

Controversies relating to the boundary between two jurisdictions will ultimately be decided by a tribunal established under the federal government. But this doesn't change the principle. The decision is to be impartial, according to the rules of the Constitution. The usual, most effective precautions are taken to insure this impartiality. Such a tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact. That it will be more safely established under the national, rather than local, governments, is a position few would argue with.

[15] *Amending*: Federal, National Features

If we evaluate the Constitution in relation to the authority to amend it, we find it neither totally *national* nor totally *federal.*

If it was totally national, the supreme, ultimate authority would reside in the *majority* of the people of the Union. This authority at any time, like the majority of every national society, could alter or abolish the established government.

If it were totally federal, on the other hand, the concurrence of every State in the Union would be essential for every amendment that would be binding on all.

The mode provided in the Constitution is not founded on either of these principles. By requiring more than a majority, and particularly in computing the proportion by *States,* not by *citizens*, it departs from the *national* and advances towards the *federal* character. By requiring the concurrence of less than the total number of States, it becomes less *federal* and more of the *national* character.

[16] Neither Strictly National or Federal

Therefore, the proposed Constitution is, strictly, neither a national nor federal Constitution, but a composition of both.

Its foundation is federal, not national.

Its source of ordinary governmental powers is partly federal and partly national.

In the operation of these powers, it is national, not federal.

In the extent of these powers, it is federal, not national.

And, finally, the authoritative mode of introducing amendments is neither wholly federal nor wholly national.

Publius

Constitutional References:

Article 1, section 2	House of Representatives elected directly by people, 2-year term
Article 1, section 3	Senate elected indirectly by people, 6-year term
Article 2, section 1	President elected indirectly by people, 4-year term
Article 2, section 2	judges, Union officers, "remote" choice of people
Article 2, section 4	President impeachable
Article 3, section 1	judges tenure during good behavior
Article 1, section 9	federal prohibition nobility titles
Article 1, section 10	State prohibition nobility titles
Article 7	ratification of Constitution
Article 3, section 2	trials involving more than one State
Article 5	amendment process

40: Was Convention Authorized to Draft Constitution?

[This paper continues the discussion started in Number 39, paragraph 8.]

The *second* point to be examined is whether the convention was authorized to frame and propose this mixed [both national and federal form, as discussed in #39] Constitution.

[2] Convention's Mission Defined

In strictness, the convention's powers should be determined through inspecting the commissions given the individual members by their constituents. However, since they all referred to either the September 1786 meeting at Annapolis or the February 1787 congressional meeting, it will be sufficient to reiterate these particular acts.

[3] Annapolis Meeting, September 1786

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

[4] Congress Recommendation, Feb. 1787

The recommendatory act of Congress is in the following words: "Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein, by the assent of Congress of the United States and the legislatures of the several States; and whereas experience has evinced that there are defects in the present Confederation; as a means to remedy which, several States, and *particularly the State of New York,* by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable means of establishing in these States a *firm national government*:

[5] Resolution to Revise Articles

"*Resolved,*—That in the opinion of Congress it is expedient that on the second Monday in May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia for the sole and express purpose *of revising the Articles of Confederation,* and reporting to Congress and all the legislatures the *alterations and provisions therein* as shall, when agreed to in Congress and confirmed by the States, render the federal Constitution *adequate to meet the exigencies of government and the preservation of the Union"*

[6] Convention's Objectives/Tasks

From these two acts, it appears that:

1) the objective of the convention was to establish *a firm national government,*

2) that this government was to be adequate for the needs of the government and the preservation of the Union,

3) these goals were to be met through *alterations and provisions in the Articles of Confederation,* as expressed in the act of Congress, or by *such further provision as should appear necessary,* as recommended in the act from Annapolis, and

4) that the alterations and provisions were to be reported to Congress and to the States, in order to be agreed to by the former and confirmed by the latter.

[7] Convention's Charge

The authority under which the convention acted can be summarized as follows:

They were to frame a *national government,* adequate to the *exigencies of government* and *of the Union*, and to reduce the Articles of Confederation into a form to accomplish these purposes.

[8] Goals Conflict: Sacrifice Less Important

There are two rules of construction, dictated by plain reason and founded on legal axioms.

First, every part of the expression ought, if possible, have some meaning and made to conspire to some common end.

Secondly, where the several parts can't be combined, the less important should give way to the more important part. The means should be sacrificed to the end, rather than the end to the means.

[9] Change Articles vs. New Constitution

Suppose that the specific goals in the mission statement of the convention were irreconcilably at variance with each other, that a "*national . . . [and] adequate government"* could not possibly be accomplished, in the judgment of the convention, by "*alterations* and *provisions* in the *Articles of Confederation*."

Which part should be embraced and which rejected? Which is more important, which less important? Which end? Which means?

Let those people who can most precisely delineate the delegated powers and the most adamant objectors against the actions of the convention answer these questions. Let them declare whether it was more important for the happiness of the people of America to disregard the Articles of Confederation in order to provide an adequate government and preserve the Union. Or should the adequate government be omitted and the Articles of Confederation preserved.

Let them declare whether the purpose of government reform was to preserve the Articles, themselves originally aimed to establish a government adequate to the national happiness, or whether the Articles, proven insufficient, ought to be sacrificed so an adequate government can be established.

[10] Maybe Goals Are Not Irreconcilable

But must we suppose that these goals are absolutely irreconcilable, that no *alterations* or *provisions* in the *Articles of the Confederation* could possibly mold them into a national and adequate government, into a government as has been proposed by the convention?

[11] Alteration vs. Transmutation of Gov't

It is presumed that there is no objection to the ***title***. A change of title couldn't be deemed an exercise of ungranted power.

Alterations in the body of the instrument are expressly authorized.

New provisions are also authorized.

Therefore, the convention had the power to change the title, insert new articles, and alter old ones.

Is this power infringed as long as a part of the old Articles remain? Those who say yes should specify the boundary between authorized and usurped innovations. What degree of change falls within the definitions of *alterations and further provisions*, and what amounts to a *transmutation* of the government?

Will it be said that the substance of the Confederation should not have been altered? The States would never have so solemnly appointed a convention nor described its objectives with so much latitude, if some *substantial* reform had not been contemplated.

Will it be said that the ***fundamental principles* of the Confederation** were not within the purview of the convention and should not have been changed? I ask, what are these principles?

Do they require that, in establishing the Constitution, the States should be regarded as distinct and independent sovereigns? That is how the proposed Constitution regards them.

Must federal representatives be appointed from the legislatures, not from the people of the States? One branch of the new government is to be appointed by these legislatures; under the Confederacy, the delegates to Congress *may all* be appointed immediately by the people and in two States, Connecticut and Rhode Island, are actually so appointed.

Do they require that government power act on States rather than individuals? It has been shown that sometimes the new government will act on the States in their collective characters. In some instances, the existing government acts on individuals, including in cases of capture, piracy, the post office, coins, weights, measures, trade with the Indians, claims under grants of land by different States, and, above all, in the case of trials by courts-martial in the army and navy that may result in the death penalty without the intervention of a jury or even a civil magistrate. In all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens.

Do these fundamental principles require, specifically, that no tax should be levied without the intermediate agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post office. Congress has construed the power of coinage as a levy.

But putting aside these examples, wasn't it an objective of the convention, and the universal expectation of the people, that the national government would regulate trade so it would be an immediate source of general revenue? Hasn't Congress repeatedly recommended that this measure is consistent with the fundamental principles of the Confederacy? Hasn't every State but one, even New York, complied with the plan of Congress, recognizing the *principle* of the innovation?

Do these principles require that the federal government's powers should be limited and that, beyond this limit, the States should be left in possession of their sovereign and independent jurisdiction? We have seen that in the new government, as in the old, the general powers are limited and the States, in all unenumerated cases, have sovereign, independent jurisdiction.

[12] Constitution Expands Principles

The truth is, the important principles of the convention's proposed Constitution are not absolutely new, rather they expand the principles found in the Articles of Confederation. Unfortunately, under the Articles these principles are so feeble and confined as to justify all the charges of inefficiency that have been leveled against it. And the Articles required such a degree of enlargement that it entirely transforms the old system into one that appears new.

[13] Ratification Process Changed

In one area, the convention did depart from the tenor of their commission. Instead of reporting a plan requiring the confirmation *of all the States,* they have reported a plan that is to be confirmed and carried into effect by *nine States only*.

It is noteworthy that this is the source of the most plausible objection, but has been the least mentioned in the swarm of writings against the convention. The forbearance can only be the result of an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of the thirteenth.

We have had an example of inflexible opposition given by a *majority* of the 1/60 of the American population to a measure approved and called for by the voice of twelve States, comprising 59/60s of the people—an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country.

Therefore, since this objection seems to have been waived by those who criticize the powers of the convention, I dismiss it without further observation.

[14] Authority Supplanted by Duty

The *third* point to be inquired into is, how far considerations of duty arising out of the case itself could have supplied any defect of regular authority.

[15] Convention Only Recommends Plan

Up to this point, the convention's work has been rigorously analyzed as if it had the authority to establish a Constitution for the United States. And it has withstood this scrutiny.

Now, it's time to remember that the convention was only authorized to advise and recommend. That is what the States meant and the convention understood. And, accordingly, the convention proposed a Constitution that is nothing more than pieces of paper, unless it is stamped with the approval of the people to whom it is addressed. This puts the subject into an altogether different view and will enable us to properly judge the course taken by the convention.

[16] Convention Delegates: Considerations

Let us review the ground on which the convention stood. From the notes of their proceedings, it appears that they were so deeply and unanimously concerned with the crisis within their country that almost with one voice they created the singular and solemn document for correcting the errors of the system that produced this crisis. They were deeply and unanimously convinced that the reform they have proposed was absolutely necessary to accomplish the goals for which the convention was convened.

They knew that the hopes and expectations of the citizens throughout this great empire watched their deliberations with keen anxiety.

Delegates had every reason to believe that contrary sentiments agitated the minds and hearts of every external and internal foe to the liberty and prosperity of the United States

They had seen how quickly a *proposition* for a partial amendment of the Confederacy, made by the State of Virginia, was studied and promoted. They watched the Annapolis convention, with *very few* deputies from a *very few* of the States, *assume liberty* and recommend a great and critical objective, completely foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve of the thirteen States.

Several times, they had seen Congress assume, not just recommendations, but operative powers, to achieve objectives that, in the public's mind, are infinitely less urgent than those faced by the convention.

Members of the constitutional convention must have realized that whenever great changes are made in established governments, form must give way to substance. Rigid adherence to the form would make the people's transcendent and precious right to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness"* nearly impossible because people don't spontaneously and universally move in concert towards their objectives. Therefore, it is essential that such changes be instituted by some *informal and unauthorized propositions* made by some patriotic, respectable citizen or number of citizens.

Delegates must have remembered that the States first united against danger threatened by their ancient government because of this assumed privilege—that people could plan for their safety and happiness. Committees and congresses concentrated their efforts, defending their rights. *Conventions* were *elected* in the *States* for establishing the constitutions under which they are now governed. Delegates could not have forgotten that no scruples or zeal for adhering to ordinary forms were seen, except from those who wished to indulge, under masks, their secret enmity towards their goal.

As they formed this new plan, delegates knew that, once framed, it would be submitted *to the people themselves*. They knew that if the people, the supreme authority, rejected the plan, it would be destroyed forever. Likewise, approval by the people blots out antecedent errors and irregularities.

The delegates might even have realized that once trivial objections were settled, whether they executed the amount of power vested in them or whether they recommended measures not a part of their commission, would not particularly face criticism, particularly if their recommendation met the national exigencies.

[17] Judging the Delegates

Keeping in mind these considerations, if the convention hadn't had the confidence in their country to point out a system they judged capable of securing its happiness, if they had coldly decided to disappoint the country's ardent hopes and sacrificed substance to form, thereby committing the dearest interest of their country to the uncertainties of delay and the hazard of events, let me ask the rational patriot—what judgment should the impartial world, the friends of mankind, every virtuous citizen, pronounce on the conduct and character of this assembly?

Or, if there is a man whose propensity to condemn is not susceptible to control, let me ask what punishment he has in reserve for the twelve States who *usurped power* by sending deputies to the convention, an action no where mentioned in their constitutions, for Congress, who recommended the appointment of this body, equally unknown to the Confederation, and for the State of New York, in particular, which first urged and then complied with this unauthorized interposition?

[18] Source of Good Advice Unimportant

To disarm the objectors of every pretext, let's agree for a moment that the convention was neither authorized by their commission nor justified by circumstances to propose a Constitution for their country. Does it follow that the Constitution ought, for that reason alone, to be rejected?

If, according to some noble precept, it is lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends?

∗ Declaration of Independence--Publius

In all cases, the prudent inquiry shouldn't be *from whom* the advice comes but whether the advice is *good.*

[19] Convention Didn't Exceed Authority

We have proved here that the charge against the convention, that it exceeded its power—except its change of the ratification process, a point rarely mentioned by the objectors—has no foundation.

And if they did exceed their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, exercising the liberty they assumed.

And finally, even if they violated both their powers and their obligations in proposing a Constitution, it ought, nevertheless, to be embraced, if it appears to accomplish the views and promote the happiness of the people of America. How far this properly characterizes the Constitution, is the subject under investigation.

PUBLIUS

Articles of Confederation:

Article 13	provision for altering Articles of Confederation
Article 2	States retain sovereignty
Article 5	State legislatures appointed congressional delegates
Article 9	direct tax: postage

Constitutional reference:

Article 1, Sec 3	Senators elected by State legislatures
Article 7	ratification process

41: Constitutionally Vested Federal Powers

The Constitution proposed by the convention may be considered from two general points of view.

first: quantity of power it vests in the federal government, including the restraints on the States

second: structure of the government and distribution of this power among its branches.

[2] Federal Power

Regarding federal powers, two important questions arise:

1. Are any of the powers transferred to the federal government unnecessary or improper?
2. Are the combined federal powers dangerous to those left to State jurisdictions?

[3] Is Federal Power Too Extensive?

Is the federal government's total power greater than should be vested in it?
This is the *first* question.

[4] Are Federal Powers Necessary?

Everyone aware of the arguments against the extensive powers of the government must have noticed that the people who object to the new Constitution rarely consider whether these powers are necessary to attain a necessary end. Instead they dwell on the inconveniences that must, unavoidably, be blended with political advantages, and the possible abuses that may result from that power or trust.

The American people won't be fooled by this method of handling the subject. It may show the subtlety of the writer. It may open a boundless field for rhetoric and declamation. It may inflame the passions of the unthinking and confirm the prejudice of the misthinking. But cool and candid people will immediately reflect that even the purest of human blessings are part alloy. The choice must always be made, if not of the lesser evil, at least of the greater, not the perfect, good.

In every political institution, a power to advance the public happiness involves a discretion that may be misapplied and abused. Therefore, whenever power is to be conferred, it must first be decided whether such a power is necessary for the public good.

If the Constitution is ratified, the next point will be to effectually guard against the misuse of power to the public detriment.

[5] Six Categories of Federal Power

To form a correct judgment on this subject, we will review the powers conferred on the federal government. As a convenience, they can be reduced into different classes as they relate to the following different issues:

1. Security against foreign danger.
2. Regulate intercourse with foreign nations.
3. Maintain harmony and intercourse in the States.
4. Miscellaneous objects of general utility.
5. Restraint of the States from certain injurious acts.
6. Provisions giving efficacy to these powers.

[6] 1. Security Against Foreign Danger

The powers within the *first* class are: declaring war and granting letters of marque, providing armies and fleets, regulating and calling forth the militia, levying and borrowing money.

[7] Primary Objective of Civil Society

Security against foreign danger is one of the primary objectives of civil society. It is an avowed and essential objective of the American Union. Federal councils must be entrusted with the powers required for attaining it.

[8] Declare War

Is the power to declare war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation established this power.

[9] Military

Is the power of raising armies and equipping fleets necessary? This is part of the previous power and involves the power of self-defense.

[10] Power to Raise Armies

But was an indefinte power of raising troops, as well as providing fleets necessary? Of maintaining both in peace as well as in war?

[11] Defense Must Equal Possible Offense

These questions have been too thoroughly discussed in another place to extensively discuss them here. The answer, indeed, seems so obvious and conclusive as scarcely to justify such a discussion in any place.

What justifies limiting a defensive force when the force of offense cannot be limited? If a federal Constitution could chain the ambition or limit the exertions of all other nations, then it might prudently chain the discretion of its own government and limit the exertions for its own safety.

[12] In Peacetime, Military Prevents War

How could a readiness for war in time of peace be safely prohibited, unless we could also prohibit the preparations of every hostile nation?

Security can only be regulated by the means and the danger of attack. It will always be determined by these rules and no others. It is vain to oppose

constitutional barriers to the impulse of self-preservation. It is worse than vain because it puts into the Constitution, itself, necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetition.

If one nation constantly maintains a disciplined army, ready to serve ambition or revenge, it forces the peaceful nations within its reach to take corresponding precautions.

The fifteenth century was the unhappy epoch of military establishments in the time of peace. They were introduced by Charles VII of France. All Europe has followed, or been forced to follow, the example. If the other nations hadn't built up their defenses, all of Europe would have long ago worn the chains of a universal monarch. If every nation except France were now to disband its peace establishments, the same event might follow. The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations, rendering her the mistress of the world.

[13] Military Endangers Liberty

It is true that the liberties of Rome became the final victim of her military triumphs. And the majority of European liberties, as far as they ever existed, have been the price of her military establishments. Therefore, a standing force is dangerous at the same time that it may be necessary.

On the smallest scale, it has inconveniences. On an extensive scale, its consequences may be fatal. On any scale, it deserves extreme caution.

A wise nation combines all these considerations. And while it doesn't rashly exclude itself from any resource that may become essential to its safety, it will prudently diminish both the necessity and the danger of resorting to a resource that may be unfortunate to its liberties.

[14] Union: Protects Against Foreign Army

The clearest marks of this prudence are stamped on the proposed Constitution. It secures the Union, which destroys every pretext for a military establishment that could be dangerous. America united, with a handful of troops or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited with a hundred thousand veterans ready for combat.

It was mentioned earlier that the lack of this pretext saved the liberties of one nation in Europe. Insulated by geography and impregnable maritime resources, the rulers of Great Britain have never been able, by real or fabricated dangers, to cheat the public into an extensive peacetime military establishment.

The distance of the United States from the powerful nations of the world gives them the same happy security. A dangerous military establishment can never be necessary or plausible, so long as the States continue to be united.

But let it never, for a moment, be forgotten that the States are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things.

The fears of the weaker or ambition of the stronger States, or Confederation, will set the same example in the New World as Charles VII did in the Old World. The same motives that produced universal imitation in the Old World will produce the same here. Instead of taking from our situation the precious advantage that Great Britain has taken from hers, America would become a copy of the European continent. Liberty would be crushed between standing armies and perpetual taxes. The fortunes of a disunited America would be more disastrous than those of Europe. The sources of evil in Europe are confined by geography. No superior powers from other parts of the globe will ally with her rival nations, inflame their mutual animosities, and make them the instruments of foreign ambition, jealousy, and revenge.

However, in America the miseries springing from internal jealousies, contentions, and wars, would form only part of her problem. An additional and plentiful source of evil resides in the unique relationship between Europe and this part of the earth.

[15] Disunion: Disastrous Consequences

The consequences of disunion cannot be too strongly or too often stated. Every man who loves peace, every man who loves his country, every man who loves liberty, should always have it before his eyes, so he may cherish an attachment to the Union of America and set an appropriate value on the way of preserving it.

[16] Military Appropriations

Next to the establishment of the Union, the best possible precaution against danger from standing armies is limiting the term that revenues may be appropriated for their support. The Constitution has prudently added this precaution.

I won't repeat the observations, which I flatter myself have shown this subject in a just and satisfactory light. But it may be proper to take notice of an argument against this part of the Constitution that draws from the policy and practice of Great Britain.

It is said that continuing an army in that kingdom requires an annual vote of the legislature, where the American Constitution has lengthened this critical period to two years. This is how the comparison is usually stated to the public. But is it a fair comparison? Does the British Constitution restrain the parliamentary discretion to one year? Does the American require two-year Congressional appropriations?

On the contrary, the authors of the fallacy must know that the British Constitution fixes no limit whatever to the discretion of the legislature and that the American limits the legislature to no more than two years.

[17] British vs. United States Constitution

If the argument from the British example had been honestly stated, it would have been: Although the British Constitution contains no term limit for appropriating supplies to the army establishment, in practice the parliament has limited it to a single year.

In Great Britain, the House of Commons is elected for seven years. A great proportion of the members is elected by a small proportion of the people. The electors are corrupted by the representatives and the representatives are corrupted by the Crown. The representative body has the power to make appropriations to the army for an indefinite term beyond a single year.

Shouldn't we be suspicious about those who pretend that the representatives of the United States, elected freely by the whole body of the people every second year, cannot be safely entrusted with the discretion over such appropriations, expressly limited to the short period of two years?

[18] Union Prevents Multiple Armies

A bad cause seldom fails to betray itself. The management of the opposition to the federal government is an unvaried example of this truth. But among all their blunders, none is more striking than the attempt to enlist the support of people who have prudent concerns about a standing army.

This attempt has awakened the public attention to an important subject. It has led to investigations that will terminate in a thorough and universal conviction that the Constitution provides the most effectual guards against danger from that area. It will also lead to the conclusion that nothing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America from having as many standing armies as States, or Confederacies, after the Union splits. The progressive augmentation of armies, if the States disunite, will endanger properties and liberties more than any establishment of armies necessary under a united and efficient government, which will have tolerable property burdens and preserve liberty.

[19] Navy Has Avoided Censure

The clear necessity to provide and maintain a navy has protected that part of the Constitution against the censure that has spared few other parts. It must, indeed, be numbered among American's greatest blessings that, since her Union will be the only source of her maritime strength, it will be a principal source of her security against danger from abroad.

In this respect, our situation bears another similarity to the insular advantage of Great Britain. And, happily, the batteries most capable of repelling foreign enterprises on our safety [the navy] are happily such as can never be turned by a perfidious government against our liberties.

[20] New York Seacoast Vulnerable

The inhabitants of the Atlantic coastline are deeply interested in this provision for naval protection. Until now, they have slept quietly in their beds, their property has remained safe against the predatory spirit of licentious adventurers, and their maritime towns haven't yet been forced to ransom themselves from the terrors of a conflagration, paying the blackmailing invaders. This good fortune is not the result of the existing government's capacity to protect its citizens. Rather, it has resulted from fugitive and fallacious causes.

Except for Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no State should be more anxious about this subject than New York. Her seacoast is extensive. A very important part of the State is an island. A large navigable river penetrates the State for more than 50 leagues. [A league is about 3 miles.] The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events. It could almost be regarded as a potential hostage to the dictates of a foreign enemy or even the rapacious demands of pirates and barbarians.

If a war results from the precarious situation of European affairs and all the unruly passions are let loose on the ocean, it will be truly miraculous if we escape attacks and plundering from Europe and the countries bordering it. In America's present condition, the States most exposed to these calamities have no hope of help from the current phantom national government. If State resources were substantial enough to fortify them against the danger, the object to be protected would be almost totally consumed by the means of protecting it.

[21] Regulating, Calling Forth Militia

The power of regulating and calling forth the militia has already been sufficiently justified and explained.

[22] Import Duties Will Decline

The power of levying and borrowing money, the financial support of the national defense, properly falls into the same class. This power has already been closely examined and has been clearly shown, I trust, necessary in both the extent and form given it by the Constitution.

I will address one more point to those who believe that the power of taxation should be limited to external taxation, by which they mean taxes on articles imported from other countries. Of course, this will always be a valuable source of revenue. For a long time, in fact, it must be the principal source. And at this moment, it is essential.

But we may form very mistaken ideas on this subject if we do not remember to include in our calculations how the revenue from foreign commerce will vary with both the extent and the kind of imports. And these variations won't correspond with the progress of our population, which is the general measure of the public wants. As long as agriculture continues to be the sole field of labor, importation of manufactured goods will increase as consumers multiply. As soon as domestic manufacturers employ hands not needed for agriculture, imported manufactured goods will decrease as the numbers of people increase. Eventually, imports may primarily be raw materials that will be made into articles for exportation and will, therefore, require encouragement of bounties rather than loaded with discouraging duties. A durable system of government should

remember these cycles and be able to accommodate itself to them.

[23] Tax Clause Not Unlimited Power

Some, who don't deny the necessity of the power of taxation, have based their fierce attack against the Constitution on the language defining this power. They repeatedly contend that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," amounts to an unlimited license to exercise any and every power that may be alleged to be necessary for the common defense or general welfare.

There is no stronger proof of how far these writers will reach to find objections to the Constitution than their stooping to such a misconstruction.

[24] Broad Interpretation of Clause

Had no other enumeration or definition of Congressional powers been found in the Constitution than the general expression just cited, the critics might have found some basis for the objection, although it would have been difficult to find a reason for such an awkward way to describe an authority to legislate in all possible cases. "To raise money for the general welfare" must be an extraordinary phrase if it includes the power to destroy the freedom of the press, the trial by jury, or even regulate the course of descents, or the forms of conveyances.

[25] Illogical Objections

But how will the objection be slanted when the issues alluded to in general terms are specifically mentioned immediately following the clause, not even separated by a longer pause than a semicolon?

If different parts of the Constitution are magnified in this way, adding meanings everywhere it is possible, should the pertinent part of a sentence be excluded while keeping all the more doubtful and ambiguous terms?

Why would specific powers be enumerated, if they were meant to be included in the preceding general power? Nothing is more natural than to first use a general phrase and then to explain and qualify it by a recital of particulars. But the idea of enumerating specifics that neither explain nor qualify the general meaning and can have no other effect than to confuse and mislead is absurd. Since we are reduced to the dilemma of charging this absurdity on either the authors of the objection or the authors of the Constitution, we must take the liberty of guessing it didn't originate with the latter.

[26] Constitution Copies Articles

The objection here is even more extraordinary because the language in the Constitution appears to be a copy of that in the Articles of Confederation. The objective of forming a Union among the States, as described in article three, is "their common defense, security of their liberties, and mutual and general welfare." The terms of article eight are even more identical: "All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress, shall be defrayed out of a common treasury," etc. Similar language again occurs in article nine.

If we construe either of these articles by the rules objectors have used on the new Constitution, they give the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of Congress if it had locked onto these general expressions, disregarding the specifications that define and limit their meaning, and exercised an unlimited power of providing for the common defense and general welfare?

I ask those who are making the objections whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation!

Publius

Constitutional references:

Article 1, section 8 military defense
Article 1, section 8 taxes; defense
Article 1, section 8 borrow money, regulate commerce

42: 2. Regulate International, Interstate Intercourse

The national government's *second* class of powers are those that regulate the intercourse with foreign nations.

The national government will make treaties, send and receive ambassadors, ministers, and consuls, define and punish piracies and felonies committed on the high seas and against the law of nations, regulate foreign commerce including a power to prohibit, after 1808, the importation of slaves and, until then, lay a duty of ten dollars per head as a discouragement to such importations.

[2] World Must See Us as One Nation

It is obvious that the federal government should have this essential class of powers. If we are to be one nation in any respect, it clearly should be in respect to other nations.

[3] Treaties, Ambassadors, Consuls

By their nature, the powers to make treaties, and send and receive ambassadors belong to the federal government. Both are in the Articles of Confederation, with two small differences.

The Constitution removes a phrase under which treaties might be substantially frustrated by State regulations.

And the term ambassador, if interpreted strictly, as seems to be required by the Articles of Confederation, includes only the highest rank of public ministers and excludes the lower level officials that the United States will probably prefer where foreign embassies may be necessary. And under no interpretation will the term include consuls. Yet it has been found expedient and become the practice of Congress to employ lower levels of public ministers, and to send and receive consuls.

[4] Foreign Consuls: Crucial Correction

When commercial treaties require a mutual appointment of consuls whose duties are connected with commerce, admitting foreign consuls into the United States may fall within the power of making commercial treaties.

When no commercial treaties exist, establishing American consuls in foreign countries may *perhaps* be covered under the authority of article nine of the Confederation to appoint all such civil officers necessary for managing the general affairs of the United States.

But admitting consuls into the United States, where no treaty has stipulated it, seems not to have been provided for in the Articles of Confederation. Correcting this omission is one of the smaller things improved by the constitutional convention. But the tiniest provisions become important when they tend to anticipate and prevent the necessity, or the pretext, for gradual, unobserved usurpations of power.

A list of the cases where Congress has betrayed or been forced into violating its chartered authorities, because of defects in the Articles of Confederation, would surprise people who haven't paid attention to the subject. These corrections make a strong argument in favor of the new Constitution, which has given as much attention to the small provisions as to the more obvious and striking defects of the Articles of Confederation.

[5] Piracies, Felonies on High Seas

The power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations, also belongs to the national government. It is a great improvement on the Articles of Confederation.

The Articles contain no provision in the case of offenses against the law of nations. Consequently, one indiscreet State could embroil the Confederation with foreign nations.

The provision in the Articles of Confederation on the subject of piracies and felonies extends no further than the establishment of courts to try these offenses.

The definition of piracies might, without being inconvenient, be left to the law of nations, even though a legislative definition of them is found in most municipal codes.

A definition of felonies on the high seas is evidently required. The term "felony" has many definitions, even in the common law of England. It is given various meanings in English statute law. But neither the common nor statute law of England, or any other nation, should be the standard unless already adopted by legislation in the United States.

Using the term as defined by the codes of several States would be as impractical as using it as defined by England and other nations would be dishonorable and illegitimate. It is not defined precisely the same in any two of the States, and varies in each State with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the power to define "felonies" in this case was absolutely necessary and proper.

[6] Commerce, Federal Jurisdiction

The regulation of foreign commerce has been so fully discussed that it needs no additional proofs here of its being properly under federal jurisdiction.

[7] Slave Trade Abolished in 1808

It is wished, without a doubt, that the power to prohibit the importation of slaves had not been postponed until 1808, that there was an immediate ban. But it isn't difficult to explain this restriction on the national government and the way the whole clause is expressed.

It should be considered a great point gained in favor of humanity that in 20 years, a traffic that has so long and so loudly been upbraided as barbarism, may be terminated forever within these States. During that period, it will receive considerable discouragement from the federal government. And it may be totally abolished if the few States that continue the unnatural traffic agree to prohibit it like the majority of the Union. It would be happy for the unfortunate Africans if an

equal prospect lay before them of being redeemed from the oppressions of their European brethren!

[8] Extreme Arguments against Constitution

Some opponents have perverted this clause into an objection against the Constitution. One side says it is a criminal toleration of an illicit practice. The other says it's calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not as an answer to them, because they deserve none, but to show the manner and spirit of some people opposing the proposed government.

[9] 3. Provide Harmony, Intercourse Among States

The powers included in the *third* class are those providing for the harmony and proper intercourse among the States.

[10] Brief Review of Third Class of Powers

This classification could include the restraints imposed on State authority and certain judicial power. But the former are reserved for a distinct class and the latter will be examined when we discuss the structure and organization of the government.

I will confine myself to a brief review of the remaining powers under this third description. They are: to regulate commerce among the States and the Indian tribes, to coin and regulate the value of money, to punish counterfeiting coins and securities of the United States, to fix the standard of weights and measures, to establish a uniform rule of naturalization and uniform laws of bankruptcy, to prescribe the manner that public acts, records, and judicial proceedings of each State will be proved and the effect they will have in other States, and to establish post offices and post roads.

[11] Regulate Commerce among States

Experience has clearly shown the existing Confederacy defective in its power to regulate commerce between the States. To the remarks made in other papers on this subject may be added that, without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual.

An important objective of this power was to give relief to the States that import and export through other States and are forced to pay improper contributions levied on them. If the intermediary States were at liberty to regulate trade between States during the passage through their jurisdiction, they would load the articles of import and export with duties that would have to be paid by manufacturers and consumers. Past experience assures us that such a practice would be introduced by future contrivances. Experience and human psychology shows it would nourish unceasing animosities and probably end in serious interruptions of the public tranquility.

To people without a vested interest in the question, this desire of commercial States to collect indirect taxes from their uncommercial neighbors must appear even more politically inexpedient than it is unfair. Resentment and self-interest would stimulate the injured party to find less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of a larger and permanent interest, is too drowned by the clamors of an impatient avarice for immediate and immoderate gain.

[12] Federal Supervision Interstate Commerce

The necessity of a superintending authority over the reciprocal trade of confederated States has been illustrated by other examples as well as our own.

In Switzerland, where the union is very slight, each canton [state] must allow merchandise passage through its jurisdiction into other cantons without additional tolls.

It is a law in the German empire that the princes and states shall not put tolls or customs on bridges, rivers, or passages without the consent of the emperor and the diet [governing body]. It appears from a quotation in an earlier paper that in practice this law, like many others in the German confederacy, has not been followed, producing the mischiefs predicted here.

Among the restraints imposed by the Union of the Netherlands on its members, one is that they shall not establish imposts disadvantageous to their neighbors without the general permission.

[13] Regulate Commerce: Indian Tribes

In the proposed Constitution, the regulation of commerce with the Indian tribes is very properly released from two limitations in the Articles of Confederacy, which render the provision obscure and contradictory.

In the Articles, the power to regulate trade is limited to Indians, not members of any State. And it is not supposed to violate or infringe on the legislative right of any State within its own borders.

Which Indians are supposed to be described as members of a State is not yet settled and has been a frequent question of perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State yet residing within its legislative jurisdiction, can be regulated by an external authority without intruding on the internal rights of State legislation, is absolutely incomprehensible.

This is not the only case in which the Articles of Confederation have inconsiderately endeavored to accomplish impossibilities. One is reconciling a partial sovereignty in the Union with complete sovereignty in the States. This subverts a mathematical axiom—by taking away a part, yet letting the whole remain.

[14] Coin Money, Regulate Value of Currency

Concerning the power to coin money and regulate its value and the value of foreign coin, by providing for this last case, the Constitution supplies a material omission in the Articles of Confederation. Currently, Congress only regulates the value of coin *struck* by its own authority or the States. It must be obvious that the proposed uniformity in the *value* of the currency might be destroyed if foreign currency was valued differently by the different States.

[15] Punish Counterfeiters

The authority to punish counterfeiters of public securities and currency is given to that part of the government responsible for securing the value of both.

[16] Regulate Weights and Measures

The regulation of weights and measures is transferred from the Articles of Confederation and is based on similar considerations as the preceding power of regulating coin.

[17] National Naturalization Rule

The dissimilarity in the naturalization rules has long been mentioned as a fault in our system. And it has been the reason for intricate and delicate questions.

The fourth Article of the Confederacy declares "that the *free inhabitants* of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of *free citizens* in the several States; and *the people* of each State shall, in every other, enjoy all the privileges of trade and commerce," etc.

The confusing language is remarkable. Why were the terms *free inhabitants* used in one part, *free citizens* in another, and *people* in another? Or what was meant by adding to the phrase "all privileges and immunities of free citizens," "all the privileges of trade and commerce," cannot easily be determined.

However, there seems to be an unavoidable assumption: people defined as *free inhabitants* of one State—but who are not citizens of that State—are entitled, in every other State, to all the privileges of *free citizens*. In other words, they may be entitled to greater privileges than in their home State. Therefore, every State must give citizenship rights to any person who lives in a different State but who, if he lived in the State, would qualify to be a citizen, *and* to anyone whom it allows to become inhabitants within its jurisdiction.

If the term "inhabitants" was defined so that only "citizens" could have the stipulated privileges, the difficulty would only be diminished, not removed. Each State would still retain the very improper power to naturalize aliens in every other State.

For example, let's say that in one State a short-term resident fulfills all criteria for citizenship. In another, greater qualifications are required. An alien, therefore, who legally doesn't have certain rights in the latter, only has to first reside in the former to elude the greater qualifications in the latter. Thus, pre-posterously, the law of the first State is dominant to the law of the second, within the jurisdiction of the second State.

We have escaped embarrassment on this subject only by good luck. Several States had laws that described some resident aliens as subjects of a different State. They lived under prohibitions inconsistent not only with the rights of citizenship but with the privilege of residence. What would have happened if such persons, by residence or otherwise, had become citizens under the laws of another State, then demanded their rights to both residency and citizenship within the State which prohibited it? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature not to be provided against.

The new Constitution, properly, makes provision against this problem, and all others proceeding from the defect of the Confederation on this subject, by authorizing the general government to establish a uniform rule of naturalization throughout the United States.

[18] Uniform Bankruptcy Laws

The power to establish uniform laws of bankruptcy is so intimately connected with the regulation of commerce and will prevent so many frauds, where the people or property may live or be taken into different States, that the expediency of it seems not likely to be drawn into question.

[19] Validity of Public Records

The power of prescribing by federal laws the manner that public acts, records, and judicial proceedings of each State will be proved, and the effect they shall have in other States, is clearly a valuable improvement on the clause relating to this subject in the Articles of Confederation. The meaning of the Articles is extremely indeterminate and can have little importance under any likely interpretation.

This Constitutional power may become a very convenient instrument of justice. It will be particularly beneficial on the borders of contiguous States where the effects liable to justice may be suddenly and secretly translated, in any stage of the process, within a foreign jurisdiction.

[20] Post Roads Help Commerce in States

In every view, the power of establishing post-roads must be a harmless power and may, perhaps, by judicious management, produce a great public conveniency. Nothing that tends to facilitate intercourse between the States can be deemed unworthy of public care.

Publius

Constitutional references:

Article 2, sec 2	treaties
Article 2, sec 2	appoint ambassadors, consuls
Article 2, sec 3	receive ambassadors, ministers
Article 1, sec 8	commerce: foreign/interstate/Indians
Article 1, sec 8	piracies, law of nations
Article 1, sec 9	importation of slaves

Article 1, sec 10	restraints on State authority
Article 3, sec 1-3	judicial authority
Article 1, sec 8	coin, regulate money
Article 1, sec 8	counterfeiting
Article 1, sec 8	weight and measures
Article 1, sec 8	naturalization
Article 1, sec 8	bankruptcy
Article 4, sec 1	public acts, records proved
Article 1, sec 8	post offices, roads

Articles of Confederation**:**

Article 9	make treaties
Article 9	send, receive ambassadors
Article 6	no State treaties, ambassadors
	ambassador, strict interpretation
Article 9	trial piracies
Article 9	regulate commerce with Indians
Article 9	U.S. regulates coin value
Article 9	weights, measures
Article 4	naturalization

43: 4. Miscellaneous Federal Powers

The *fourth* class of powers includes:

[2-3] Copyrights, Patents

A power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their writings and discoveries."

The usefulness of this power will hardly be questioned. Great Britain's courts have solemnly judged that the copyright of authors is a right of common law.

The right to obtain the useful benefits of their inventions seems, with equal reason, to belong to inventors.

In both cases, the public good fully coincides with the claims of individuals. The States, individually, cannot make effectual provisions in either of these cases. Most States anticipated this decision, passing laws recommended by Congress.

[4-5] Federal Capital

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

The indispensable necessity of complete independence at the seat of government is self-evident. This power is exercised by every legislature in the Union, I might say in the world, simply because of its general supremacy. Without it, the public authority might be demeaned and its proceedings interrupted with impunity. And if the federal government depends on the State where the seat of government is located for protection, that State might have an imputation of awe or influence on the national councils, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy.

This consideration will have more weight as public improvements in the permanent residence of the government gradually accumulate. This would become too great a public trust to be left in the hands of a single State, creating too many obstacles to moving the government, still further limiting its necessary independence.

The size of this federal district is sufficiently restricted to satisfy every jealousy of an opposite nature. The State ceding the land for this use will consent. No doubt, that State will assure the rights and the consent of the citizens of the district in its compact with the federal government. The inhabitants will find sufficient inducements of interest to become willing parties to the cession. They will elect the municipal legislature that is to exercise authority over them. The legislature of the State, representatives of the entire population of the State, and the inhabitants of the ceded part will concur on the cession, and in their adoption of the Constitution. Therefore, every imaginable objection seems to be obviated.

[6] Forts, Arsenals, Etc

That the federal government must have authority over forts, military depots, arsenals, dockyards, etc., is evident. The public money spent on such places, and the property and equipment stored there, requires that they should be exempt from the authority of a State. Nor is it proper that the places so important to the security of the entire Union may depend, to any degree, on one State.

Objections are prevented by requiring the concurrence of the States concerned in every such establishment.

[7-8] Treason: Definition, Punishment

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

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

Since treason may be committed against the United States, the United States should have the authority to punish it. However, violent factions, the natural offspring of free government, have created new, artificial treasons, and used them as an excuse for malicious vengeance against each other. The convention has, prudently, erected a barrier against this specific danger by inserting a constitutional definition of the crime, fixing the proof necessary for conviction, and restraining Congress from extending the consequences and punishment beyond the guilty person.

[9-10] Creation of New States

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress."

The Articles of Confederation have no provision on this important subject. Canada was to be admitted of right, on her joining in the measures of the United States. And other *colonies*, by which were evidently meant the other British colonies, could be admitted at the discretion of nine States.

The eventual establishment of *new States* seems to have been overlooked by the compilers of the Articles. We have seen the inconvenience of this omission and how it has led Congress into an

assumption of power. Quite properly, therefore, the new system corrects the defect.

The general precaution, that no new States will be formed without the concurrence of the federal authority and the States concerned, is appropriate to the principles governing such transactions. The specific precaution against the forming new States by partitioning a State without its consent, quiets the jealousy of the larger States, just as that of the smaller States is quieted by a similar precaution, against joining States without their consent.

[11-12] Congress Regulates U. S. Territory

"The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

This very important power is required for reasons similar to the last one. The proviso is proper and probably necessary by jealousies and questions about the Western territory.

[13-14] Republican Government in Each State

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasions, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."

In a confederacy founded on republican principles and composed of republican members, the superintending government should clearly possess the authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater the interest of the members in the political institutions of each other. And the greater the right to insist on the form of government to be *substantially* maintained.

But a right implies a remedy. And where else could the remedy be found than in the Constitution?

Governments of dissimilar principles and forms are less adaptable to a federal coalition than those of a similar nature. "As the confederate republic of Germany," says Montesquieu, "consists of free cities and petty states, subject to different princes, experience shows us that it is more imperfect than that of Holland and Switzerland . . . Greece was undone," he adds, "as soon as the king of Macedon obtained a seat among the Amphictyons." In the latter case, no doubt, the disproportionate force, as well as the monarchical form of the new confederacy, influenced events.

It may be asked why this precaution is needed and whether it may become a pretext for alterations in the State governments without the States themselves agreeing. These questions have answers.

If the federal government's intervention isn't needed, the Constitutional provision will be harmlessly superfluous. But who can say what experiments will be tried by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers?

As to the second part of the question, if the national government uses this constitutional authority to interpose, it will be, of course, bound to pursue the authority. But the authority extends no further than a *guarantee* of a republican form of government, which assumes a pre-existing government of the form guaranteed. Therefore, as long as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have the right to do so and to claim the federal guarantee. The only restriction is that they shall not exchange republican for anti-republican Constitution, a restriction that, it is presumed, will hardly be considered a grievance.

[15] States Protected Against Invasion

Every part of a society is entitled to protection against invasion. The latitude expressed in the Constitution seems to secure each State, not only against foreign hostility but against ambitious vindictive enterprises of its more powerful neighbors. The history both of ancient and modern confederacies proves that the weaker members of the union should not be indifferent to the policy of this article.

[16-17] Union Protection: Domestic Violence

Protection against domestic violence is also proper. Even among the Swiss cantons that, properly speaking, are not under one government, provision is made for this. That league's history informs us that mutual aid is frequently claimed and given, by both the democratic as well as other cantons.

A recent, well-known event among ourselves has warned us to be prepared for similar emergencies.

At first view, it might not seem to square with the republican theory to suppose either that a majority has no right or that a minority will have the force to subvert a government. And, consequently, that federal intervention can never be required except when it would be improper. But theoretic reasoning must be qualified by the lessons of practice. Couldn't a conspiracy, planning violence, be formed by a majority of a State, especially a small State, just as it could happen in a county, or a district within a State? If the State authority should, in the latter case, protect the local officials, then shouldn't the federal authority, in the former, support the State authority?

Besides, certain parts of the State constitutions are so interwoven with the federal Constitution that a violent blow to one cannot avoid wounding the other.

Insurrections in a State will rarely induce a federal interposition, unless the number involved is large compared to the friends of the government. In such cases, it will be better if the violence is repressed by the superintending power than having the majority left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose will generally prevent the necessity of exerting it.

[18] Strength May Not be on Ethical Side

Is it true that force and right are necessarily on the same side in republican government? Might not the minority party possess such a superiority of monetary resources, military talents and experience, or secret aid from foreign powers, to render it a superior military force?

Might not a more compact and advantageous position tip the scale against a superior number that may be in a weaker situation, unable to quickly and effectively respond? Nothing is less realistic than imagining that in actual battles the larger number of citizens assures victory. Cannot a minority of citizens become a majority of persons by adding alien residents, mercenaries, or people in the State without voting rights?

I take no notice of an unhappy species of population abounding in some of the States who, during the calm of regular government, are sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into the human character, giving a superiority of strength to any party with which they may associate themselves.

[19] Other States Act as Impartial Judges

In cases where it may be doubtful on which side justice lies and two violent factions are tearing a State to pieces, what better umpires could be desired than the representatives of States not heated by the local battles? They could act with the impartiality of judges and the affection of friends. It would be wonderful if all free governments enjoyed such a remedy for its infirmities. And if an equally effective project could be established for universal peace!

[20] Less Risk of Nation-Wide Insurrection

If it is asked: What is the redress for an insurrection pervading all the States with a superior force but not a constitutional right? The answer must be: Such a case is outside the ability of human remedies and probably would not occur. This is a sufficient recommendation of the federal Constitution: it diminishes the risk of a calamity for which no possible constitution can provide a cure.

[21] Republic: Remedy Abuse in One Part

Among the advantages of a confederate republic enumerated by Montesquieu, an important one is, “that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound.”

[22] Confederacy Debts Valid

“All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.” [Article 6, lines 578-582]

[23-24] Recognizing Debts Satisfies Foreign Creditors

This can be considered a declaratory proposition. Among other reasons, it may have been inserted to satisfy foreign creditors of the United States, who are probably aware of the pretended doctrine—that a change in the political form of civil society has the magical effect of dissolving its moral obligations.

One of the lesser criticisms of the Constitution is that the validity of engagements in favor of the United States should have been asserted, as well as those against them. And in the spirit that usually characterizes little critics, the omission has been transformed and magnified into a plot against national rights. The authors of this criticism may be told what many others already know that, by their nature, engagements are reciprocal, an assertion of their validity on one side, necessarily involves a validity on the other side. Since the article is merely declaratory, the establishment of the principle in one case is sufficient for every case. Further, every constitution must limit its precautions to dangers that are not altogether imaginary. And no real danger can exist that the government would dare, with or without this constitutional declaration, to remit the debts justly due to the public, on the pretext here condemned.

[25-26] Amending the Constitution

“To provide for amendments to be ratified by three fourths of the States, under two exceptions only.”

Experience will suggest useful alterations. A way to introduce them was required. The way preferred by the convention seems totally proper. It guards equally against an extremely easy amendment process that would make the Constitution too mutable and an extremely difficult process that would preserve the faults discovered within it. Moreover, the federal and the State governments are equally able to originate the amendment of errors, as experience shows them to one side or the other.

The exception in favor of equal suffrage in the Senate was probably meant as a safeguard to the remaining sovereignty of the States, secured by equal representation in one branch of the legislature. The States particularly concerned with that equality probably insisted on it.

The other exception must have been admitted on the same considerations that produced the privilege defended by it.

[27] Ratification by Nine States

“The ratification of the Conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same.”

[28-29] Unanimous Ratification

This article speaks for itself. The authority of the people alone could validate the Constitution. To require the unanimous ratification of the thirteen States would have exposed the essential interests of the entire Union to the caprice or corruption of a single State. This would have shown a lack of foresight by the convention that our own experience would have rendered inexcusable.

Two delicate questions present themselves:

1. On what principle can the Confederacy, which exists under a solemn compact among the

States, be superseded without the unanimous consent of the parties to it?

2. What relationship will exist between the nine or more States ratifying the Constitution and the remaining few who do not become parties to it?

[30] Majority of States Ratify

The first question is immediately answered by reiterating that it is absolutely necessary. The great principle of self-preservation, which is both a transcendent law of nature and God, that the safety and happiness of society are the aims of all political institutions, to which all such institutions must be sacrificed.

Perhaps an answer may also be found without searching beyond the principles of the compact itself. It has been noted that among the defects of the Confederacy is that in many of the States it received no higher sanction than a mere legislative ratification. The principle of reciprocity seems to require that its obligation on the other States should be reduced to the same standard.

A compact between independent sovereigns, founded on ordinary acts of legislative authority, has no higher validity than a league or treaty between the parties. Treaties are only mutual conditions of each other. A breach of any one article in a treaty is a breach of the whole treaty. A breach committed by either party absolves the others, authorizes them, if they want, to pronounce the compact violated and void.

If it should, unhappily, be necessary to appeal to these delicate truths to justify not receiving the consent of particular States to dissolve the federal pact, won't the complaining parties find it difficult to answer the multiple and important violations pointed out to them? Previously, the ideas presented in this paragraph were played down. The scene has changed and so has the part that the same motives dictate.

[31] Hopeful Relationships Will Remain Good

The second question is also delicate. And the hope that it is merely hypothetical, that all States will ratify the Constitution, forbids an over-curious discussion of it. It is one of those cases that must be left to provide for itself.

It may be observed in general that although no political relationship can continue to exist between the assenting and dissenting States, yet the moral relationships will remain uncancelled. Claims of justice on both sides will be in force and must be fulfilled. The rights of humanity must always be duly and mutually respected. Hopefully, considerations of a common interest and, above all, the remembrance of the endearing scenes past the anticipation of a speedy triumph over the obstacles to reunion, will urge moderation on one side and prudence on the other.

Publius

Article 1, sec 8	copyrights, patents
Article 1, sec 8	capital, forts, arsenals
Article 3, sec 3	treason
Article 4, sec 3	creation of new States
Article 4, sec 3	U.S. territory
Article 4, sec 4	republican government in States
Article 1, sec 8	protect against invasion, domestic violence
Article 6	Confederacy's debts valid
Article 5	amending
Article 7	ratifying

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5. Provisions Restricting State Authority

A *fifth* class of provisions in favor of the federal authority consists of the following restrictions on the authority of the States:

[2] States Shall Not . . .

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

[3] Treaties, Alliances, Letters of Marque

The prohibition against treaties, alliances, and confederations is part of the existing Articles of Union. For reasons that need no explanation, it is copied into the new Constitution.

The prohibition of letters of marque [retaliation through confiscation] is another part of the old system, but is somewhat extended in the new. The Articles of Confederation allowed States to grant letters of marque after a declaration of war. In the Constitution, these licenses must be obtained, both during and before war, from the government of the United States. The advantage of uniformity in foreign policy justifies this change. As does the States' responsibility to the nation, which is itself responsible for the conduct of every State.

[4] States Can't Coin Money

The Confederacy gave both the States and the Union the right to coin, with Congress exclusively, regulating its alloy and value. The new provision takes the right to coin money away from the States and is an improvement.

The federal authority has regulated the alloy and value of coins. Allowing the States to manufacture coins has created two problems: (1) many expensive mints, and (2) a diversify of shape, size, and weight of coins. The power to coin money was originally given to the federal government to standardize coinage. State mints were created to prevent the inconvenience of transporting gold and silver to the central mint for recoinage. These problems can be solved by having local mints established under the national authority.

[5] No State Bills of Credit

Prohibiting bills of credit must give pleasure to every citizen that loves justice and understands the true source of public prosperity. Since the peace, America has sustained the destructive effects of paper money on the confidence so necessary between man and man, in public councils, in industry, and in the republican government. It constitutes an enormous debt against the issuing States that must long remain unsatisfied. Or it will remain an accumulation of guilt that can only be expiated by a voluntary sacrifice on the altar of justice by the State that issued it.

In addition to these persuasive considerations, the reasons that show the necessity of denying States the power to regulate coin, also prove that they should not be allowed to substitute a paper medium for a coin. If every State could regulate the value of its coin, there might be as many different currencies as States, impeding the intercourse among them. Retroactive alterations in its value would injure the citizens of other States, kindling animosities among the States themselves.

The citizens of foreign nations might suffer from the same cause, discrediting and embroiling the Union by the indiscretion of a single State. These mischiefs are just as likely to occur if the States issue paper money, as if they coin gold or silver.

The power to make anything but gold and silver a tender in payments of debts is withdrawn from the States, using the same principle with that of issuing a paper currency.

[6] Bills of Attainder, *Ex Post Facto* Laws

Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts are contrary to the first principles of the social compact and every principle of sound legislation. The two former are expressly prohibited by the prefixes to some of the State constitutions, and all are prohibited by the spirit and scope of the State constitutions.

Our experience, nevertheless, has taught us to create additional fences against these dangers. Very properly, therefore, the convention added this constitutional bulwark in favor of personal security and private rights. I believe that by doing this, they faithfully reflected the genuine sentiments of their constituents. The sober people of America are weary of fluctuating policy directing public councils. They have been both indignant and remorseful at sudden legislative interferences affecting personal rights that have brought profits to enterprising and influential speculators and snares to the more-industrious and less-informed part of the community.

They have seen, too, that one legislative interference is just the first link of a long chain of repetitions, every subsequent interference comes through the effects of the preceding. They very correctly infer, therefore, that some thorough reform is needed, a reform that will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.

The prohibition against titles of nobility is copied from the Articles of Confederation and needs no comment.

[7] Taxes, Troops, Foreign Compacts

2. "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of

all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

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

[8] No State Import, Export Duties

The restraint on the States over imports and experts is enforced by all the arguments proving that regulation of trade should be handled by the federal councils. Therefore, further remarks on this are unnecessary, except to say that the restraint's one qualification gives the States reasonable discretion to facilitate their imports and exports, and gives the United States a reasonable check against the abuse of this discretion.

The remaining particulars of this clause fall within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark.

6. Provisions Giving Efficacy to All the Other Powers

The *sixth* and last class consists of the powers and provisions that give efficacy to all the rest. These fall into four categories.

[10] 1. Make Necessary and Proper Laws

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

[11] Opposition

Few parts of the Constitution have been assailed with more intemperance than this. Yet on objective investigation, no part appears more completely invulnerable. Without the *substance* of this power, the whole Constitution would be a dead letter.

Therefore, people who object to it being in the Constitution must mean that the *form* of the provision is improper. But have they considered whether a better form could have been substituted?

[12] Alternatives to Clause

There are four other approaches the Constitution might have taken on this subject:

1) They could have copied article two of the existing Confederation, prohibiting the exercise of any power not *expressly* delegated.

2) They might have attempted listing every power included under the general terms "necessary and proper."

3) They could have attempted a negative listing, specifying the powers not falling under the general definition.

4) Or they might have been completely silent on the subject, leaving these necessary and proper powers to interpretation and inference.

[13] Adopting Article Two of Confederation

["Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."]

If the convention had adopted the Second Article of Confederation, the new Congress would be continually exposed, as its predecessors have been, to two diametrically opposite alternatives:

1) Either the term "*expressly"* is rigorously construed, stripping the federal government of all real authority.

2) Or it is interpreted so widely that it completely destroys the force of the restriction.

It would be easy to show, if necessary, that no important power delegated by the Articles of Confederation has been or can be executed by Congress without returning, more or less, to either the doctrine of *construction* or *implication.*

Since the new Constitution delegates extensive powers, the government administering it would face the dilemma of betraying the public interests by doing nothing or violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not *expressly* granted.

[14] List of Necessary & Proper Powers

If the convention had attempted to list every power necessary and proper for carrying out their other powers, it would have meant listing every law on every subject to which the Constitution relates. They would have had to also accommodate, not only the existing state of things, but all possible future changes. For every new application of a general power, the *particular powers,* which are the means of attaining the *objective* of the general power, must vary as the objective changes, or vary while the objective remains the same.

[15] List Powers *Not* Necessary & Proper

If they attempted to list every power not necessary or proper to execute the general powers, the task would have been no less unrealistic. And it would have been vulnerable to another objection—every defect in the list would have been the same as granting an authority.

If, to avoid this consequence, they had attempted a partial list of exceptions, then summarized the rest in the general terms of *not necessary or proper,* the list would only have included a few of the powers not included in the general definition. These few excepted powers would probably have been those likely to be assumed or tolerated. And the unnecessary and improper powers not included in the list would be less forcibly excepted than if no partial list had been made.

[16] No "Necessary And Proper" Clause

If the Constitution was silent on this point, by unavoidable implication all the powers required to

execute the general powers would revert to the government.

No axiom is more clearly established in law, or in reason, that whatever the goal, the means are authorized. And wherever a general power to do a thing is given, every particular power necessary for doing it is included.

Therefore, if the convention had done this, every current objection to the clause would continue to be plausible. And it would create a real problem. It would remove a pretext that may be used on critical occasions to raise doubt about the essential powers of the Union.

[17] If Congress Oversteps Its Authority

What are the consequences if the Congress misconstrues this part of the Constitution and exercises powers not warranted by its true meaning? I answer, the same thing will happen as will occur if they misconstrue or enlarge any power vested in them. The same thing that will happen if the general power had been reduced to specifics and any one of these were violated. The same thing, in short, as if the State legislatures violated their respective constitutional authorities.

First, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and interpret the legislative acts. And in the last resort, a remedy will be obtained from the people, who can elect more faithful representatives, who can annul the acts of the usurpers.

The truth is, that this ultimate remedy may work better against the unconstitutional acts of the federal than the State legislatures, simply because every such act of the federal government will be an invasion of the rights of a State. The States will always be ready to note deviations, to sound the alarm to the people, and to exert their local influence to change federal representatives.

There is no such intermediate body between the State legislatures and the people interested in watching their conduct. Violations of the State constitutions are more likely to remain unnoticed and unredressed.

[18] 2. Federal Laws Supreme

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

[19] Lack of State Supremacy-Saving Clause

The indiscreet zeal of the adversaries to the Constitution has betrayed them into an attack on this part of it. Without it, the Constitution would have been clearly and radically defective. To fully realize this, we only need to imagine what would happen if the supremacy of the State constitutions had been left complete by a saving clause in their favor.

[20] Saving Clause Annul New Authorities

First. Since each State constitution invests in its State legislature absolute sovereignty, any authorities contained in the proposed Constitution that exceed those listed in the Articles of Confederation would be annulled. The new Congress would be reduced to the same impotent condition as its predecessors.

[21] Some States Nullify Constitution

Second. Since the constitutions of some States do not even expressly and fully recognize the existing powers of the Confederacy, an explicit statement of the States' supremacy would, in such States, bring into question every power contained in the proposed Constitution.

[22] State Constitutions: Variety

Third. Since the State constitutions differ from each other, a treaty or national law, of equal importance to the States, might interfere with some and not with other constitutions. Consequently, it would be valid in some of the States and have no effect in others.

[23] Authority of Union Subordinate to Parts

In the end, the world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all government. The authority of the whole Union would have been subordinate to the States. It would have seen a monster in which the head was under the direction of the members.

[24] 3. Oath to Support Constitution

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

[25] State Judges, Federal Constitution

Some people ask why it was necessary to force the State judicial system to support the federal Constitution. And why it's not necessary that officers of the United States take a similar oath in favor of the State constitutions.

[26] State Officials: Agents Constitution

Several reasons might explain the difference. I'll give one that is obvious and conclusive. Members of the federal government will not be agents of State constitutions. However, members and officers of the State governments will be essential agents of the federal Constitution.

The election of the President and Senate will depend, in all cases, on the State legislatures, as will the election of the House of Representatives. It will, probably forever, be conducted by the officers and according to the laws of the States.

[27] 4. Executive, Judicial Federal Powers

Among the provisions for giving efficacy to the federal powers might be added those which belong to the executive and judiciary departments. But since these will be examined in another place, I'll pass over them here.

[28] All Constitutional Powers *Are* Necessary And Proper

We have now reviewed, in detail, all the articles that define the power delegated by the proposed Constitution to the federal government. It brings us to the undeniable conclusion that no part of the power is unnecessary or improper for accomplishing the necessary objectives of the Union.

The question, therefore, of whether this amount of power shall be granted or not, resolves itself into another question: whether or not a government commensurate to the exigencies of the Union shall be established.

Or, in other words, whether the Union itself shall be preserved.

Publius

Constitutional references:

Article 1, sec 10	restrictions on State authority
Article 1, section 10	no State import, export taxes, alliances
Article 1, section 8	necessary & proper clause
Article 6	Const supreme over States oath to support federal Const

Articles of Confederation references:

Article 2	no State treaties, alliances, confederations
Article 6	State letters of Marque
Article 9	coin money
Article 6	bans nobility titles
Article 2	prohibits federal government from exercising powers not expressly given

45: Constitutional Federal Powers Not Dangerous to State Sovereignty

Having shown that none of the powers transferred to the federal government is unnecessary or improper, the next question is whether the whole collection of them will be dangerous to the authority left in the States.

[2] Union Benefits vs. State powers

Rather than focusing on the degree of power absolutely necessary to fulfill the purposes of the federal government, the adversaries of the proposed Constitution have exhausted themselves in a secondary inquiry into the possible consequences to the State governments of the proposed degree of federal power.

But if the Union, as has been shown, is essential to the security of the American people against foreign danger, if it is essential to their security against wars among the different States, if it is essential to guard them against violent and oppressive factions that threaten the blessings of liberty, and against those military establishments that gradually poison its very fountain, and if, in a word, the Union is essential to the happiness of the American people, is it not preposterous to argue against a government, without which the objectives of the Union cannot be attained, by saying it may detract from the importance of the governments of the individual States?

Was the American Revolution fought, the American Confederacy formed, the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not so the people of America can enjoy peace, liberty, and safety, but so individual State governments can enjoy some power, with certain dignities and attributes of sovereignty?

The impious doctrine in the Old World said that people were made for kings, not kings for the people. Is the same doctrine to be revived in the New World in another shape—that the solid happiness of the people is to be sacrificed to a different political institution, the States?

It is too soon for politicians to presume that we'll forget the public good. The real welfare of the people is the supreme objective. Attaining this objective is government's only value.

If the Constitution was against the public happiness, I would say, Reject the plan. If the Union itself was inconsistent with the public happiness, I would say, Abolish the Union.

In a similar manner, whenever the sovereignty of the States is incompatible with the happiness of the people, every good citizen should cry out, Let the former be sacrificed to the latter. The necessary depth of the sacrifice has been shown. The question before us is how far the unsacrificed residue will be endangered.

[3] No Danger from Federal Government

Several important subjects discussed in these papers disprove the supposition that the federal government will gradually prove fatal to the State governments. The more I evaluate the subject, the more fully I am persuaded that the large number of State governments is much more likely to disturb the balance than the federal government.

[4] History: Federal Government at Risk

All the examples of ancient and modern confederacies show the strong tendency for member states to plunder the general government's authority. And the general governments are ineffectual to defend themselves against encroachments. In most examples, the system was very dissimilar from the one we are considering, weakening any possible inferences that can be made. However, since the States will retain a very extensive portion of active sovereignty under the proposed Constitution, the inferences shouldn't be totally disregarded.

In the Achaean league, the federal government had power similar to the government framed by the convention. The Lycia Confederacy, as far as its principles and form are recorded in history, must have been even more similar. Yet history doesn't tell us that either of them ever degenerated, or even tended to degenerate, into one consolidated government. On the contrary, we know that one of them was ruined because the federal authority couldn't prevent the dissensions and, eventually, the disunion of the subordinate authorities.

These are worthy of our attention because in both cases the external causes pushing the parts together were much more numerous and powerful than in our case. Consequently, less powerful bonds between members were sufficient to bind them to the head and to each other.

[5] Feudal System: Local Bonds

In the feudal system, we see a similar propensity exemplified. In spite of the antagonistic relationship between the local sovereigns [barons] and the people in every case, and the sympathy between the general sovereign [monarch] and the people in some cases, local sovereigns usually prevailed during encroachment attempts. If external dangers had not forced internal harmony and subordination and, more importantly, if the people had liked their local sovereigns, today there would be as many independent princes as there were formerly feudatory barons instead of a few great European kingdoms.

[6] Advantages of State Governments

The State governments will have several advantages over the Federal government: their immediate dependence on one another, the weight of personal influence each side will possess, the powers vested in them, the predilections and probable support of the people, and the disposition and ability to resist and frustrate the measures of each other.

[7] Federal Officials Owe States for Positions

The State governments are essential parts of the federal government. But the federal government

is in no way essential to the operation or organization of the State governments.

Without the intervention of the State legislatures, the President of the United States cannot be elected at all. In all cases, they participate in his appointment and, in most cases, determine it.

The Senate will be elected absolutely and exclusively by the State legislatures. Even though the people elect the House of Representatives, their decision will be influenced by men whose own influence over the people results in their election into the State legislatures.

Thus, each elected official in the federal government will owe his political existence, more or less, to the State governments. Consequently, they must feel a dependence more likely to produce a disposition too obsequious than too overbearing towards them.

On the other side, the component parts of the State governments will never be indebted for their appointment to the direct agency of the federal government, and very little, if at all, to the local influence of its members.

[8] More People Work for States

Fewer people will be federal employees under the Constitution of the United States than the number employed by the States. Consequently, the former will have less personal influence.

The members of the State legislative, executive, and judiciary departments, State justices of peace, militia officers, and all county and city officers—that is, all State and local officials—will have acquaintances in every class and circle of people. They will exceed in number and influence the total number of people employed in the administration of the federal system.

Compare the number of people in the three great departments of the thirteen States, excluding from the judiciary department the justices of peace, with the number of people in the corresponding departments of the one federal government. Compare the number of militia officers of three million people with the military and marine officers of any permanent federal force within the probable, or even possible area of the entire country, and in this view alone, we may pronounce the advantage of the States to be decisive.

Both the federal and State governments will have collectors of revenue. Since the former will be principally on the seacoast and not very numerous, while those of the latter will be spread over the face of the country and will be very numerous, the States again have the advantage. It is true that the Confederation is to possess, and may exercise, the power to collect internal as well as external taxes throughout the States. But this power will probably not be resorted to, except for supplemental purposes of revenue. States will have the option of supplying their quotas by previous collections of their own. And the eventual collection, under the immediate authority of the Union, will generally be made by the officers appointed by the States.

Indeed, it is extremely probable that in other cases, particularly in the judiciary, the officers of the States will also serve under the authority of the Union.

However, if the federal government appoints separate collectors of internal revenue, the total number would be nothing compared to the multitude of State tax collection officers. Every district with a federal collector would have no less than thirty or forty, or even more, officers of different descriptions, many persons of character and weight, whose influence would lie on the side of the State.

[9] Federal Powers Limited; State Indefinite

The Constitution delegates a few, defined powers to the federal government. The remaining State powers are numerous and indefinite.

Federal powers will be principally exercised on external objects like war, peace, negotiation, and foreign commerce. Taxation will be the primary federal power over foreign commerce.

The State powers extend to everything that, in the ordinary course of affairs, concerns the lives, liberties, property of the people, internal order, improvement, and the prosperity of the State.

[10] War vs. Peacetime Influence

The federal government's operations will be most extensive and important in times of war and danger. Those of the State governments, in times of peace and security.

Since times of war will probably be small compared to peacetime, the State governments will enjoy another advantage over the federal government. Indeed, the more adequate the federal national defense, the less frequent the danger that might favor its ascendancy over the governments of the States.

[11] Invigorates Powers in Articles

An accurate and candid examination of the new Constitution shows that the change it proposes consists much less in the addition of new powers to the Union than in the invigoration of its original powers.

The regulation of commerce is a new power. But it seems to be an addition that few people oppose and from which no apprehensions are entertained.

The Articles of Confederation already gives Congress the powers relating to war and peace, armies and fleets, treaties and finance—and the other more considerable powers. The proposed change doesn't enlarge these powers, it only substitutes a more effective mode of administering them.

The change relating to taxation may be regarded as the most important. Yet the present Congress has the same authority to require from the States indefinite supplies of money for the common defense and general welfare as the future Congress will require from individual citizens. And the citizens will be no more bound than the States themselves have been to pay the quotas respectively taxed on them.

If the States had complied punctually with the Articles of Confederation or if their compliance could

have been enforced with as peaceable a means as may be used with success towards a single person, our past experience shows that the State governments would not have lost their constitutional powers and gradually consolidated. To maintain that this would have happened is the same as saying that State governments cannot exist within any system that accomplishes the essential purposes of the Union.

Publius

Constitutional references:

Article 2, sec 1	States appoint presidential electors
Article 1, sec 3	Senator elected by State legislature
Article 1, sec 2	people elect Representatives
Article 1, sec 8	taxation
Article 1, sec 8	regulation of commerce
Article 1, sec 2	proportioning taxes

Articles of Confederation:

Article 8	federal revenue collected through State quotas [11]

46: Federal vs. State Government Authority

Resuming the subject of the last paper, I will proceed with the inquiry into whether the federal government or the State governments will be more preferred and supported by the people. Although appointed or elected by different modes, both are substantially dependent on the citizens of the United States. I will, here, assume this to be true, and will save the proofs for another place.

The federal and State governments are simply agents and trustees of the people with different powers designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people in their discussions on this subject. And they have viewed the federal and State governments not only as mutual rivals and enemies, but as uncontrolled in their efforts to usurp the authorities of each other.

These gentlemen must be reminded of their error. They must be told that the ultimate authority, whatever its origin, resides in the people alone. Whether either one will be able to enlarge its sphere of jurisdiction at the expense of the other will not depend on which is more ambitious or where it is located. Truth, no less than decency, requires the assumption that every case depends on the sentiments and sanction of their common constituents.

[2] Attachment of People to States

Besides those suggested earlier, many considerations seem to show, beyond a doubt, that the first and most natural attachment of the people will be to their State governments. A greater number of individuals will expect to rise within the administrations of State governments. From this gift will flow a greater number of civil service offices and benefits. All the more domestic and personal interests of the people will be regulated and provided for by the superintending care of the States. The people will be more familiar and conversant about State issues. A greater proportion of the people will have the ties of personal acquaintance of friendship, family and party attachments with State officials, strengthening the popular bias towards the State.

[3] Experience Confirms State Bias

Experience confirms this bias. Even though the federal administration, up until now, has been very defective compared to what is hoped for under a better system, during the war and as long as the federal government was solvent, it was as important as it will ever be in the future. At the time, it was also engaged in a series of measures to protect everything that was dear and acquire everything that could be desirable to the people at large. Nevertheless, after the transient enthusiasm for the early Congress, it was invariably found that the attention and attachment of the people turned anew to their own State governments. The federal administration was at no time a popular idol. Opponents to proposed enlargements of the few governmental powers and its importance were usually men who wished to build their political importance on the predispositions of their fellow citizens.

[4] Federal Powers Limited

Therefore, if people in the future become more partial to the federal than the State governments, the change can only result from manifest and irresistible proofs of better administration overcoming the people's original tendencies. In that case, the people should not be stopped from placing their confidence where they discover it is most appropriate. But even in that case, the State governments would have little to fear because federal powers are only applicable within a certain sphere where federal power can be advantageously administered.

[5] Resources: Federal vs. States

The last points on which I propose to compare the federal and State governments are the disposition and the resources each may possess to resist and frustrate the measures of each other.

[6] States Influence Congress not visa versa

As already proven, the federal government will depend more on the State governments than the latter on the former. Both will depend on the people, who are predisposed to be more loyal to the State governments. As far as these causes influence the disposition of each towards the other, the State governments clearly have the advantage.

But there is another distinct and very important reason that the State governments will have the advantage. The predispositions of federal officials will generally be favorable to the States. But State officials will rarely carry into the public councils a bias in favor of the federal government. A local spirit will infallibly prevail more often in members of Congress than a national spirit will prevail in the legislatures of the States.

Everyone knows that many of the errors committed by State legislatures are the result of members being willing to sacrifice the comprehensive, permanent interest of the State to the specific, separate views of the counties or districts in which they reside. If State legislators don't sufficiently enlarge their policy to embrace the collective welfare of their State, how can we imagine that federal legislators will make the aggregate prosperity of the Union, and the dignity and respectability of its government, the objects of their affections and consultations?

For the same reason that the members of the State legislatures will be unlikely to attach themselves to national objectives, members of the federal legislature will be likely to attach themselves too much to local objectives. States will be to national legislators what counties and towns are to State legislators. Too often, measures will be decided, not on their effect on national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments and people of the individual States.

What has been the general characteristic spirit of Congress? Its journal and candid statements of members inform us that members have, too frequently, displayed the character of partisans of their respective States than of impartial guardians of a common interest. If local considerations were improperly sacrificed to the aggrandizement of the federal government once, the great national interests have suffered on a hundred occasions from undue attention to State prejudices, interests, and views.

I do not mean to insinuate that the new federal government will not embrace a more enlarged policy than the existing government may have pursued. Nor am I saying that its views will be as confined as those of the State legislatures. I am only saying that the national government will partake sufficiently in the spirit of both the State and federal governments to be disinclined to invade the rights of the individual States or the prerogatives of their governments. The motives of State governments, to augment their prerogatives by defalcations from the federal government, will not be overruled by reciprocal predispositions in federal officials.

[7] States can Block Federal Encroachments

If the federal government, like the State governments, felt disposed to extend its power beyond the due limits, the States would still have the advantage in the means of defeating such encroachments.

If a State act is unfriendly to the national government but generally popular in that State and doesn't too grossly violate the oaths of the State officers, it is executed immediately, using State resources. If the federal government opposed the action or sent federal officers to stop it, the federal response would inflame the zeal of all parties on the side of the State, and the evil couldn't be prevented or repaired, if at all, without using methods that must always be resorted to with reluctance and difficulty.

On the other hand, if an unreasonable measure of the federal government is unpopular in some States, which would usually be the case, or even if a reasonable measure is unpopular, which may sometimes happen, the means of opposition to it are powerful and at hand. The anxiety of the people, their repugnance and, perhaps, refusal to cooperate with the officers of the Union, the frowns of the State courts, and the embarrassments created by legislative devices that often would be added on such occasions would expose, in any State, difficulties not to be ignored. They would form, in a large State, very serious impediments. And where the sentiments of several adjoining States happened to be in unison, would present obstructions that the federal government would hardly be willing to encounter.

[8] States Would Fight Federal Usurpations

But ambitious encroachments of the federal government on State authority would not excite the opposition of only a single State or only a few States. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. In short, the same resistance groups would result from an apprehension of the federal yoke as was produced by the dread of a foreign yoke. And unless the federal government's projected innovations are voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other. But what degree of madness could ever drive the federal government to such an extremity?

In the contest with Great Britain, one part of the empire was employed against the other. The more numerous part invaded the rights of the less numerous part. The attempt was unjust and unwise. But it was not in speculation absolutely chimerical.

But what would be the contest in our hypothetical case? Who would be the parties? A few representatives of the people [i.e., elected federal officials] would be opposed by the people themselves. Or one set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter.

[9] Military Force to Usurp State Power

There is only one scenario remaining that would fulfill the prophesy of the State governments' downfall at the hands of the federal. It includes the visionary supposition that the federal government previously accumulates a military force for the projects of ambition.

The reasonings in these papers have been employed to little purpose indeed, if it is necessary now to disprove the reality of this danger. That the people and the States would, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both. Throughout this period, the traitors would uniformly and systematically pursue some fixed plan for the extension of the military establishment. The State governments and the people would silently and patiently behold the gathering storm, continuing to supply the materials, until it was prepared to burst on their own heads.

This series of events must appear to everyone more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism.

However, extravagant as the supposition is, let it be made. Let a regular army, fully equal to the resources of the country, be formed. And let it be entirely devoted to the federal government. Still it could be safely assumed that the State governments, with the people on their side, would be able to repel the danger. According to the best computations, the highest number to which a standing army can be carried in any country does not exceed one-hundredth of the whole number of souls, or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than 25,000 or 30,000 men.

These would be opposed by a militia amounting to near half a million armed citizens with officers chosen from among themselves, fighting for their common liberties, and united and conducted by local governments possessing their affections and confidence.

It may be doubted whether this kind of militia could ever be conquered by such a proportion of regular troops. Those best acquainted with the last successful resistance of this country against the British arms will be most inclined to deny the possibility. Besides the advantage of being armed, which Americans possess unlike the people of almost every other nation, the existence of State governments to which the people are attached and by which the militia officers are appointed, forms a barrier against the enterprises of ambition that is more insurmountable than any which a simple government of any form can admit of.

Despite the military establishments in several kingdoms of Europe, which are as large as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with this aid alone they would not be able to shake off their yokes. But if the people possessed the additional advantages of local governments chosen by themselves, who could collect the national disposition, direct the national force, and appoint officers from the militia, it may be said, with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it.

Let's not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights that they actually possess, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors.

Let's no longer insult the American people with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures that must precede and produce it.

[10] People Will Stop Federal Usurpation

The current argument may be put into a very concise form that appears conclusive. Either the federal government's construction will render it sufficiently dependent on the people, or it will not.

If it is sufficiently dependent on the people, that dependence will restrain schemes obnoxious to their constituents from forming. Or, if not, it will not possess the confidence of the people and its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people.

[11] Federal Powers Won't Hurt States

Summing up the ideas in this and the last paper, they seem to amount to the most convincing evidence that the powers proposed to be lodged in the federal government are as little formidable to those reserved to the individual States, as they are indispensably necessary to accomplish the purposes of the Union. And all the alarms that have been sounded, of a meditated and consequential annihilation of the State governments must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them.

Publius

47: Separation of Legislative, Executive, Judicial Powers

Having reviewed the general form of the proposed government and the power allotted to it, I will now examine the specific structure of this government and the distribution of its total power among its parts.

[2] Critics: Violates Separation Maxim

One major objection made by the more respectable adversaries to the Constitution is its supposed violation of the political maxim that the legislative, executive, and judiciary departments should be separate and distinct.

It is said that the structure of the federal government doesn't seem to have this essential precaution in favor of liberty. The powers are distributed and blended in a manner that destroys all symmetry and beauty of form, and exposes some essential parts of the government to the danger of being crushed by the disproportionate power of other parts.

[3] Separation of Powers to Maintain Liberty

This objection is based on a political truth with the greatest intrinsic value and endorsed by the most enlightened patrons of liberty. The holding of all powers—legislative, executive, and judiciary—in the same hands, whether by one person, a few, or many, and whether hereditary, self-appointed, or elective, is the very definition of tyranny. Therefore, if the federal Constitution combined powers, or mixed powers in a way that tended to lead to a dangerous accumulation, no further arguments would be necessary to inspire a universal rejection.

I believe, however, that it will become clear to everyone that the charge cannot be supported and the maxim it relies on has been totally misunderstood and used incorrectly.

In order to make an informed judgment on this important subject, it is proper to investigate why the preservation of liberty requires that the three great departments of power should be separate and distinct.

[4] Political Scientist, Montesquieu, Recommends Separation of Power

The expert always quoted on this subject is the famous Montesquieu. If he didn't discover this invaluable precept in political science, he can be credited, at least, with effectually recommending it to mankind. Let's try to discover his meaning.

[5] Maxim in British Constitution

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As poets consider the work of the immortal bard as the perfect model from which the principles and rules of the epic art were drawn, and the standard used to judge all similar works, so has the great political critic, Montesquieu, viewed the Constitution of England as the standard. Or, to use his words, it is the mirror of political liberty. It contains several elementary truths, principles that are part of the British system. So that we make no mistakes interpreting his meaning, let's return to the source from which the maxim was drawn.

[6] Powers Mixed in British Constitution

A brief look at the British Constitution reveals that the legislative, executive, and judiciary departments are not totally separate and distinct from each other.

The chief executive is an integral part of the legislative authority. He, alone, makes treaties with foreign sovereigns that have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on petition by the two Houses of Parliament, and become, when he wants to consult them, one of his constitutional councils.

One legislative house also forms a constitutional council to the executive chief, at the same time that it is the sole depository of judicial power in cases of impeachment, and is the supreme court of appeals in all other cases.

The judges, again, are so connected with the legislative branch that they often attend and participate in its deliberations, though they cannot vote.

[7] No One Has *Total* Power of 2 Branches

From these facts, which guided Montesquieu, it may be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he didn't mean that the government's branches should have no *partial agency* in, or no *control* over, the acts of each other. His words and examples make his meaning clear: when the *whole* power of one branch is in the same hands as the *whole* power of another branch, the fundamental principles of a free constitution are subverted.

This would have been true in the British constitution if the king, who is the sole executive magistrate, also held the complete legislative power, or the supreme administration of justice; or if the entire legislative body was also the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution.

The chief executive cannot, himself, make law, though he can veto every law; he cannot personally administer justice, though he appoints those who administer it.

The judges can exercise no executive power, though the executive chooses them. Nor any legislative function, though they may be advised by legislative councils.

The entire legislature can perform no judiciary act, but joint acts of the two houses of the legislature can remove a judge from office, and one house has the judicial power of final appeal. The entire legislature, again, can exercise no executive prerogative, though one house constitutes the supreme executive magistracy, and the other, after an impeachment vote by one third, can try and condemn

all the subordinate officers in the executive department.

[8] Liberty Demands "Separation" Maxim

Montesquieu's reasons for his maxim further demonstrate his meaning.

"When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate *enact* tyrannical laws to *execute* them in a tyrannical manner."

And: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*."

Some of the reasons are more fully explained in other passages. But, even briefly stated as here, they establish the meaning of this celebrated maxim of this celebrated author.

[9] Separation of Powers: New Hampshire

If we look at the State constitutions, we find that, despite the emphatical and, sometimes, unqualified terms in which this axiom is stated, there is not a single example of the departments of power being absolutely separate and distinct.

New Hampshire has the newest constitution. Its framers seemed to be fully aware that it would be impossible and inexpedient to avoid any mixture, whatever, of these departments. It qualifies the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity*."

Accordingly, her constitution mixes these departments in several ways. The Senate, a part of the legislature, is also a judicial tribunal for impeachment trials. The president, who is the chief executive, is the presiding member of the Senate. His vote is equal to the others and a casting vote in case of a tie. The chief executive is elected, yearly, by the legislature and his council is chosen, yearly, by and from the members of the legislature. Several state officials are also appointed by the legislature. And the executive appoints members of the judiciary.

[10] Massachusetts Constitution

The Massachusetts constitution expresses this fundamental article of liberty in more general terms. Its prefix declares "that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them."

This corresponds precisely with Montesquieu's doctrine, as explained earlier. And not a single point is violated by the proposed Constitution. It prohibits, without going any further, any entire branch from exercising the powers of another branch.

The Massachusetts Constitution has a partial mixture of powers. The chief executive has a qualified negative on the legislative body. The Senate, part of the legislature, is the impeachment court for members of both the executive and judiciary departments. Members of the judiciary are appointed by the executive and removable by the two legislative houses. Lastly, the legislature annually appoints a number of government officials. Since the appointment to offices, particularly executive offices, is in its nature an executive function, the authors of the constitution have, in this last point at least, violated the separation rule established by themselves.

[11] Rhode Island, Connecticut

I pass over the constitutions of Rhode Island and Connecticut because they were formed prior to the Revolution, and before the principle under examination came under political attention.

[12] New York Constitution

New York's constitution has no declaration on this subject. But it appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. However, it gives the chief executive partial control over the legislature. And it gives a similar control to the judiciary. It even blends the executive and judiciary departments in the exercise of this control.

Both the legislative and the executive are involved with the appointment of officers, both executive and judiciary. One house of the legislature and the principal members of the judiciary act as its court for appeals and impeachment trials.

[13] New Jersey Constitution

New Jersey's constitution blends the powers of government more than any of the preceding. The legislature appoints the governor, who is the chief executive. He, also, is chancellor and ordinary, or surrogate of the State, is a member of the Supreme Court of Appeal, and is president, with a casting vote, of one of the legislative houses.

The same legislative house acts as executive council of the governor and, with him, constitutes the Court of Appeals.

The members of the judiciary are appointed by the legislature and removable by one house of it on the impeachment of the other.

[14] Pennsylvania Constitution

According to the constitution of Pennsylvania, the president, who is head of the executive branch, is annually elected by a vote in which the legislature predominates. With an executive council, he appoints the members of the judiciary and forms an impeachment court for trial of all officers, judiciary as well as executive. The Supreme Court judges and justices of the peace seem also to be removable by the legislature. And the legislature, in certain cases, has the power to pardon, normally an executive power. The members of the executive council are made ex

officio [automatically] justices of peace throughout the State.

[15] Delaware's Constitution

In Delaware, the chief executive is annually elected by the legislature. The speakers of the two legislative houses are vice-presidents in the executive branch. The chief executive with six others, three appointed by each legislative house, constitutes the Supreme Court of Appeals. The chief executive joins with the legislature to appoint other judges.

Throughout the States, it appears that members of the legislature may be, at the same time, justices of the peace. In New York, the members of one house are ex officio justices of the peace, as are the members of the executive council. The principal officers of the executive are appointed by the legislature. And one house of the latter forms a court of impeachment. All officers may be removed by formal legislative petition.

[16] Maryland's Constitution

Maryland adopted the separation-of-powers maxim in the most unqualified terms, declaring that the legislative, executive, and judicial powers of government should be forever separate and distinct from each other. Her constitution, however, has the legislature appoint the chief executive. And the executive appoints judges.

[17] Virginia's Constitution

The language of Virginia's Constitution is still more pointed on this subject. It declares, "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly."

Yet we find not only this clear exception with respect to the members of the lower courts, but the chief executive and his council are appointed by the legislature. Every three years, two members of the latter are removed from office at the pleasure of the legislature. And all principal offices, both executive and judiciary, are appointed by the legislature. Also, in one case, the legislature has the executive prerogative of pardon.

[18] North Carolina's Constitution

North Carolina's constitution declares "that the legislative, executive, and supreme judicial powers of government ought to be for ever separate and distinct from each other." Yet the legislature appoints not only the chief executive, but all the principal officers within both the executive and the judiciary.

[19] South Carolina's Constitution

The South Carolina constitution makes the chief executive eligible by the legislature. The latter also appoints the members of the judiciary, including justices of the peace and sheriffs, and all officers, from the executive department to captains in the army and navy of the State.

[20] Georgia's Constitution

The constitution of Georgia declares "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other."

But we find that the legislature appoints all members of the executive and it has the executive prerogative of pardon. Even justices of the peace are to be appointed by the legislature.

[21] New Constitution Doesn't Violate Maxim

In citing these cases in which the legislative, executive, and judiciary departments aren't kept totally separate and distinct, I don't want to be seen as an advocate for the way these State governments have been organized. I am fully aware that besides the many excellent principles they exemplify, they carry strong marks of the haste and, still stronger, inexperience under which they were framed. It is obvious that in some of the State constitutions the fundamental principle of separation of powers is violated. Some mix the powers too much. Some actually consolidate the different powers. And none of them provide a way to maintain the separation called for by their constitutions.

I wanted to clearly show that the charge brought against the proposed Constitution, that it violated the sacred maxim of free government, is not warranted by either the true meaning of that maxim by its author or by the way it has been, up until now, understood in America.

This interesting subject will be resumed in the next paper.

Publius

Constitutional references:

Article 1, section 1	legislative powers
Article 2, section 1	executive powers
Article 3, section 1	judicial powers

48: Separation of Government's Powers, continued

In the last paper, I showed that the political maxim examined does not require that the legislative, executive, and judiciary branches should be totally unconnected with each other.

Next I will try to show that unless the branches are so interconnected and blended that each has a constitutional control over the others, the degree of separation required by the maxim, as essential to a free government, can never be maintained in practice.

[2] Encroaching Nature of Power

Everyone agrees that the powers properly belonging to one branch should not be directly and completely administered by either of the other branches. Clearly none of them should have, directly or indirectly, a superior authority over the others in the administration of their respective powers.

Power has an encroaching nature and it should be effectually restrained from passing the limits assigned to it. After theoretically dividing the classes of power into legislative, executive, or judiciary, the next—and most difficult—task is to provide some practical security for each against the invasion of the others. The great problem is: what will this security be?

[3] *Written* Barriers Inadequate

If the boundaries between these branches are in the constitution, can these parchment barriers be trusted to stop the encroaching spirit of power? Most of the State constitutions seem to rely principally on this security. But experience assures us that the efficacy of the provision has been greatly overrated. A more adequate defense is needed so the weaker branches of the government are protected from the more powerful.

Across the nation, the legislative is extending the sphere of its activity, drawing all power into its impetuous vortex.

[4] Danger from Legislative Usurpations

The founders of our republic deserve so much credit for the their wisdom that no task is less pleasing than pointing out their errors. However, because we respect the truth, we must mention that they seem to have been completely focused on the danger to liberty from an overgrown, all-grasping hereditary magistrate, supported and fortified by an hereditary legislature. They seem to have forgotten the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

[5] Protect Liberty from Legislature

When a hereditary monarch holds many of government's powers, the executive branch is correctly seen as the source of danger. It is watched with a scrutiny inspired by a zeal for liberty.

In a democracy, a huge number of people gather to exercise the legislative functions. Because all citizens cannot regularly meet to discuss and make laws, it is continually exposed to the ambitious intrigues of the executive officials. A fear that the executive could use the excuse of an emergency to get a tyrannical toehold is wise.

But in a representative republic, the chief executive is carefully limited in both extent and duration of power. The legislative power is exercised by an assembly with a fearless confidence in its own strength, inspired by their assumed influence over the people. The legislature is sufficiently numerous to feel all the passions that motivate a multitude, yet not so numerous as to be incapable of pursuing its passions by means that reason prescribes. It is against the enterprising ambition of the legislature that the people should focus their scrutiny and take all precautions.

[6] Legislative Limits Imprecise

The legislative branch derives a superiority in our governments from other circumstances. Its constitutional powers are extensive with imprecise limits. It can easily mask the encroachments it makes on the other branches, using complicated and indirect measures. Legislative bodies frequently question whether, in operation, a particular measure will, or will not, extend beyond the legislative sphere.

On the other side, executive power is restrained within a narrower compass and is simpler in nature. The judiciary is confined within even more specific landmarks. Usurpation attempts by either of these departments would immediately betray and defeat themselves.

Nor is this all. The legislative branch, alone, has the power to impose taxes. And in some constitutions it has full discretion, and in all it is a prevailing influence, over the wages of people who fill the other branches. Therefore, all government officials are dependent on the legislature, facilitating even greater legislative encroachments.

[7] State Legislatures Usurping Power

For the truth on this subject, I rely on our own experience. If this experience needs specific proofs, they could multiply without end. I could collect an abundance of vouchers from the records and archives in every State in the Union. But as a more concise and equally satisfactory evidence, I will refer to the example of two States, attested to by two respected authorities.

[8] Virginia Legislature Usurped Powers

The first example is Virginia. As we have seen, its constitution expressly says that the three great branches should not be intermixed. Mr. Jefferson is the authority supporting it. Besides his other advantages for observing the operation of Virginia's government, he was governor.

To fully convey the ideas on this subject resulting from his experience, it is necessary to quote a fairly long passage from his very interesting *Notes on the State of Virginia*, page 195:

All the powers of government, legislative, executive, judiciary, revert to the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason, the convention that organized the government made the legislative, executive, and judiciary separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and executive branches were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, *in many* instances, *decided rights,* which should have been left to *judiciary controversy*, and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*

[9] Pennsylvania Violated Constitution

My other example is Pennsylvania. And the other authority is the Council of Censors, assembled in 1783 and 1784. One duty of the council, as stated by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution."

To accomplish this task, the council compared the actual legislative and executive activities with the constitutional powers of these branches. From the facts, most of the council, on both sides, agreed that the constitution had been flagrantly violated by the legislature in a variety of important instances.

[10] Laws Passed *Without* Public Notification

A great number of the laws passed violated, without any good reason, the rule that requires all bills of a public nature to be previously printed for the consideration of the people, even though this is one of the important precautions relied on by the constitution to prevent improper acts of the legislature.

[11] Violated Right of Trial by Jury

The constitutional trial by jury has been violated and powers assumed that had not been delegated by the constitution.

[12] Usurped Executive Powers

Executive powers have been usurped.

[13] Legislature Interference with Judiciary

The salaries of judges, which the constitution expressly requires to be fixed, have been occasionally varied. And the legislature has frequently heard and judged cases belonging to the judiciary.

[14] Council Journal: More Examples

Those who want to read the specifics may consult the journals of the council, which are in print. Some of them may be attributable to specific circumstances connected with the war. But the majority must be considered as the spontaneous shoots of an ill-constituted government.

[15] Executive Violated Constitution

It appears, also, that the executive branch has not been innocent of frequent violations of the constitution. Three observations, however, should be made:

1) Most were either immediate necessities because of the war, or recommended by Congress or the commander-in-chief.

2) In most of the other instances, they conformed either to the declared or the known sentiments of the legislature.

3) Pennsylvania's executive branch has more members than the other States, so it's as much like a legislative assembly as an executive council. And a council doesn't feel the same restraint as an individual, who is personally responsible for his acts. Members derive confidence from each other and are influenced by each other so that unauthorized measures would be more easily tried than where the executive branch is administered by a single hand, or by a few hands.

[16] Words, Alone, Don't Block Tyrannical Accumulation of Power

The conclusion from these observations is that a simple statement within the Constitution, defining the limits of the branches, is not enough protection against the encroachments that lead to a tyrannical concentration of all the powers of government in the same hands.

Publius

49: Jefferson Suggests Constitutional Convention to Correct Power Mixing

The author, Mr. Jefferson, of the *Notes of the State of Virginia*, was quoted in the last paper. He added to that valuable work a draft of a constitution, which had been prepared in order to lay before a convention that had been expected to be called by the legislature in 1783 to establish a constitution for Virginia.

The plan, like everything from that author, marks a turn of thinking—original, comprehensive, and accurate. It is even more worthy of attention because it equally displays a fervent attachment to republican government and an enlightened warning about the dangerous propensities that must be guarded against.

One precaution he proposes may be his original idea. He relies on it to safeguard the weaker branch of power against the invasions of the stronger. As it relates to the subject we're discussing, it shouldn't be overlooked.

[2] Jefferson: Constitutional Convention

His proposition is "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or *correcting breaches of it*, a convention shall be called for the purpose."

[3] Citizens Source of Power; Citizens Lend Power by Constitution

People are the only legitimate source of power. The constitution, under which the branches of government hold their power, is derived from the people. It seems in line with republican theory to return to the original authority, the people, not only whenever it is necessary to enlarge, diminish, or remodel the powers of the government, but also whenever any of the branches encroach on the constitutional authorities of the others.

When branches have constitutionally defined equal authority and power, clearly none of them can pretend to have an exclusive or superior right to determine the boundaries between their respective powers. How are the encroachments of the stronger to be prevented? Or how are the wrongs of the weaker to be redressed without an appeal to the people themselves. The people gave the government its authority and power through the constitution. They, alone, can declare its true meaning and enforce its observance.

[4] Need Amendments, not Convention

There is certainly great force in this reasoning. The people must have a defined constitutional road available for extraordinary occasions. But there are some insurmountable objections to the proposal to return to the people, in all cases, to keep branches within their constitutional limits.

[5] Two Branches Usurp Authority of Third

First, the provision doesn't provide for the case of two branches usurping the authority of the third. If the legislative authority, which has so many ways to influence the motives of the other branches, gains the support of either of the others, or even one-third of its members, the remaining branch couldn't be helped by this provision. I won't dwell on this objection, however, because if I did, it might appear that my objection is to the specific details of the principle, rather than the principle itself.

[6] *Numbers* Strengthen Opinions

The next objection comes from the inherent nature of the principle itself. Every appeal to the people would imply the government is defective. Frequent appeals would help deprive the government of the veneration that time bestows on everything and, without which, the wisest and freest government would probably not possess the required stability.

If it is true that all governments rest on popular opinion, isn't it also true that the strength of each individual's opinion and its influence on his conduct depends on the number of people he thinks have the same opinion. Man's reasoning, like man himself, is timid and cautious when left alone, and gains confidence as the number of people agreeing with him grows. When examples supporting an opinion are *ancient* and *numerous*, they have a double effect.

In a nation of philosophers, this consideration could be disregarded. Enlightened reasoning would produce reverence for laws. But a nation of philosophers can no more be expected than the philosophical race of kings wished for by Plato.

In every other nation, rational governments know the advantage of having the prejudices of the community on its side.

[7] Danger of Destructive Passions

The danger of disturbing the public tranquillity by arousing public passions is an even more serious objection to frequently referring constitutional questions to a decision by the whole society.

Although the success of our governmental reforms honor the virtue and intelligence of the American people, it must be confessed that the experiments are far too ticklish to be unnecessarily multiplied. Remember that all the existing constitutions were formed in the midst of danger. That situation repressed the passions most unfriendly to order and concord. The people's enthusiastic confidence in their patriotic leaders stifled the ordinary diversity of opinions on great national questions. A universal ardor for new and opposite governmental forms produced a universal resentment and indignation against the ancient government. No party partianship mingled its leaven into the operation that made changes and reformed abuses. Future situations do not have any equivalent security against the anticipated danger.

[8] Legislature Most Influential Branch

But the greatest objection is that the decisions resulting from a constitutional convention would not

fulfill the purpose of maintaining constitutional equilibrium in the government.

We have seen that republican governments tend to aggrandize the legislative at the expense of other branches. Therefore, the executive and judiciary branches would usually make the appeals to the people. But would each side enjoy equal advantages at a convention? Let's review their different situations.

Fewer people are members of the executive and judiciary branches and they can be personally known to only a small number of people. The judiciary has permanent appointments and judges are too far removed from the people to share their predispositions. Politicians not in the executive are usually jealous of it; the executive administration is always susceptible to negative propaganda, making it unpopular.

On the other hand, legislative members are numerous. They live among the people. Their relatives, friends, and acquaintances include a great proportion of the most influential part of society. The fact that they are in the legislature implies that they have personal influence among the people, that they are seen to be the guardians of the rights and liberties of the people. With these advantages, it hardly seems that the branches seeking the correction would have an equal chance for a favorable outcome.

[9] Congressmen Majority of Delegates

But members of Congress would not only successfully plead their cause with the people, they would also probably become judges in the issue. The same influence that got them elected to the legislature would get them a seat in the convention. If not all, at least this would be the case for many, especially the legislative leaders. In short, the convention would be composed chiefly of men who had been, who actually were, or who expected to be, members of the branch whose conduct was arraigned. Consequently, parties to the question would be deciding the question.

[10] Passions would Judge

Sometimes appeals would be made under circumstances more favorable to the executive and judicial departments. The legislative usurpations might be too flagrant and sudden to allow a specious spin. A strong party might side with the other branches. The president might be a particular favorite of the people. In such a situation, the public might be less swayed by predispositions in favor of the legislative party.

But a convention’s decision still could never by expected to turn on the true merits of the question. Inevitably, the decision would reflect the spirit of pre-existing parties or of parties springing out of the question itself. It would be connected with people of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate.

The *passions*, therefore, not the *reason*, of the public would sit in judgment. But public reason, alone, should control and regulate government. Passions should be controlled and regulated by the government.

[11] Convention Can't Enforce Words

We found in the last paper that mere declarations in the written Constitution are not sufficient to keep the branches within their legal rights. From the arguments in this paper, it appears that occasional appeals to the people would not be a proper or effective measure for that purpose.

I will not examine whether other provisions in the Virginia constitution might be adequate. Some are unquestionably founded on sound political principles, and all are framed with singular ingenuity and precision.

Publius

#50: Periodic Conventions to Correct Constitutional Infractions

It might be argued, perhaps, that instead of *occasional* appeals to the people, which are susceptible to the objections urged against them, fixed *periodic* appeals are the proper and adequate means of *preventing and correcting infractions of the Constitution.*

[2] Scheduled Conventions Ineffective

I am examining remedies that *enforce* the Constitution, by keeping the branches of power within their bounds, without considering them as provisions for *altering* it.

First, scheduled periodic conventions appear no more desirable than conventions held when problems emerge. If the periods between conventions are short, problems needing review and correction will be in recent memory. Therefore, the same circumstances will exist that tend to slant and pervert the result with occasional appeals.

If the periods between conventions are distant from each other, the same argument applies to all recent measures. Others will receive a dispassionate review depending on their remoteness. However, inconveniences counterbalance this advantage.

First, excesses caused by current motives will be very feebly restrained by the possibility of public censure in the distant future. Can it be imagined that a legislature, with a hundred or two hundred members, eagerly bent to achieve an unconstitutional objective, would be stopped because their conduct might be censored in ten, fifteen, or twenty years?

Second, the mischievous effects of their abuses would often be completed before the remedy could be applied.

And lastly, if not completed, they would be of long standing, taken deep root, and not easily corrected.

[3] Pennsylvania: Branch Encroachment

Revising the constitution, to correct recent breaches of it, as well as for other purposes, has actually been tried in one of the States. When the Council of Censors met in Pennsylvania in 1783 and 1784, one of their objectives was to inquire, "whether the constitution had been violated, and whether the legislative and executive branches had encroached on each other."

This important experiment in politics merits attention for several reasons. Because it was a single experiment made under specific circumstances, some examples may be thought not absolutely conclusive. But as applied to this discussion, it involves some facts that present a complete and satisfactory illustration of my reasoning.

[4] Party Activists/Council Leaders

First. From the names of the gentlemen composing the council, it appears that some of its most active and leading members had also been leading activists in the parties that pre-existed in the State.

[5] Some in Council Reviewed Own Work

Second. It appears that the same active and leading members of the council had been active, influential members of the legislative and executive branches during the period reviewed. They had supported or opposed the very measures brought before the council for the constitutional test.

Two members had been vice president of the Senate. Several others were members of the executive council within the seven preceding years. One had been speaker and, several others, distinguished members of the legislature during the same period.

[6] *Passions*, Not *Reasoning*, Ruled Debates

Third. The recorded minutes of the proceedings clearly show the effect of all these circumstances on the temper of their deliberations. Throughout the council, it was split into two fixed and violent parties. They acknowledged and lamented the fact. But even if they hadn't, an examination of their proceedings exhibits an equally satisfactory proof. No matter how unimportant or unconnected the issues, invariably the same men stood on opposite sides of them. Every unbiased observer may infer, without any danger of making a mistake and without judging either party or any individuals that, unfortunately, *passion*, not *reason*, presided over their decisions.

When men exercise their reason coolly and freely on a variety of distinct questions, inevitably they have different opinions on some of them.

When they are governed by a common passion, their opinions, if they can be called that, will be the same.

[7] Some Constitutional Misinterpretations

Fourth. It is at least problematical that in several instances this body misconstrued the limits prescribed for the legislative and executive branches, instead of reducing and limiting them within their constitutional places.

[8] No Effect on Legislature's Behavior

Fifth. I have never seen the council's constitutional decisions, whether they were right or wrong, influence the practices of the legislature. It even appears, if I'm not mistaken, that in one case the current legislature denied the opinions of the council and actually prevailed in the contest.

[9] Problems Exist, Council Not Cure

A study of the council, therefore, proves both the existence of the disease and, by its example, the inefficacy of the remedy.

[10] Crisis Doesn't Excuse Liabilities

This conclusion cannot be invalidated by alleging that Pennsylvania was at a crisis, and had been in one for a long time, violently heated and distracted by partisan rage. Is it to be presumed that during any future seven-year period it will be free from

partisanship? Can we presume that any other State, at any time, will be exempt from it?

Such an event should neither be presumed nor desired, because an extinction of parties necessarily implies either a universal alarm for the public safety or an absolute extinction of liberty.

[11] Excluding Government Officials Wouldn't Solve Council's Problems

Excluding from the elected assemblies called to review the preceding administration of the government all the people involved with the government during that period, would not have solved the problem. The important task would probably have fallen to men with inferior capacities who, in other respects, would be little better qualified. Although they might not have been personally concerned in the administration and, therefore, not immediately involved in the measures to be examined, they would probably have been involved with the parties connected with these measures and probably be elected under their sponsorship.

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51: Separation of Powers: Structural Checks and Balances

What method should we use, then, to maintain the necessary partition of power between the different branches as laid down in the Constitution?

The only answer is: all outside provisions are inadequate. Therefore, the government must be structured, designed, so that the three constitutional branches and their relationships will have the ability to keep each other in their proper places.

Without presuming to undertake a full development of this important idea, I will hazard a few general observations. They may place it in a clearer light. They may also help us judge the principles and structure of the government planned by the convention.

[2] Perfect Separation: People Appoint All Officials

To a certain extent, everyone agrees that a separation of the different powers of government is essential to the preservation of liberty.

As a foundation towards that goal, it is clear that each branch should have a will of its own. Consequently, government should be designed so members of each branch have as little input as possible in the appointment of members of the others.

If this principle [separation of powers] was rigorously adhered to, all appointments to the executive, legislative, and judiciary branches would have to be made from the same fountain of authority, the people, through channels having no communication with one another.

Perhaps such a plan to construct the branches would be less difficult in practice than it appears in contemplation. However, difficulties and additional expense would accompany its execution. Therefore, some deviations from this principle must be allowed.

[2a] Judiciary: Specific Qualifications

In the construction of the judiciary, in particular, requiring that the people pick all members might not be very successful.

First, specific qualifications in the members are essential. The most important consideration should be to select the method of choice that best secures these qualifications.

Second, since judges hold permanent tenure, this would soon destroy all sense of dependence on the authority appointing them.

[3] Executive, Judiciary Not Dependent on Legislature for Pay

Clearly, the members of each branch should be as little dependent as possible on a different branch for their compensation. Were the executive or the judicial not independent of the legislature on this point, their independence in every other area would be insignificant.

[4] Authority, Motives to Resist Usurpations

But the best security against a gradual accumulation of powers in one branch, is giving to the administrators of each branch the necessary constitutional tools and personal motives to resist encroachments.

As in all cases, the provision for defense must be made proportional to the danger of attack. Ambition must be made to counteract ambition. The personal interests of the man must be connected with the constitutional rights of the place.

[4a] Government Reflects Human Nature; Angels Don't Need Government

It may be a reflection on human nature that such devices are necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature?

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

In framing a government that is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place, force it to control itself.

Dependency on the people is, no doubt, the primary control on the government. But experience has taught mankind that auxiliary precautions are necessary.

[5] Checks, Balances in All Organizations

This policy of correcting through opposite and rival interests can be traced throughout the whole system of human affairs, private as well as public. We see it, particularly, in all subordinate distributions of power, where the aim is to divide and arrange the offices in a manner that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These prudent measures are just as important in the distribution of the supreme powers of the state.

[6] Divide Legislative; Fortify Executive

But it is not possible to give each branch an equal power of self-defense.

In republican government, the legislative authority necessarily predominates. The remedy for this is to divide the legislature into different houses and make them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will allow. It may even be necessary to guard against dangerous encroachments with even further precautions.

Since the weight of the legislative authority requires it should be divided, the weakness of the executive may require, on the other hand, that it should be fortified.

At first view, an absolute negative on the legislature (veto) appears to be the natural defense with which the executive should be armed. But by itself it might not be completely safe or sufficient. On ordinary occasions, it might not be exerted with the requisite

firmness and, on extraordinary occasions, it might be perfidiously abused. Can not a solution to this absolute negative be supplied by some qualified connection between this weaker executive branch and the weaker side of the stronger legislative branch, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own branch?

[7] Constitution and Separation of Powers

If these observations are based on just principles, as I persuade myself they are, and if they are applied as a criterion to the State constitutions and the federal Constitution, it will be found that, if the federal Constitution doesn't perfectly meet these principles, the State constitutions are infinitely less able to pass such a test.

[8] U. S. Federal System Unique

Moreover, two special circumstances apply to the federal system in America, making it a unique situation.

[9] State Governments: Additional Check on Federal Government

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government. To guard against usurpations, the government is divided into distinct and separate branches.

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, state and federal. Then the portion allotted to each is subdivided among distinct and separate branches. Hence the rights of the people are doubly protected. The different governments will control each other, at the same time that each will be controlled by itself.

[10] Oppression from Society

Second. In a republic, society must not only be protected against the oppression of its rulers, but one part of the society must be guarded against the injustice of the other part.

Different interests necessarily exist in different classes of citizens. If a majority is united by a common interest, the rights of the minority will be insecure. There are only two methods of providing against this evil. One, create a will in the community independent of the majority—that is, of the society itself. Or two, include into society so many separate descriptions of citizens that it will be either impossible or impractical to form a majority of the people into an unjust alliance.

The first method prevails in all governments possessing a hereditary or self-appointed authority. This is, at best, but a precarious security because a power independent of the society may well espouse the unjust views of the majority, as the rightful interests of the minority, and may possibly be turned against both parties.

The second method will be exemplified in the federal republic of the United States. All authority will be derived from and dependent on the society. The society itself will be broken into so many parts, interests, and classes of citizens that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

In a free government, the security for civil rights must be the same as that for religious rights. In one case, it consists of a multiplicity of interests and, in the other, a multiplicity of sects. This is presumed to depend on the extent of the country and number of people comprehended under the same government.

To all sincere and serious friends of republican government, this must recommend a proper federal system. It shows that in exact proportion as the Union's territory is formed into more States, an oppressive alliance of a majority will be facilitated. The best security for the rights of every class of citizen will be diminished. Consequently the stability and independence of some member of the government, the only other security, must be proportionally increased.

Justice is the final goal of government. It is the goal of civil society. It has always and always will be pursued until it is obtained or until liberty is lost in the pursuit.

In a society structured so that the stronger faction can easily unite and oppress the weaker, anarchy reigns as it does in nature, where the weaker individual is not protected against the violence of the stronger. Yet in nature, the uncertainty of their situation prompts even the stronger individuals to submit to a government that may protect the weak as well as themselves. In society, a similar motive will induce more powerful factions or parties to want a government that will protect all parties, the weaker as well as the more powerful.

Let's suppose the State of Rhode Island was separated from the Confederacy and left to itself. Can it be doubted that the repeated oppressions of factious majorities would cause such insecurity of rights under the popular form of government within such narrow limits that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had provided the necessity of it.

The extended republic of the United States will embrace a great variety of interests, parties, and sects. A coalition of a majority of the whole society could seldom happen on any other principles than justice and the general good. While there is less danger to a minority from the will of a majority party, there must be less pretext, also, to provide for the security of the minority by introducing into the government a will not dependent on the majority or, in other words, a will independent of the society itself.

Despite some opinions to the contrary, it is no less certain than it is important that the larger the society, provided it lies within a practical sphere, the more capable it will be of self-government. And happily for the *republican cause,* the practical sphere may be carried to a very great extent by a judicious modification and mixture of the *federal principle*.

Publius

Constitutional references:

Article 1, sec 1	two legislative houses
Article 1, sec 2	electing Representatives
Article 1, sec 3	electing Senators
Article 1, sec 2	Representatives impeach
Article 1, sec 3	Senate tries impeachment
Article 1, sec 5	each house judges elections
Article 1, sec 5	each house, own rules
Article 1, sec 6	hold no other government jobs
Article 1, sec 7	President signs bills
Article 1, sec 7	Presidential veto

52: House of Representatives: Candidates, Elections, Term in Office

From the more general inquires pursued in the last four papers, I pass on to a more specific examination of the several parts of the government. I will begin with the House of Representatives.

[2] Qualifications of Electors, Elected

The first study of this part of the government relates to the qualifications of the voters and Representatives.

The voters are to be the same as the electors of the largest house of the State legislatures.

The right of suffrage is justly defined as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To allow Congress to occasionally regulate it would be improper for the reason just mentioned. To submit it to the discretion of the State legislatures would be improper for the same reason. Additionally, it would make the branch of the federal government that should be dependent on the people alone, too dependent on the State governments.

However, if the convention had established one uniform rule instead of allowing different qualifications in the different States, it would have been as dissatisfactory to some of the States as difficult for the convention. Therefore, the convention's provision appears to be the best option.

Every State will find it satisfactory because it conforms to the standard already established, or which may be established, by the State itself. It will be safe to the United States because, even though it is fixed by the State governments, it is not alterable by the State governments and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution.

[3] Candidate for Representative

The qualifications of Representatives are less carefully defined by the State constitutions. And it is easier to make them uniform. Therefore, they are defined in the proposed Constitution.

A Representative of the United States must be 25 years old, must have been a citizen of the United States for seven years, at the time of his election he must be an inhabitant of the State he is to represent, and, during the time of his service, he must hold no other office under the United States.

Under these reasonable limitations, the door into this part of the federal government is open to people of merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular religious faith.

[4] Representatives' Term in Office

The second discussion about the representatives is their term in office. Two questions must be considered: first, whether biennial elections will, in this case, be safe; secondly, whether they are necessary or useful.

[5] Frequent Elections: Dependence on Voters

It is essential to liberty that the government has a common interest with the people. It is particularly essential that the House of Representatives has an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy that effectually secures this dependence and sympathy.

But how frequently is absolutely necessary for this purpose doesn't seem susceptible to any precise calculation and must depend on a variety of circumstances. Let us consult experience, the guide that should always be followed whenever it can be found.

[6] Elections in Great Britain

Representation, as a substitute for a meeting of all the citizens in person, was imperfectly known to ancient politics. We expect instructive examples in more modern times. And even here, to avoid vague research, we will confine ourselves to the few examples that are best known and bear the greatest analogy to our specific case.

The first is the House of Commons in Great Britain. The history of this branch of the English Constitution, before the Magna Charta, is too obscure to yield instruction. Its very existence is a question among political historians.

The earliest available records prove that parliaments were to *sit* every year, not that they were to be *elected* every year. And even these annual sessions were left so much at the discretion of the monarch that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambition. To remedy this grievance, a statute in the reign of Charles II limited the intermissions to three years.

On the accession of William III, when a revolution took place in the government, the subject was still more seriously confronted. It was declared to be among the fundamental rights of the people that parliament should be held *frequently*. By another statute, passed a few years later in the same reign, the term "frequently," which suggested the triennial period settled in the time of Charles II, is precisely defined. A new parliament shall be called within three years after the termination of the former.

It was changed again, early in the present century. Under an alarm for the Hanoverian succession, the time was extended from three to seven years.

From these facts, it appears that Great Britain has decided three years between elections is the shortest period necessary to bind the representatives to their constituents.

If we look at the degree of liberty retained even with elections every seven years and all the other vicious ingredients in the parliamentary constitution, we cannot doubt that a reduction of the period from seven to three years would extend the influence of the people over their representatives far enough to satisfy us that biennial elections, under our federal system, cannot possibly be dangerous to the required dependence of the House of Representatives on their constituents.

[7] Ireland's Election Rare

Until recently, elections in Ireland were regulated entirely by the crown and were seldom repeated, except on the accession of a new prince or some other contingent event.

The parliament that started when George II began his rule continued throughout his whole reign, a period of about thirty-five years. The representatives were dependent on the people only when there was an election to fill vacancies, and in the chance of some event that might produce a general new election. The Irish parliament's ability to maintain their constituents' rights, as far as they might want to, was extremely shackled by the crown's control over the subjects of their deliberation.

If I am not mistaken, these shackles were recently broken. And octennial parliaments have been established. The effect produced by this partial reform must be left to further experience.

From this view of it, Ireland can throw little light on the subject. As far as we can draw any conclusion from it, it must be that if the people of that country, under all these disadvantages, have been able to retain any liberty whatever, the advantage of biennial elections would secure every degree of liberty that depends on a connection between their representatives and the people.

[8] Colonial States: Elections 1 - 7 Years

Let's bring our inquiry closer to home. The example of the States, when British colonies, claims particular attention and is so well known as to require little be said about it.

The principle of representation in at least one house of the legislature was established in all of them. But the election periods were different. They varied from one to seven years. Have we any reason to infer, from the spirit and conduct of the people's representatives prior to the Revolution, that biennial elections would be dangerous to the public liberties?

The spirit displayed at the start of the struggle that vanquished the obstacles to independence is the best proof that sufficient liberty had been everywhere enjoyed to inspire both a sense of its worth and a zeal for its proper enlargement. This remark is as valid for colonies whose elections were the least frequent as those most frequent.

Virginia was the first colony to resist the parliamentary usurpations of Great Britain. It was also the first to espouse, by public act, the resolution of independence. Nevertheless, in Virginia, if I am not misinformed, elections under the former government were every seven years. This example is brought into view not to prove of any particular merit, the priority of these events was probably accidental. And even less an advantage in *septennial* elections. When compared with a greater frequency, they are inadmissible. But as proof, and I think it is very substantial proof, that the liberties of the people can be in no danger from *biennial* elections.

[9] Short Terms, Dependent on People, Restrained by Senate

The conclusion from these examples will be strengthened by remembering three circumstances.

First, the federal legislature will possess only part of the supreme legislative authority that is vested completely in the British Parliament and, with only a few exceptions, was exercised by the colonial assemblies and the Irish legislature. It is a well-founded maxim that, excluding all other circumstances, the greater the power, the shorter ought to be its duration. And conversely, the smaller the power, the more safely may its duration be protracted.

In the second place, on another occasion, it has been shown that the federal legislature will not only be restrained by its dependence on the people, but it will be, moreover, watched and controlled by several collateral legislatures, which other legislative bodies are not.

Third, no comparison can be made between the ability possessed by the more permanent branches of the federal government to seduce, if they should want to, the House of Representatives from their duty to the people, and the ability of the Senate to influence the popular house of the legislature. Therefore, with less power to abuse, the federal representatives will be less tempted on one side and doubly watched on the other.

PUBLIUS

Constitutional references:

Article 1, Sec 2	representatives' biennial elections
Article 1, Sec 2	qualifications of electors, elected
Article 1, Sec 6	congress members can't hold another office
Article 6	no religious test

53: Biennial Elections Safe, Promote Quality Representatives

I am here reminded of a current observation, "that where annual elections end, tyranny begins." If it is true, as has often been remarked, that clichés are generally based in reason, it is no less true that once established, they are often applied to cases to which the reason of them does not extend. For proof, I need look no further than the case before us.

On what reason was this cliché' founded? No man will pretend that a natural connection exists between the sun or the seasons and how long a man's virtue can withstand the temptations of power. Happily for mankind, liberty is not confined to any single point of time. But liberty lies within extremes, affording sufficient latitude for all the variations required by the various situations and circumstances of civil society. If it was found to be expedient, the election of public officials might be, as in some instances it actually has been, daily, weekly, or monthly, as well as annual. If circumstances require a deviation from the rule on one side, why not also on the other side.

Turning our attention to the terms in the largest house of each State legislature, we find a variety of time periods.

In Connecticut and Rhode Island the periods are half-yearly. In the other States, except South Carolina, they are annual. In South Carolina they are biennial, as proposed in the federal government. The difference is four to one, between the longest and shortest periods. Yet it wouldn't be easy to show that Connecticut or Rhode Island is better governed or enjoys more liberty than South Carolina. Or that either the one or the other of these States is distinguished in these respects, and by these causes, from the States whose elections are different from both.

[2] No Constitution: Legislature Can Change Government

In searching for the basis of this doctrine, I discovered only one, and it is completely inapplicable to our case. The important distinction between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, is well understood in America, but seems to be little understood and less observed in any other country.

Wherever the supreme power of legislation exists, the full power to change the form of the government also exists. Even in Great Britain where the principles of political and civil liberties have been the most discussed and where we hear of the rights of the Constitution, the authority of the Parliament is transcendent and uncontrollable in regard to the Constitution as an object of legislature. Accordingly several times they have actually changed by legislative acts some of the most fundamental articles of the government, specifically, the election period. On the last occasion, they not only introduced septennial to replace triennial elections, but by the same act continued themselves in place four years beyond the term for which the people elected them.

Frequency of elections is the cornerstone of free governments. These dangerous practices produce a very natural alarm among voters. And it has led them to seek some way to secure their liberty against this danger. In countries without a Constitution that controls the government and where one cannot be obtained, the type of constitutional security established in the United States was not attempted. Some other security was sought. And what better security could be found than the length of time as a standard for measuring the danger of changes, fixing the national sentiment, and uniting the patriotic efforts? The simplest, most familiar length of time applicable was a year. Hence, the doctrine has been inculcated by a laudable zeal in order to erect some barrier against the gradual changes of an unlimited government. The approach of tyranny was calculated by how far away from annual elections.

But what is the necessity of applying this measure to a government limited, as our federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the American people will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government?

[3] Biennial Elections Necessary, Useful

Are biennial elections necessary and useful? Several obvious considerations will show that an affirmative answer is proper.

[4] Legislator Experience Important

No man can be a competent legislator if he doesn't have, in addition to upright intentions, a sound judgment and some knowledge of the subjects on which he is to legislate. Some knowledge can be acquired through information within the compass of men in private as well as public life. Another part can only be thoroughly attained by actual experience in the station that requires the use of it. Therefore, in all such cases, the length of service should be somewhat proportional to how much practical knowledge is required to adequately perform the service.

The length of service established for the larger legislative house in most States is, as we have seen, one year. The question then is: can a congressman acquire any greater proportion of the knowledge required for federal legislation in two years than the knowledge required and acquired in one year for State legislation? The very form of the question suggests its answer.

[5] Large Area, Diversified Laws, Commerce

In a single State, the required knowledge relates to existing laws, which are uniform throughout the State and with which all the citizens are more or less conversant, and to the general affairs of the State, which lie within a small area, are not very diversified

and occupy the attention and conversation of every class of people.

The great theatre of the United States presents a very different scene. The laws are far from being uniform, varying in every State. The public affairs of the Union are spread throughout a very extensive region and are extremely diversified by the local affairs connected with them. They are difficult to learn in any other place than the central councils, where the representatives of every part of the empire bring knowledge of them.

The members from each of the States should possess some knowledge of the affairs, and even the laws, of all the States. How can foreign trade be properly regulated by uniform laws without some acquaintance with the commerce, the ports, the usage, and the regulations of the different States? How can the trade between the different States be regulated without some knowledge of their relative situations in these and other respects? How can taxes be judiciously imposed and effectually collected if they are not knowledgeable of the different laws and local circumstances relating to these objects in the different States? How can uniform regulations for the militia be duly provided without a similar knowledge of the many internal circumstances that distinguish the States from each other?

These are the principal subjects of federal legislation and suggest, most forcibly, the extensive information that the representatives should acquire. The other interior subjects will require a proportionate degree of information.

[6] Difficulties Will Decrease, Knowledge Increase

All these difficulties will, by degrees, diminish. The most laborious task will be properly inaugurating the government and the very first formation of a federal code. Improvements on the first drafts will become easier and fewer every year. Past transactions of the government will be a ready and accurate source of information to new members. The affairs of the Union will become more interesting, conversational subjects among the citizens at large. And the increased intercourse among the different States will contribute to the mutual knowledge of their affairs, as it will contribute to a general assimilation of their manners and laws.

But even with all these abatements, the business of federal legislation will continue to so far exceed, both in novelty and difficulty, the legislative business of a single State, as to justify the longer period of service assigned to those who are to transact it.

[7] Foreign Affairs Learned as Legislator

A branch of knowledge a federal representative needs to acquire, and which has not been mentioned, is that of foreign affairs.

In regulating our own commerce, he should be acquainted with the treaties between the United States and other nations, and the commercial policies and laws of other nations. He should not be completely ignorant of the law of nations because it, as far as it is a proper object of municipal legislation, is submitted to the federal government.

And although the House of Representatives will not directly participate in foreign negotiations and arrangements, from the necessary connection between the areas of public affairs, the different areas will frequently deserve attention in the ordinary course of legislation and will sometimes demand legislative sanction and cooperation. Some portion of this knowledge may, no doubt, be acquired in a man's private life. But some of it can only be derived from the public sources of information. And all of it will be best acquired by attention to the subject during the period of actual service in the legislature.

[8] Representatives' Distance Traveled

There are other considerations of less importance, perhaps, but worthy of notice.

The distance many of the representatives will be forced to travel, with all the necessary arrangements, might become serious objections made by men fit for this service, if limited to a single year than if extended to two years. No argument on this subject can be drawn from the case of the delegates to the existing Congress. They are elected annually, it is true. But their reelection is considered by the legislative assemblies almost as a matter of course. The election of representatives by the people would not be governed by the same principle.

[9] Some Members Will Serve Long Time

As happens in all such assemblies, a few of the members will possess superior talents and, by frequent reelections, will become members of long standing. They will be masters of the public business and perhaps willing to avail themselves of those advantages. The greater the proportion of new members and the less the information of the bulk of the members, the more apt they will be to fall into the snares that may be laid for them. This remark is applicable to both the House of Representatives and the Senate.

[10] Annual Elections Too Short to Unseat Irregular Members

With the advantage of frequent elections, comes an inconvenience. In a single, large State where elections and legislative sessions are once a year, spurious elections can not be investigated and annulled in time for the decision to have effect. If an election is won, no matter by what unlawful means, the irregular member, who takes his seat is sure of holding it a sufficient time to fulfill his goals. Hence, a very destructive encouragement is given to the use of unlawful means for obtaining irregular returns. If elections for the federal legislature were annual, this practice might be very seriously abused, particularly in the more distant States.

Each house is, as it necessarily must be, the judge of the elections, qualifications, and returns of its members. And whatever improvements may be suggested by experience for simplifying and accelerating the process in disputed cases, a great

portion of a year would unavoidably elapse before an illegitimate member could be dispossessed of his seat. The prospect of such an event would do little to check unfair and illicit means of obtaining a seat.

[11] Biennial elections Useful, Safe to Liberty

All these considerations taken together give us reason to affirm that biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberty of the people.

Publius

Constitutional references:

Article 1, section 2	biennial elections
Article 1, section 5	each house judge of its own elections, returns, member qualifications

54: Number of Representatives, Direct Taxes: Calculated by Same Rule

The next topic on the House of Representatives relates to the appointment of its members by the States, which is determined by the same rule as that of direct taxes.

[2] Representation/Population; Taxes/Wealth

No one is arguing that the population of each State should not be the standard for determining each State's proportional representation. Likewise, using the same rule to determine each State's tax obligation will probably not be contested. However, the rule itself, in these two cases, is founded on two different principles.

In the case of representatives, the rule refers to the personal rights of the people, with which it has a natural and universal connection.

In the case of taxes, it refers to the proportion of wealth. It is not a precise measure. In fact, in most cases, it is a very unfit one. Despite the imperfection of the rule as applied to the relative wealth and contributions of the States, it is evidently the least objectionable among the practical rules. Since it recently received the general sanction of America, the convention selected it.

[3] Objection: Counting Slaves In Population

Admitting all this, it might be asked: But does it follow from using numbers to measure representation, or slaves combined with free citizens as a ratio of taxation, that slaves should be included in the numerical rule of representation? Slaves are considered property, not persons. Therefore, they should be counted in estimates of taxation, which are founded on property. And they should be excluded from legislative representation, which is determined by a census of persons.

As I understand it, this is the objection stated in its full force. I will state the reasoning, which may be offered on the opposite side with equal candor.

[4] Change Law, Slaves Become Citizens

"We subscribe to the doctrine," one of our Southern friends might observe, "that representation relates more closely to persons and taxation more closely to property. We join in applying this distinction to the case of our slaves. But we must deny the fact that slaves are considered as merely property and in no way whatever as persons. The true state of the case is, they have both qualities. Our laws consider them, in some respects, as persons and, in other respects, as property.

"Since the slave is forced to labor, not for himself but for a master, since one master can sell him to another master, since he is subject at all times to be restrained in his liberty and chastised in his body by the capricious will of another—the slave may appear to be degraded from the human rank and classed with those irrational animals which fall under the legal denomination of property.

"On the other hand, by being protected in his life and limbs against the violence of all others, even the master of his labor and his liberty, and in being punishable himself for all violence committed against others—the slave is clearly regarded by the law as a member of society, not as a part of the irrational creation. He is regarded as a moral person, not as a mere article of property.

"The federal Constitution, therefore, is correct when it views the character of our slaves as a mixture of persons and property. This is, in fact, their true character. It is the character bestowed on them by the laws under which they live. And it will not be denied that these are the proper criterion. Non-slave states dispute the inclusion of slaves in the computation of numbers. But the pretext of laws, alone, has transformed Negroes into property. And it is admitted, if the laws restored the rights that have been taken away, the Negroes could no longer be refused an equal share of representation with the other inhabitants.

[5] Condemn Slavery, Yet Call Slaves Property

"This question may be looked at in another way. Everyone agrees that just as wealth and taxation are measured by numbers, numbers are the only proper measure of representation. Would the convention have been impartial or consistent, if they had excluded slaves from the list of inhabitants when calculating representation, then inserted them to calculate tariff contributions (taxes)? Could it be reasonably expected that the Southern States would agree to a system that considered their slaves, in some degree, as men when burdens were imposed, but refused to consider them in the same way when advantages were conferred?

"Wouldn't there also be some surprise that the same people who reproach the Southern States for the barbarous policy of considering part of their human brethren as property, should now contend that the government, to which all States are to be parties, should consider this unfortunate race more completely in the unnatural light of property than the very laws they complain about?

[6] Slaves: Computing State Representation

"It may be argued, perhaps, that slaves are not included in computing the state representation in any of the States possessing them. They neither vote nor increase the votes of their masters. On what principle, then, should they be taken into the federal computation of representation? By rejecting them completely, the Constitution would follow the very laws looked to as the proper guide.

[7] Constitution Defines # Representatives; States Define Voters

"This objection is repelled by a single observation. It is a fundamental principle of the proposed Constitution that the total number of representatives allotted to each State is determined by a federal rule, based on the total number of inhabitants. However, the State, itself, designates

which inhabitants may choose the people who will be Representatives. Voter qualifications may not be the same in any two States. In some of the States, the difference is very material.

"In every State, some inhabitants who are deprived of the right to vote by the State constitution, will be included in the census by which the federal Constitution determines the number of representatives. Following this reasoning, the Southern States might argue that the Constitution doesn't require that all States have the same suffrage policy towards their own inhabitants. Consequently, the full number of slaves should have been included in the census of inhabitants, in the same way that other States count inhabitants who do not have all the rights of citizens.

"A rigorous adherence to this principle, however, is waived by the southern States that would gain by it. All that they ask is that equal moderation be shown on the other side. Let the case of the slaves be considered, as it is in truth, a specific one. Let the Constitutional compromise be mutually adopted, regarding slaves as inhabitants debased by servitude below the equal level of free inhabitants, which regards the *slave* as divested of two-fifths of the *man*.

[8] Government Protects Property, People

"After all, isn't there a better basis to defend this article of the Constitution. So far, we have assumed that representation relates only to persons and not at all to property.

"But is this valid? Government is established to protect property as well as people. Therefore, both may be considered as represented in the government.

"On this principle, in several States, particularly New York, one branch of government is intended to more especially be the guardian of property and is, accordingly, elected by that part of society most interested in this governmental objective.

"In the federal Constitution, this policy does not prevail. Property rights are committed into the same hands as the personal rights. Therefore, some attention ought to be paid to property when choosing those hands.

[9] Influence of Wealth

"For another reason, the votes allotted in the federal legislature to the people of each State ought to bear some proportion to the comparative wealth of the States.

"States, unlike individuals, don't have an influence over each other, influence arising from wealth. The law allows an opulent citizen only a single vote to choose his representative. However, his wealth frequently influences other voters towards his choice. Through this imperceptible channel, the rights of property are conveyed into public representation.

"A State possesses no such influence over other States. The richest State in the Confederacy will probably never influence the choice of a single representative in any other State. Nor will the representatives of the larger, richer States possess any advantage in the federal legislature over the representatives of other States, except the advantage resulting from their superior number. Therefore, if their superior wealth and influence may entitle them to any advantage, it should be secured to them by a superior share of representation.

"In this respect, the new Constitution is materially different from the existing Confederation, as well as from that of the United Netherlands, and other similar confederacies. In each of the latter, federal resolutions take effect only after the states composing the union voluntarily approve them. Hence the states, though possessing an equal vote in the public councils, have an unequal influence, corresponding with the unequal importance of these subsequent, voluntary resolutions.

"Under the proposed Constitution, the federal acts will take effect without the ratification of the individual States. They will depend only on the majority of votes in the federal legislature and, consequently, each vote, whether from a larger or smaller State, or a State more or less wealthy or powerful, will have equal weight and efficacy. In the same manner that individual votes in a State legislature by representatives of unequal counties have precise equality of value and effect, or if there was any difference in the case, it proceeds from the difference in the personal character of the individual representative rather than from any regard to the wealth of the district from which he comes."

[10] Arguments Favor Apportionment Plan

An advocate for the Southern interests might employ such reasoning on this subject. And although it may appear to be a little strained in some points yet, on the whole, I must confess that it fully reconciles me to the scale of representation that the convention established.

[11] States' Census Bias: Increase Representation, Decrease Tax

In one respect, the establishment of a single measure to calculate representation and taxation will have a very beneficial effect. The accuracy of the Congressional census will necessarily depend to a considerable degree on the disposition, if not on the cooperation, of the States. It is important that the States should feel as little bias as possible to swell or reduce their numbers.

If their share of representation alone was governed by this rule, they would have a reason to exaggerate their inhabitants. If it decided their share of taxation alone, the opposite temptation would prevail. By extending the rule to both, the States will have opposite interests, which will control and balance each other, and produce the requisite impartiality.

PUBLIUS

Article 1, sec 2 apportionment of Reps and direct taxes, census

55: Total Number of Members in House of Representatives

The number of members in the House of Representatives is another interesting topic. Indeed, hardly any article in the whole Constitution seems more worthy of attention, judging by the force of arguments by respected people against it.

The charges are:

1) So **small a number** of representatives will be an unsafe depository of the public interests.

2) They won't possess a proper knowledge of **local circumstances** of their numerous constituents.

3) They will be taken from the **upper class** of citizens, who sympathize the least with the feelings of the mass of the people. And they will, most likely, aim at a permanent elevation of the few on the depression of the many.

4) Defective as the number will be in the beginning, it **will become more and more disproportionate** by the increase of the people and the obstacles preventing a correspondent increase of representatives.

[2] States: Constituent/Legislator Ratios

In general, no political problem is less susceptible to a precise solution than the appropriate number for a representative legislature. Among the States, no policy varies as widely, whether we compare their legislatures directly with each other or compare the proportionate number of constituents to each representative.

The smallest State legislature is Delaware's. Its largest branch has 21 representatives. The largest is Massachusetts, which has between three and four hundred members.

Even States nearly equal in population vary considerably. The number of representatives in Pennsylvania is no more than one-fifth of Massachusetts. New York, whose population is to that of South Carolina as six to five, has little more than one-third of the number of representatives.

As great a disparity prevails between Georgia and Delaware or Rhode Island. In Pennsylvania, the representatives bear no greater proportion to their constituents than one for every 4 or 5,000.

In Rhode Island, their proportion is at least one for every thousand.

According to the constitution of Georgia, the proportion may be one to every ten electors, far exceeding the proportion in any of the other States.

[3] Ratio Changes with Population Size

Another general comment is that the ratio between the representatives and the people should not be the same in very large and very small populations.

If the number of representatives in Virginia were calculated as in Rhode Island, they would currently amount to between four and five hundred. And twenty years from now, a thousand.

On the other hand, if Pennsylvania's ratio was applied to Delaware, its representative assembly would have seven or eight members.

Nothing can be more misleading than to base political decisions on arithmetical principles. Perhaps sixty or seventy men can be more trusted with a certain amount of power than six or seven. But it doesn't follow that six or seven hundred would be a proportionately better depository. And if we carry on the supposition to 6,000 or 7,000, the whole reasoning should be reversed.

The truth is, in all cases, the number needs to be large enough to secure the benefits of open discussion and guard against making a conspiracy too easy. Yet the number should be kept within a certain limit, to avoid the confusion and intemperance of a multitude. In all very large assemblies, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.

[4] House of Representatives' Power Limited

It is necessary to remember the observations made about biennial elections. The limited powers of the Congress and the control of the State legislatures justify less frequent elections than the public safety might otherwise require.

For the same reasons, the number of representatives can be fewer than if they were the entire legislative branch and were under only the ordinary restraints of other legislative bodies.

[5] Objections: Small Number Can't Be Trusted With So Much Power

With these general ideas in mind, let's weigh the objections stated against the number of members proposed for the House of Representatives.

It is said, in the first place, that so small a number cannot be safely trusted with so much power.

[6] Size of House will Quickly Grow

When the government begins, the number will be 65. A census will be taken within three years. Then the number may increase to one for every 30,000 inhabitants. A new census is to be taken every ten years. Augmentations may continue to be made under the above limitation.

It isn't extravagant to guess that the first census will, at the rate of one for every 30,000 people, increase the number of representatives to at least 100. Estimating Negroes in the three-fifths proportion, the population of the United States will be three million, if it isn't already.

According to the computed rate of increase, after 25 years the number of representatives will be

200. In 50 years, 400. This number, I presume, will end all fears arising from the smallness of the body.

I assume here what I'll show when answering the fourth objection, that the number of representatives will increase from time to time in the manner provided by the Constitution. If this didn't happen, I admit the objection would have very great weight indeed.

[7] Proposed Number Won't Threaten Liberty

The true question to be decided is whether the smallness of the number, as a temporary regulation, is dangerous to public liberty? Are 65 members for a few years, and 100 or 200 for a few more, a safe depository for a limited, well-guarded power of legislating for the United States?

To answer no, I would have to erase every impression I have about the current characteristics of the American people, the spirit driving the State legislatures, and the principles incorporated within the political character of every class of citizens.

I cannot conceive that the people of America, in their present mood or under any circumstances within the near future, will elect—and every second year reelect—65 or 100 men who want to pursue a scheme of tyranny or treachery. I am unable to conceive, either now or in the immediate future in the United States, any 65 or 100 men capable of running for office with the desire or daring to, within the short space of two years, betray the solemn trust committed to them.

What future circumstances and a larger population may produce requires a prophet, which is not one of my pretensions. But judging from our present circumstances and the probable state of them in the near future, I must state that American liberties will be safe in the number of hands proposed by the federal Constitution.

[8] Small Congress During Revolution

From where will the dangers come? Are we afraid of foreign gold? If foreign gold could so easily corrupt our federal rulers, enabling them to ensnare and betray their constituents, how has it happened that we are at this time a free and independent nation?

The congress that led us through the Revolution was smaller than its successors will be. They were not chosen by, nor responsible to, their fellow citizens. Though appointed from year to year and recallable at pleasure, they generally continued for three years and, prior to the ratification of the federal articles, for an even longer term. They always held their discussions under the veil of secrecy. They had complete control of our affairs with foreign nations. Through the whole course of the war, they had the fate of their country more in their hands than, it is hoped, will ever be the case with our future representatives. And from the greatness of the prize at stake and eagerness of the party that lost it, it may be supposed that they wouldn't have hesitated to use means other than force.

Yet we know by happy experience that the public trust was not betrayed. Nor has the purity of our public councils, in this area, ever suffered from even the whispers of calumny.

[9] Would President or Senate Corrupt Representatives?

Is the danger feared from the other branches of the federal government? How could the President or the Senate or both do it? The benefits of their offices, it is presumed, will not be enough to be used to corrupt Representatives, except if they are already corrupt. Their private fortunes, as they must all be American citizens, cannot possibly be sources of danger. The only way they can corrupt Representatives will be through giving out government appointments. Is this where suspicion arises? Sometimes we are told that this source of corruption will be exhausted by the President, who will subdue the virtue of the Senate. Now the fidelity of the other House is to be the victim.

The improbability of such a mercenary and perfidious conspiracy of the members of government, standing on as different foundations as republican principles will allow and, at the same time, accountable to the society over which they are placed, should, by itself, quiet this apprehension.

Fortunately, however, the Constitution has provided another safeguard. The members of Congress are rendered ineligible to hold any civil offices that were created or the benefits increased during the term of their election. Therefore, no offices can be given to existing members except when vacated by ordinary casualties. And to suppose these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events are forecast and substitute an indiscriminate, unbounded, illogical jealousy.

The sincere friends of liberty, who extravagate this passion, injure their own cause. Since mankind has a degree of depravity that requires circumspection and distrust, there are also qualities in human nature that justify some esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. If the pictures drawn by the political jealousy of some people were a faithful portrayal of the human character, the inference is that people are not virtuous enough for self-government. And that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

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56: Opposition: Too Few Representatives to Know, Understand Constituents

The second charge against the House of Representatives is that it will be too small to possess knowledge of the interests of its constituents.

[2] Congress: Different Type of Legislature

This objection apparently comes from comparing the proposed number of representatives with the great size of the United States, the number of inhabitants who have a diversity of interests, without considering the specific characteristics that will distinguish Congress from other legislative bodies. The best answer is a brief explanation of these characteristics.

[3] Specific Knowledge Necessary

It is a sound and important principle that the representative should be acquainted with the interests and circumstances of his constituents. However, this principle extends only to situations and interests related to a representative's authority.

An ignorance of a variety of minute subjects that don't fall within the legislative domain is consistent with every attribute necessary for proper performance of the legislative trust.

To determine how much information is required to exercise a particular authority, we must look at the objects within the scope of that authority.

[4] Commerce, Taxes, Militia

The most important areas of federal legislation that seem to require local knowledge are commerce, taxation, and the militia.

[5] Commerce Complex

As mentioned before, the proper regulation of commerce requires much information. But as far as this information relates to State laws and situations, a very few informed federal representatives are sufficient.

[6] Union Tax Codes will Borrow From States

Taxation will primarily be duties involved in the regulation of commerce, making the preceding remark about commerce applicable.

As it may include internal tax collections, a wider knowledge of the circumstances within the State may be necessary. But won't a very few intelligent men, diffusely elected within the State, possess enough knowledge? Divide the largest State into ten or twelve districts. No local interests will be found with such an exclusive quality that it will not be within the knowledge of the district's representative.

Besides this source of information, the laws of the State, framed by legislators from every part of it, will almost, by themselves, be a sufficient guide.

Every State has, and will continue to make, tax regulations. In many cases, the federal legislature could simply review the different laws and reduce them to a general act. A skillful person, by himself, with all the local codes before him, might compile a taxation law for the whole Union without any aid from oral information. And it can be expected that whenever internal taxes may be necessary, particularly when uniformity throughout the States is required, the simplest objects will be preferred.

To fully understand how much help in this area of federal legislation the State codes will be, we only need to imagine New York, or any State, divided into a number of parts, each with the power of local legislation. Isn't it evident that the labors of the general legislature would be shortened by the amount of local information, so that the general legislature needs far fewer members to be sufficient?

Another circumstance will give the federal legislature a great advantage. Representatives from each State will not only bring with them a considerable knowledge of its laws and local knowledge of their districts, but will probably have been members of the State legislature, where all the local information and interests of the State are assembled. From the State legislatures, the information can be easily conveyed by a very few hands into the legislature of the United States.

[7] Within States, Militia Discipline Uniform

The observations on taxation apply with greater force to the case of the militia. However different the rules of discipline may be in different States, they are the same throughout each particular State, and depend on circumstances that can differ only a little in different parts of the same State.

[8] Need to Acquire Wider Knowledge

The attentive reader will notice that the reasoning used to prove that a moderate number of representatives is sufficient, does not contradict what was stressed on another occasion: the representatives should possess extensive information and the time necessary for acquiring it.

Understanding different local laws and circumstances is necessary and difficult, not within a single State, but among different States.

Within each State, laws are the same and interests only a little diversified. Therefore, a few men will have the knowledge required to properly represent them. If the interests and

affairs of each individual State were perfectly simple and uniform—a knowledge of them in one part would mean having the knowledge of every other—the whole State could be competently represented by a single member taken from any part of it.

Comparing different States, we find a great dissimilarity in their laws. And a dissimilarity of many circumstances that will be subjects of federal legislation, all of which the federal representatives should have some acquaintance. While representatives from each State bring with them knowledge of their own State, every representative will need to acquire a lot of information about all the other States.

As formerly remarked, in time, the comparative situation of the different States will have an assimilating effect. The effect of time on the internal affairs of the individual States will have the opposite effect.

At present, some of the States are little more than a society of farmers. Few of them have made much progress in the areas of industry that give a variety and complexity to the affairs of a nation. These will be the fruits of a more advanced population and will require, on the part of each State, a full representation. Accordingly, the foresight of the convention has taken care that the population's progress may be accompanied with a proper increase of the representative branch of the government.

[9] Great Britain: Citizens/Representative

Great Britain presents many political lessons, both of the monetary and exemplary kind, which have been frequently consulted in these papers. Its experience affirms what we have just said.

The two kingdoms of England and Scotland have at least eight million inhabitants. These eight million have 558 representatives in the House of Commons. Of this number, 364 people elect one ninth, and 5,723 people elect one half.*

It can't be assumed that the half elected by so few people, representatives who don't even reside among the people at large, can add anything to the security of the people against the government or to the knowledge of their circumstances and interests in the legislative councils. On the contrary. It is well known that they are more frequently the representatives and instruments of the executive magistrate than the guardians and advocates of the popular rights. Therefore, they could be considered as something worse than just a deduction from the real representatives of the nation. We will, however, consider them in this light alone. We will not deduct the considerable number of other representatives who don't reside among their constituents, are very little connected with them, and have very little specific knowledge of their affairs.

With these concessions, 279 people are the only depository of the safety, interest, and happiness of eight million. In other words, there is only one representative to maintain the rights and explain the situation of 28,670 constituents. And the assembly is exposed to the whole force of executive influence and extends its authority to every subject of legislation within a nation whose affairs are in the highest degree diversified and complicated.

Yet it is very certain that most of the people's freedom has been preserved under these circumstances. Additionally, the legislature's ignorance of the people's circumstances can only partially be blamed for the defects in the British code.

Allowing the British example the weight due it and comparing it with the House of Representatives, it assures us that a representative for every 30,000 inhabitants will be both safe and a competent guardian of the interests entrusted to it.

PUBLIUS

Article 1, section 2	# of Representatives
Article 1, section 8	commerce
Article 1, section 9	commerce
Article 1, section 8	taxation
Article 1, section 9	taxation
Article 1, section 8	militia

* Burph's Political Disquisitions.—PUBLIUS

57: Charge: Representatives from Society's “Upper Class”

The *third* charge against the House of Representative is that members will come from that class of citizens with the least in common with the mass of the people and who would be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few.

[2] Elitist House, Republican Government

Of all the objections against the federal Constitution, this is perhaps the most extraordinary. While the objection itself is leveled against an imagined oligarchy, the principle strikes at the very root of republican government.

[3] Want Rulers Who Pursue Common Good

The first aim of every political constitution is, or ought to be, to find men for rulers who possess the most wisdom to discern and the most virtue to pursue the common good of the society. Next, it needs the most effective precautions for keeping them virtuous while they continue to hold their public trust.

Republican governments elect rulers. Numerous and various means are relied on to prevent their degeneracy. The most effective is limiting the term in office to maintain a proper responsibility to the people.

[4] House Based on Republican Principles

Let me ask: What in the Constitution about the House of Representatives violates the principles of republican government or favors the elevation of the few on the ruins of the many?

Let me ask: Is not just the opposite true? Does not the constitution strictly conform to these principles? Is it not scrupulously impartial to the rights and pretensions of every class and description of citizens?

[5] People Will Elect Representatives

Who will elect the federal representatives? Not the rich more than the poor. Not the learned more than the ignorant. Not the haughty heirs of distinguished names more than the humble sons of obscurity and unpropitious fortune.

The voters are the people of the United States. They will be the same people who have the right to elect representatives to the State legislatures.

[6] “Class” Won't Disqualify Candidates

Who will be elected by popular choice? A citizen whose merit recommends him to the esteem and confidence of his country. No qualification of wealth, birth, religious faith, or civil profession is permitted to fetter the judgment or disappoint the inclination of the people.

[7] Internal Securities

The men freely elected by their fellow citizens will face every security that can be devised or desired to assure their fidelity to their constituents.

[8] Because Elected, Have Good Qualities

First, since they will be honored by being the choice of their fellow citizens, we presume that they will have, to some degree, those qualities entitling them to be elected and which promise a sincere and scrupulous regard to the nature of their engagements.

[9] Representatives Feel Gratitude to Voters

Second, as they enter public service, they will have at least a temporary affection for their constituents. Every person responds positively when they are honored or favored, or given the esteem and confidence of their fellow citizens. Apart from all considerations of interest, this guarantees some grateful and benevolent returns.

Ingratitude is a common topic of declamation against human nature. And it must be confessed that instances of it are too frequent and flagrant, both in public and private life. But the universal and extreme indignation it inspires proves the energy and prevalence of the contrary sentiment.

[10] Politicians Court Voters' Favor

In the third place, the ties that bind the representative to his constituents are strengthened by selfish motives. His pride and vanity attach him to a form of government that favors his pretensions, giving him a share in its honors and distinctions. Whatever the hopes or plans entertained by a few aspiring characters, a large proportion of men derive their advancement from their influence with the people. They would have more to hope from a preservation of the voters' favor, than from governmental innovations subversive to the authority of the people.

[11] Frequent Elections

All these securities, however, would be very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is designed to habitually remind members of their dependence on the people.

Before their exercise of power causes them to completely forget how they became elevated to high office, they will be forced to think about the moment when their power will cease, when their exercise of it will be reviewed, and when they must descend to the level from which they were raised—to

remain there forever unless they had faithfully discharged their trust, establishing that they truly deserve to be reelected.

[12] Must Live Under Laws They Pass

I will add that, as a fifth restraint on the House of Representatives from enacting oppressive measures, they can make no law that will not have its operation on themselves and their friends, as well as on the great mass of the society.

This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them the communion of interests and sympathetic sentiments of which few governments have furnished examples, but without which every government degenerates into tyranny.

If it is asked what restrains the House of Representatives from making legal discriminations in favor of themselves and a specific class of society? I answer: the genius of the whole system, the nature of just and constitutional laws, and, above all, the vigilant and manly spirit actuating the people of America—a spirit which nourishes freedom and, in return, is nourished by it.

[13] Laws that Presage Tyranny

If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

[14] Duty, Gratitude, Selfishness, Ambition Will Bond Representatives to Citizens

Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition are the chords by which they will be bound to fidelity and sympathy with the great mass of the people.

It is possible that these may be insufficient to control the caprice and wickedness of man. But are they not all that government will allow and human prudence can devise? Are they not a genuine way that republican government provides for liberty and happiness? Doesn't every State government rely on identical means to attain these important ends?

What, then, are we to understand by the objection this paper has combated? What should we say to men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain they prefer only those who will immediately and infallibly betray the trust committed to them?

[15] Will Only Few Elite People Vote?

If someone who hadn't seen how the Constitution defines the way representatives will be chosen read this objection, he would be forced to conclude that only people owning a large amount of property could vote. Or that eligibility was limited to people within particular families or with fortunes. If nothing else, they would think that the method prescribed by the State constitutions was, in some respect or other, very grossly departed from.

As to the two first points, we see how far such a supposition would err. Nor would it, in fact, be less erroneous as to the last. The only difference between the two cases is, that 5,000 or 6,000 citizens will elect each representative of the United States. In the States, 500 or 600 citizens elect representatives. Is this difference sufficient enough to justify an attachment to the State government and an abhorrence to the federal government? If this is the point of the objection, it deserves to be examined.

[16-17] 5,000 vs. 500 Voters

Is it supported by *logic*?

No. It could only be true if 5,000 or 6,000 citizens are less capable of choosing a fit representative or can be more easily corrupted by an unfit one than 500 or 600 citizens.

On the contrary, logic assures us that in so great a number a fit representative would most likely be found, so the choice would be less likely to be diverted from him by the intrigues of the ambitious or the bribes of the rich.

Is the *consequence* from this doctrine admissible? If we say that 500 or 600 citizens are the total number that can jointly exercise their right of suffrage, then shouldn't we deprive the people of their immediate choice of public servants whenever the administration of the government does not require as many of them as will amount to one for that number of citizens?

[18] Comparing House of Representatives to British House of Commons

Is the doctrine warranted by *facts*? In the last paper, it was shown that in the British House of Commons the real proportionate representation is little more than one for every 30,000 inhabitants.

No variety of powerful causes exists here, causes that in Britain favor the pretensions of rank and wealth.

In Britain, no person is eligible as a county representative unless he possesses real estate with the clear value of 600 pound sterling per year. Nor a city or borough representative unless he possesses an estate of half that annual value. The right of suffrage requires that county voters have a freehold estate with

the annual value of more than 20 pounds sterling, according to the present rate of money.

In spite of these unfavorable circumstances and some very unequal laws in the British code, it cannot be said that the representatives of the nation have elevated the few on the ruins of the many.

[19] State Legislatures with Populous Districts

But we need not resort to foreign experience on this subject. Our own experience is explicit and decisive.

In New Hampshire, the state senatorial districts are nearly as large as will be necessary for her congressional representatives. Those of Massachusetts are larger than will be necessary and New York, still more so.

In fact, the members of the New York Assembly for the cities and counties of New York and Albany are elected by very nearly as many voters as will be entitled to a representative in Congress, calculating on the number of 65 representatives only. It doesn't make any difference that in these senatorial districts and counties each voter votes for a number of representatives at the same time. If the same voters at the same time are capable of choosing four or five representatives, they cannot be incapable of choosing one.

Pennsylvania is an additional example. Some counties that elect State representatives are almost as large as the districts from which the federal representatives will be elected. Philadelphia is supposed to contain between 50,000 and 60,000 souls. Therefore, it will form nearly two districts for the choice of federal representatives. However, it forms but one county in which every elector votes for each of its representatives in the State legislature. And what appears to speak more directly to our purpose, the whole city actually elects *a single member* for executive council. This is the case in all counties in the State.

[20] Are Representatives Elected By Larger Group Less Worthy?

Don't these facts satisfactorily prove the fallacy employed against the House of Representatives? Have we seen the senators of New Hampshire, Massachusetts, and New York, or the executive council of Pennsylvania, or the members of the Assembly in the two last States, show any peculiar disposition to sacrifice the many to the few? Are they in any respect less worthy of their places than the representatives and magistrates elected in other States by very small divisions of the people?

[21] Entire States Elect Governors

But there are more powerful examples than any I have yet quoted. One branch of the Connecticut legislature is so constituted that the whole State elects each member. So are the governors of that State, Massachusetts, and New York, and the president of New Hampshire.

I leave every man to decide whether the result of any one of these experiments can be said to countenance a suspicion that a diffusive mode of choosing representatives of the people tends to elevate traitors and undermine pubic liberty.

Publius

Constitutional references:

Article 1, section 2	House of Representatives voter qualifications
Article 1, section 2	House of Reps, qualifications of representative

58: Number of Representatives Will Grow With Population Growth

The remaining charge against the House of Representatives that I am going to examine is based on the supposition that the number of members will not be augmented from time to time as population growth may demand.

[2] Fear Unfounded

This objection, if it were true, would be significant. The following observations show that, like most objections against the Constitution, it must be the result of a limited view of the subject or a jealousy that discolors and disfigures every object it beholds.

[3] Temporary Number

1. When compared with the State constitutions the federal Constitution won't suffer in the security provided for a gradual augmentation of the number of representatives. The number stated in the Constitution is temporary, for only three years.

[4] 10-Year Census Will Adjust Number

Every successive ten years a census of inhabitants is to be repeated.

The census has two clear objectives. First, to periodically readjust the apportionment of representatives to the number of inhabitants; the single exception is that each State will have at least one representative. Second, to augment the number of representatives at the same periods, with the only limitation that the whole number will not exceed one for every 30,000 inhabitants.

If we review the State constitutions, some contain no determinate regulations on this subject. Others correspond pretty much with the federal Constitution on this point. And the most effectual security in any of them is resolvable into a mere directory provision.

[5] State Legislatures Have Increased

Experience under the State constitutions shows a gradual increase of representatives, keeping pace with the increase of constituents. And the representatives have seemed as ready to concur in such measures as the citizens have been to call for them.

[6] Large States Will Enforce House Increase

There is a peculiarity in the federal Constitution insuring that both the people and their representatives carefully watch the constitutional augmentation of the latter. The peculiarity lies in this: one branch of the legislature represents the citizens, the other represents the States. Consequently, in the House of Representatives, the larger States will have the most weight. The Senate favors the smaller States. From this circumstance, we may infer that the larger States will be strenuous advocates for increasing the number and weight of the House of Representatives, where their influence predominates.

It so happens that the four largest States will have a majority of the votes in the House of Representatives. Therefore, if the representatives or people of the smaller States oppose a reasonable addition of members, a coalition of a very few States will be sufficient to overrule the opposition. This coalition, despite the rivalship and local prejudices that might prevent it on ordinary occasions, would not fail to take place when not merely prompted by common interest but justified by equity and the principles of the Constitution.

[7] Senate Blocking Increase in House

Perhaps it will be alleged that the Senate, prompted by similar motives, will block the coalition. And since their concurrence would be indispensable, the just, constitutional views of the other branch might be defeated.

This difficulty has probably created the most serious apprehensions in the jealous friends of a large representation. Fortunately, this difficulty exists only in appearance and vanishes on a close, accurate inspection. The following reflections will, if I'm not mistaken, give conclusive satisfaction on this point.

[8] House Will Prevail in This Situation

The two houses will have equal authority on all legislative subjects except originating money bills. However, it cannot be doubted that the House, composed of the greater number of members, when supported by the more powerful States, and speaking the known and determined sense of a majority of the people, will have an advantage in a question depending on the comparative firmness of the two houses.

[9] House Position Bolstered by Constitution

This advantage, on the one side, will be increased by the awareness of being supported by right, reason, and the Constitution. And the awareness, on the opposite side, of fighting against the force of all these solemn considerations.

[10] Senate Also Influenced By State Size

Farther, in the gradation between the smallest and largest States, there are several States that are most likely to generally be among the smaller but are too close in size and population to the larger to agree to oppose their just and legitimate claims. Hence, it is by no means certain that a majority of votes, even in the Senate, would be unfriendly to proper

augmentations in the number of representatives.

[11] Reapportionment: New, Growing States

It will not be reaching to add that the Senators from all the new States may be won over to the just views of the House of Representatives, by an expedient too obvious to be overlooked.

For a great length of time, as these States rapidly increase in population, they will be interested in frequent reapportionments of the representatives to the number of inhabitants. Therefore, the large States, prevailing in the House of Representatives, will make the two processes of reapportionments and augmentations mutual conditions of each other. And the Senators from all the fastest growing States will be bound to contend for augmentations because of their States' interest in reapportionment.

[12] Representatives, Alone, Hold the Purse

These considerations seem to afford ample security on this subject and ought, alone, to satisfy all the doubts and fears in regard to it. However, if they were all insufficient to subdue the unjust policy of the smaller States or their predominant influence in the councils of the Senate, a constitutional and infallible resource still remains with the larger States, by which they will be able, at all times, to accomplish their just purposes.

The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse—that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representative body of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of government.

This power over the purse may, in fact, be regarded as the most complete and effectual weapon any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.

[13] Will House Cave to Senate?

But will not the House of Representatives be as interested as the Senate in maintaining the government in its proper functions? And will they not, therefore, be unwilling to stake its existence or reputation on the pliancy of the Senate? Or if a trial of firmness between the two branches were hazarded, would not either one be as likely as the other to yield first?

These questions will create no difficulty for people who reflect that, in all cases, the smaller the number and the more permanent and conspicuous the station of men in power, the stronger the interest they will individually feel in whatever concerns the government. Those who represent the dignity of their country in the eyes of other nations will be particularly sensitive to every possibility of public danger or dishonorable stagnation in public affairs.

The British House of Commons triumphed over the other branches of the government whenever the engine of a money bill was employed. Although an absolute inflexibility by those other branches could not have failed to involve every department of the government in general confusion, it has neither been anticipated nor experienced.

The utmost degree of firmness that can be displayed by the federal Senate or President will not be more than equal to a resistance in which they will be supported by constitutional and patriotic principles.

[14] Danger of Large Governing Body

In this review of the Constitution of the House of Representatives, I have passed over the circumstances of economy that, in the present state of affairs, might have some effect on a temporary lowering of the number of representatives. This subject would probably have been as rich a theme of declamation against the Constitution as that of the smallness of the number proposed.

I also omit remarks on the possible difficulty, under present circumstances, in engaging in the federal service as large a number of such characters as the people will probably elect.

One observation, however, I must add on this subject because it claims, in my judgment, very serious attention. It is that, in all legislative assemblies, the greater the number of members composing them, the fewer the men who will, in fact, direct their proceedings.

In the first place, the larger an assembly may be, of whatever characters composed, the greater the ascendancy of passion over reason.

In the next place, the larger the number, the greater the proportion of members with limited information and weak capacities.

It is precisely on these personality types that the eloquence of the few is known to act with all their force.

In the ancient republics, where the whole body of people assembled in person, a single orator or an artful statesman generally ruled with as complete sway as if a scepter had been placed in his single hand.

On the same principle, the more multitudinous a representative assembly may become, the more it will take on the infirmities accompanying collective meetings of the

people. Ignorance will be the dupe of cunning. Passion the slave of sophistry and declamation.

The people can never err more than in assuming that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, *after securing a sufficient number for the purposes of safety, of local information, and of diffusive sympathy with the whole society*, they will defeat their own purpose by every addition to their representatives. The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will direct its motions.

[15] Super Majorities Lead to Minority Rule

It is proper here to mention the suggestions about the number of members needed for legislative business. It has been said that more than a majority should be required for a quorum. And in particular cases, if not in all, more than a majority of a quorum for a decision.

Some advantages might result from such a precaution. It might be an additional shield against some special interests and another obstacle to hasty and partial measures.

But these considerations are outweighed by the inconveniences in the opposite side.

In all cases where justice or the general good might require new laws or active measures, a quorum of more than a majority would reverse the fundamental principle of free government. The majority would no longer rule. The power would be transferred to the minority.

If this defensive privilege was limited to specific cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general well being or, in emergencies, to extort unreasonable indulgences.

Lastly, it would facilitate and foster a baneful practice subversive to all principles of order and regular government, a practice which leads more directly to public convulsions and the ruin of popular government than any other which has yet been displayed among us—secessions.

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59: Congress Can Regulate Federal Elections

The natural order of subjects leads us to now consider the provision in the Constitution authorizing the national legislature to regulate, in the last resort, the election of its own members.

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

This provision has not only been loudly opposed by those who condemn the whole Constitution, but it has been criticized by people with fewer and more moderate objections. One gentleman, who has declared himself the advocate of every other part of the system, has objected to this provision.

[2] Gives Government Tool to Preserve Itself

Despite this, I believe that no other clause in the whole Constitution is more defensible. Its propriety rests on the evidence of this obvious proposition: *every government should contain in itself the means of its own preservation.*

Every logical person will immediately approve the convention's adherence to this rule. He will also disapprove of every deviation from it not dictated by the necessity of including in the Constitution something not compatible with rigid conformity to the rule. Even then, though he may know it is necessary, he will regret the departure from such a fundamental principle, seeing it as an imperfection in the system that may prove the seed of future weakness and, perhaps, anarchy.

[3] Power to Modify Election Law

No one will claim that an election law could have been framed and put in the Constitution that would always be applicable to every probable change in the country's situation. Therefore, a discretionary power over elections must exist somewhere. I presume that everyone will agree that there are only three ways to reasonably modify this power: completely by the national legislature, or completely by the State legislature, or primarily by the States and ultimately by the national. The convention has, with reason, preferred the last way.

First, local administrations will regulate elections for the federal government. In ordinary cases, when no improper views prevail, this may be both more convenient and more satisfactory. But they have reserved to the national legislature a right to intervene whenever extraordinary circumstances make the intervention necessary to its safety.

[4] No Elections: States Could End National Government

It is absolutely clear that giving State legislatures the exclusive power to regulate national elections would leave the existence of the Union entirely at their mercy. At any moment, they could annihilate it by neglecting to hold an election of persons to administer its affairs.

It's pointless to say that an omission of this kind would probably not happen. Saying something is constitutionally possible but there is no risk of it happening, is an unanswerable objection. And no one has given a satisfactory reason for incurring that risk.

The extravagant conclusions [e.g. abuses of power by the federal government] of a distempered jealousy can never be dignified with that character. If we assume there will be abuses of power, it is just as fair to assume them on the part of the State governments as on the part of the national government. And it is more logical to trust the Union with the care of its own existence, than to transfer that care to any other hands.

If abuses of power are to be hazarded on one side or on the other, it is more rational to hazard them where the power is naturally placed [i.e. local government], than where it is unnaturally placed [i.e. national government].

[5] Self Preservation of Government

Suppose the Constitution empowered the United States to regulate the elections in the States. Would any man hesitate to condemn it, both as an unjustified exchange of power and a premeditated weapon for the destruction of the State governments? The violation of the principle would have required no comment.

To an unbiased observer, the violation will be just as clear in a plan to subjugate the existence of the national government to the pleasure of the States. An impartial view cannot fail to result in a belief that, as far as possible, each should depend on itself for its own preservation.

[6] States Appoint Senators; Why Not Full Federal Election Control?

An objection to this position may be based on the Constitution, that it exposes the national Senate to the danger that might flow from an exclusive power in the State legislatures to regulate the federal elections.

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* Article 1, Section 4, Clause 1 –PUBLIUS

Some people may claim that, by not appointing Senators, State legislatures could, at any time, give a fatal blow to the Union. They might infer that since the existence of the Senate is dependent on the States for such an essential point, there could be no objection to entrusting them with it in the specific case under consideration.

Additionally, the interest of each State to maintain its representation in the national councils would provide complete security against an abuse of the trust.

[7] Compromise Election Authority

Although it sounds good, on examination this argument is not valid. It is certainly true that if the State legislatures refused to appoint Senators, the national government might be destroyed. But it doesn't follow that because the State legislatures appoint Senators, they should have complete control over every aspect of congressional elections. Under some circumstances, the possible harm from the States having the power to regulate all congressional elections could be far more inevitable than with the States appointing Senators, but without a counter-balancing reason for taking the risk.

Wherever the constitutional organization exposes the Union to possible injury from State legislatures, it is an evil. But the convention recognized that it is an evil that couldn't have been avoided without excluding the States, as political units, from a place in the organization of the national government. Thus, the convention recommends that States appoint Senators.

If there had been no inclusion of the States in the national government, it would have been interpreted as a dereliction of the federal principle. And it would have certainly deprived the State governments of the absolute safeguard they will enjoy under this provision.

Although it is wise to include the inconvenience of States appointing Senators to attain a necessary advantage or a greater good, it cannot be inferred from this that it is all right to accumulate an evil where not necessary or when it doesn't fulfill a greater good.

[8] Rotating Elections: Less State Power

Also, it is easily seen that the national government runs a much greater risk from the State legislative power over the elections to the House of Representatives, than from their power to appoint Senators.

Senators will be chosen for a period of six years. Their terms will rotate, with a third of them vacated and replenished every two years. And no State is entitled to more than two senators. A quorum of the body is to consist of sixteen members.

A result of these circumstances, a temporary conspiracy by a few States to stop appointing senators could neither annul the existence nor impair the activity of the body. And it is not from a wide-spread, permanent conspiracy of the States that we can have anything to fear.

A wide-spread conspiracy might be the result of sinister plots by leading members of a few State legislatures. To be permanent, it would require a fixed and rooted disaffection in the great body of the people. This will either never happen or, if it does, it will probably happen because of the national government's ineptitude at advancing the people's happiness—and if this happens, no good citizen could desire its continuance.

[9] State Control: Every House Election Could Cause National Crisis

But regarding the federal House of Representatives, all members will be elected every two years. If the State legislatures had exclusive power to regulate these elections and if the leaders of a few important States conspired to prevent an election, every election would create a precarious crisis in the national situation that could result in dissolution of the Union.

[10] Public's Interest vs. Rulers' Ambition

The observation that the interests of each State, represented in the federal legislature, will be a security against the abuse of a power over federal elections by the State legislatures is somewhat valid.

But people who understand that there is a difference between the people's interest in the public felicity and their local rulers interest in the power and benefits of their offices know this will not provide complete security. The American people may be warmly attached to the federal government at the same time that specific State rulers, stimulated by a natural power rivalry and hopes of personal aggrandizement, and supported by strong factions in their States, may be in a very opposite temper. Examples of these opposite sentiments, between a majority of the people and individuals with the greatest power in the people's councils, can already be seen in some of the States.

Dividing the nation into several separate confederacies would multiply the chances of ambition. It will be a never failing bait to those influential politicians in State administrations capable of preferring their own emolument and advancement to the public welfare.

With such an effective weapon as the exclusive power of regulating national elections, a group of a few men from the most

influential States, where the temptation will always be the strongest, might destroy the Union by using the opportunity of some casual dissatisfaction among the people (that they may have themselves excited) to stop choosing members for the House of Representatives.

It should never be forgotten that a firm Union with an efficient government will probably be an increasing object of jealousy to more than one nation of Europe. Sometimes enterprises to subvert it will originate through the intrigues of foreign powers and will seldom fail to be patronized and abetted by some of them. Therefore, whenever it can be avoided, its preservation should not be committed to the guardianship of any but people whose situation will uniformly beget an immediate interest in the faithful and vigilant performances of the trust.

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Constitutional references:

Article 1, section 4	Congress regulates its own elections, except places
Article 1, section 3	two Senators per State; elected for six-year term
Article 1, section 3	one-third of Senate seats vacant every two years
Article 1, section 4	quorum of Senators
Article 1, section 2	Representatives elected every two years

60: Dangers of Union Regulating Its Own Elections

We have seen that giving uncontrollable power over federal elections to State legislatures would be hazardous. Now let's see the dangers on the other side, giving the Union the ultimate right of regulating its own elections.

This right would never be used to exclude any State from its share in the representation. In this respect, the interest of all would be the security of all.

But it has been alleged that it might be employed to promote the election of some favorite class of men, excluding others by confining the places of election to particular districts, making it impractical for all citizens to participate in the choice. Of all the unbelievable suppositions, this seems to be the most unbelievable.

On one hand, it's impossible to imagine that the violent and extraordinary disposition implied by such conduct could ever find its way into national councils. On the other, it is certain that, if such an improper spirit ever gained admittance into the, it would display itself in a form altogether different and far more decisive.

[2] If Voting Rights Abridged, States Would Revolt

The improbability of an attempt can be inferred from a single reflection: that the State governments would lead and direct an immediate revolt.

During turbulent and factious times, it is possible to imagine that a victorious, overbearing majority could deny a particular class of people this fundamental right of freedom—suffrage. However, it is inconceivable and not credible that a deliberate governmental policy to invade so fundamental a privilege, against the wishes of the great mass of the people, wouldn't cause a popular revolution.

[3] Federal Diversity Creates Protection

In addition to this general comment, more specific considerations will wipe out all fears on the subject. The national government will be composed of many dissimilar ingredients. Through its various branches, they will form powerful obstacles to a conspiracy to control elections.

The genius, manners, and habits of the people from different parts of the Union are sufficiently diverse to create a significant diversity of representative dispositions towards different ranks and conditions in society. Although working closely together under the same government will promote some gradual assimilation, there are physical as well as moral causes that may, to a greater or less degree, permanently nourish their different propensities and inclinations.

But the most influential circumstance will be the dissimilar modes of constituting the component parts of the government. The House of Representatives will be elected directly by the people. The Senate by the State legislatures. The president by electors who are chosen for that purpose by the people.

There probably wouldn't be a common interest to cement these different branches into a preference for any specific class of electors.

[4] States Must Conspire to Taint Senate

As to the Senate, no regulation of "time and manner," the proposed limit of national authority, can influence the choice of Senators. Entire State legislatures can't be influenced by extraneous circumstances of that sort. This consideration, by itself, should satisfy us that the feared discrimination would never be attempted.

What could induce the Senate to concur in a preference in which it would not share? Or what would be the purpose if it could be established in one federal legislative house, the Senate, but couldn't be extended to the House of Representatives? In this case, the composition of the one would counteract that of the other.

And we can never assume the House would embrace the Senate appointments, unless we can also assume the voluntary cooperation of the State legislatures. If we make the latter assumption, that the State legislatures can be corrupted, it then becomes immaterial where the power in the question is placed—whether in their hands or in the Union.

[5] Which Men Would Be Favored?

What would be the objective of this capricious partiality in national councils? Would it be exercised to discriminate between the different departments of industry, or between different kinds of property, or between the different amounts of property? Will it lean in favor of the landed interest, or the mercantile interest, or the manufacturing interest?

Or, to speak in the fashionable language of the adversaries to the Constitution, will it court the elevation of the "wealthy and the well-born" to the exclusion and debasement of all the rest of society?

[6] Partiality in Local Councils

If partiality is exerted in favor of people in any specific description of industry or property, I presume the competition will be between landed men and merchants. And I don't hesitate to say that it is far less likely that either would predominate in national councils, than in

local councils. By inference, an excessive influence by either is much less to be dreaded in national councils than in State or local.

[7] Nationally, Range of Occupations

To various degrees, the States are addicted to agriculture and commerce. In most, if not all, agriculture is predominant. However, commerce nearly divides a few States and it has a considerable influence in most of them.

The proportionate influence of each will be carried into the national representation. Nationally, this will represent a greater variety of interests, in more varied proportions than found in any single State. So it will be much less likely to espouse either of them with a clear partiality than the representation of any single State.

[8] Agriculture Will Prevail Over Commerce

In a country consisting chiefly of cultivators of the land and where the rules of equal representation exist, agricultural interests will usually predominate in the government. As long as this interest prevails in most State legislatures, it must maintain a correspondent superiority in the national Senate, which will usually be a faithful copy of the majorities of the State assemblies. Therefore, it can't be presumed that a sacrifice of farmers to the benefit of merchants will ever be the objective of the federal Senate.

By applying to the Senate a general observation suggested by the country's situation, I am governed by the consideration that the credulous and devout adherents of State power cannot, based on their own principles, suspect that the State legislatures would be warped from their duty by any external influence.

But in reality, the same situation must have the same effect, in the primitive composition at least, on the federal House of Representatives: an improper bias towards the mercantile class is as little to be expected from this quarter as from the other.

[9] Importance of Commerce

It may be asked in support of the objection, isn't there a danger of an opposite bias in the national government, that the federal administration would tend to become a monopoly of the landed class?

Since there is little likelihood that such a bias will worry those who would be immediately injured by it, an elaborate answer to this question will be dispensed with. It will be enough to say that first, for reasons noted elsewhere, it is less likely that a strong partiality would prevail in the Union councils than in the State councils.

Second, there would be no temptation to violate the Constitution in favor of the landed class because, in the natural course of things, that class will enjoy as great an influence and power as it could desire.

And third, men who seriously investigate the sources of public prosperity must be thoroughly convinced that commerce is too important to want to inflict on it the deep a wound that would result from the entire exclusion of the men who best understand its interest from their management of business. In regard to revenue alone, the importance of commerce must effectually guard it against the enmity of a body that will continually request its favors by the urgent calls of public necessity.

[10] Fear: Elite Control of Federal Government

I will briefly discuss the probability of preference between different kinds of industry and property because, as far as I understand the meaning of the critics, they contemplate a discrimination of another kind. They appear to be trying to alarm us about politicians defined as "the wealthy and the well-born."

It seems that these "wealthy and well-born" politicians will be exalted to an odious preeminence over the rest of their fellow citizens. However, at one time, critics claim their elevation is the natural consequence of having a small representative body. At another time, they say it is the result of depriving the people at large the opportunity of exercising their right of suffrage to choose that body.

[11] Voter, Candidate Qualification Unalterable

But where can the places of election be put in order to create a preference? Are "the wealthy and the well-born," as they are called, confined to specific geographic locations in the States? Have they, by some miraculous instinct or foresight, set apart in each State a common place of residence? Are they only in town or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance has cast their lot or that of their predecessors? If the latter is the case (as every intelligent man knows it to be)* is it not evident that the policy of confining the places of election to specific districts would be as subversive to its own aim as it would be exceptionable on every other account?

The truth is, there's no method to secure the feared preference for the rich except by prescribing qualifications of property either for voters or nominees. But this power is not conferred on the national government. Its authority is expressly restricted to the regulation of the *times*, the *places*, the *manner* of

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* Particularly in the Southern States and in New York.—PUBLIUS

elections. The qualifications of persons who may choose or be chosen, as mentioned on other occasions, are defined and fixed in the Constitution and are unalterable by the legislature.

[12] If Rulers Usurp, Won't Citizens Revolt?

However, let's assume, for argument's sake, that selfish interests prevail. And at the same time, let's also assume that the national rulers overcame all the scruples arising from a sense of duty or an apprehension at the danger of the experiment. I imagine it still couldn't be carried out without the aid of a military force sufficient to subdue the resistance of the great body of the people. The improbability of getting a force big enough to do this has been discussed and demonstrated in different parts of these papers. But let's concede for a moment that such a force might exist and the national government has it. What would happen?

If the rulers wanted to invade the essential rights of the community and had the means to do it, are we to presume they would amuse themselves with the ridiculous task of fabricating election laws to secure preferences for a favorite class of men?

Wouldn't it be more likely that they would do something for their own immediate aggrandizement? Wouldn't they boldly resolve to perpetuate themselves in office by one decisive act of usurpation, rather than trust to precarious expedients which, in spite of all the precautions that might accompany them, might end in the dismissal, disgrace, and ruin of their authors? Wouldn't they fear that citizens, no less tenacious than conscious of their rights, would flock from remote distances in their respective States to the places of election, overthrow their tyrants and substitute men who would be disposed to avenge the violated majesty of the people?

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Constitutional references:

Article 1, Sec 4	States election control
Article 1, Sec 2	voter/Representative qualifications
Article 1, Sec 3	Senator 6-year term
Article 2, Sec 2	Senate elections
Article 1, Sec 3	Senator qualifications

61: Regulation of Federal Congressional Elections

The more candid critics of the election provision in the Constitution, when pressed in argument, sometimes concede that the provision is proper but that it needs one qualification. They say that it should be accompanied with a declaration that all elections should be in the counties where the voters reside. This, they say, is a necessary precaution against an abuse of the power.

A declaration of this nature would be harmless. If it would quiet apprehensions, it might not be undesirable. But it would, in fact, afford little or no additional security against the feared danger. And an impartial, judicious examiner will never consider the lack of it as a serious, still less insurmountable, objection to the plan.

The different views of the subject in the two preceding papers must satisfy all dispassionate, discerning men that if the public liberty should ever be the victim of the ambition of national rulers, the sacrifice can not be blamed on the election provision.

[2] Voter Apathy: Distance Reduces Turnout

If those who are so worried would carefully inspect the State constitutions, they would find almost as much reason for anxiety and alarm from the latitude in respect to elections as the latitude proposed for the national government. Reviewing the State constitutions would go a long way towards removing any unfavorable impressions remaining on the matter.

But a review of them all would be long and tedious. I'll limit myself to the example of New York.

The constitution of New York makes only the following provisions for *locality* of elections. Members of the Assembly shall be elected in the *counties,* and members of the State Senate are elected in the great districts into which the State is divided.

Presently there are four Senate districts, each with two to six counties. Obviously, it would be just as easy for New York to defeat the suffrages of her citizens by confining elections to specific places as for the United States legislature to defeat the suffrages of citizens in the same way.

Suppose the city of Albany was appointed the only place to vote in its county and district. Wouldn't the inhabitants of Albany quickly become the only electors of the members of both the Senate and Assembly for that county and district? Would the electors living in the remote areas of the counties of Albany, Saratoga, Cambridge, etc., or any part of the county of Montgomery, take the trouble to come to Albany to vote for members of the State Assembly or Senate quicker than they would travel to New York City to participate in the choice of members of the federal House of Representatives?

The alarming indifference found in the exercise of the invaluable privilege of voting under the existing laws, which afford every facility to it, furnishes a ready answer to this question. Our experience shows that when the place of election is at an *inconvenient distance* from the voter, the effect on his conduct is the same whether the distance is 20 miles or 20,000 miles. Therefore, objections to the federal power of regulating elections will, in substance, apply with equal force to the same power in the New York constitution. And for this reason, it is impossible to find one satisfactory and condemn the other.

A similar comparison of most State constitutions leads to the same conclusion.

[3] "Problem" Ignored in State Constitutions

If it is said that the defects in the State constitutions don't excuse those in the proposed federal Constitution, I answer: the State constitutions have never been accused of neglecting to secure liberty yet the complaints thrown at the federal Constitution apply to them also. Therefore, we must presume that these arguments are calculated and trivial accusations used to support a predetermined opposition rather than logical conclusions from a candid search for the truth.

To people who believe that the unpardonable blemish in the federal Constitution is only an innocent omission in the State constitutions, nothing can be said. Or at most, they can only be asked for a reason why State representatives could resist the lust of power, or other sinister motives, better than the federal representatives?

If they can't explain this, they should at least prove to us that it is easier to subvert the liberties of three million people, who have the advantage of local governments to lead their opposition, than 200,000 people who don't have that advantage. Additionally, they should convince us that, to maintain control, a predominant faction in a single State will be less inclined to promote a specific class of electors, than that similar motives would possess representatives of thirteen States, spread over a vast region, with a diversity of local circumstances, prejudices, and interests.

[4] Uniform Elections to House

So far my observations have been aimed only at defending the provision based on

whether it is theoretically proper, the danger of placing the power elsewhere, and the safety of placing it in the proposed Constitution. But a positive advantage resulting from this authority has not been mentioned, an advantage that could not have been as effectively obtained in any other way.

I allude to a uniform time for the federal House of Representatives' elections. Experience may prove this uniformity important to the public welfare, both as security against perpetuating an unhealthy spirit in the body and as a cure for the diseases of faction.

If each State could choose its own time for elections, there could be as many different periods as there are months in the year. Currently, the local elections in the States vary between March and November. Consequently, there could never be a total dissolution or remaking of the body at one time. If an improper spirit of any kind happened to prevail in the House of Representatives, the spirit would probably infuse itself into the new members as they joined in succession. The mass would be likely to remain nearly the same, gradually assimilating into itself new members. Example produces an influence that few men have enough willpower to resist.

I suspect that tying the time in office with a total dissolution of the body at the end of that time might be less dangerous to liberty than one-third the duration with gradual, successive alterations.

[5] Uniform Senate Elections Also Positive

Uniform election times seem no less required for Senate rotation and for conveniently assembling the legislature at a stated period in each year.

[6] Election Time in Constitution Unnecessary

It may be asked why a time couldn't have been fixed in the Constitution? Since the zealous adversaries of the federal Constitution in New York are, in general, no less zealous admirers of our New York State constitution, the question may be asked: why was not an election time fixed in the State constitution?

The best answer is that it is safe for the legislature to decide. If a time had been fixed in the Constitution, once implemented it might have been found less convenient than some other time. The same answer may be given for the federal Constitution. It may be added that since the possible danger of a gradual change is speculative, it would hardly have been advisable to establish, as a fundamental point, something that would deprive States of the convenience of having State and national elections at the same time.

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62: Senators: Qualifications, Appointment of, Reasons Necessary

Having examined the structure of the House of Representatives and answered the most relevant objections against it, I enter next on the examination of the Senate.

Senate: Topics to be Discussed

The subjects to be considered are:
I The qualification of Senators.
II. The appointment of them by the State legislatures.
III. The equality of representation in the Senate.
IV. The reasons a Senate is needed.
The number of Senators and the term for which they are to be elected.
V. The powers vested in the Senate.

[2] I. Qualifications of Senators

The qualifications of Senators, as distinguished from those of Representatives, consist of a more advanced age and longer period of citizenship.

A Senator must be at least thirty years of age. A Representative, twenty-five. And a Senator must have been a citizen for nine years. Seven years are required for the Representative.

The nature of the senatorial trust requires more information and stability of character and the Senator should have reached a period of life most likely to supply these advantages, making these distinctions proper.

Since they participate in transactions with foreign nations, they should be weaned from predispositions and habits resulting from a foreign birth and education. Nine years is a prudent compromise between total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

[3] II. State Legislatures Appoint Senators

It is also unnecessary to discuss the appointment of senators by the State legislatures. Of all the ways that this branch of government might have been formed, the method in the Constitution is probably the most consistent with public opinion. It has two advantages. It is a select appointment that gives State governments a role in the forming the federal government. It secures the States' authority and links the two systems.

III. Equal Representation in Senate

Equal representation in the Senate, apparently a compromise between the opposite demands of the large and small States, also doesn't need much discussion.

When people incorporate into one nation, every district should have a *proportional* share in the government. When independent, sovereign states form a league, the states, however unequal in size, should have an *equal* share in common councils. If these principles are true, in a compound republic, with both national and federal character, the government should contain a mixture of the principles of proportional and equal representation.

But it is superfluous to evaluate, through a theory, a part of the Constitution that everyone agrees is the result, not of theory, but "of a spirit of amity, and the mutual deference and concession that our special political situation rendered indispensable."

The voice and political situation of America calls for a common government with the powers necessary to meet its objectives. The smaller States won't agree to a government founded on principles that favor the larger States. The only option for the larger States, then, lies between the proposed government and a government still more objectionable. From the alternatives, prudence advises us to embrace the lesser evil. And instead of fruitlessly worrying about what mischief may ensue, we should think about the advantageous consequences that may make the sacrifice worthwhile.

[5] Equality Protects State Sovereignty

In this spirit, allowing each State an equal vote constitutionally recognizes and preserves the part of sovereignty remaining in the independent States. Large States are as anxious as small States to guard against an improper consolidation of the States into one simple republic. Therefore, the equality should be no less acceptable to the large States.

[6] Block against Bad Legislation

Equality in the Senate also creates a block against improper legislative acts. No law or resolution will pass without the concurrence, first, of a majority of the people [represented by the House of Representatives] and, then, a majority of the States [the Senate].

Sometimes this complicated check on legislation may be injurious as well as beneficial. The defense of the smaller States is more rational if they have any common interests different from those of the large States

that would otherwise be exposed to danger. But since the larger States, by their power over the supplies, will always be able to defeat unreasonable exertions of this prerogative of the smaller States and, as the ease and excess of law-making are the diseases to which our governments are most liable, this part of the Constitution may be more convenient in practice than it appears in contemplation.

[7] IV. Number of Members, Term in Office

The number of senators and their term in office are considered next. In order to form an accurate judgment on these points, we will look at the purposes of the Senate. To determine these, we need to look at the inconveniences the republic would suffer from not having such an institution.

[8] Differences Thwart Sinister Conspiracies

First. It is a misfortunate part of republican government, although to a lesser degree than in other governments, that the administrators may forget their obligations to their constituents and prove unfaithful to their important trust. Keeping this in mind, a senate as a second house of legislature, distinct from and dividing the power with the first, must always be a beneficial check on the government. It doubles the people's security by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy. Without it, the ambition or corruption of one would be sufficient.

This precaution is founded on clear principles, well understood in the United States. Further discussion would be superfluous. I will only say that sinister conspiracies become more improbable as the differences between the genius of the two legislative bodies grows. Therefore, making them as different as possible, consistent with due harmony in all proper measures and the genuine principles of republican government, is prudent.

[9] Passions Sway Large Assemblies

Second. All single, large assemblies have the propensity to yield to the impulse of sudden, violent passions and be seduced by factious leaders into intemperate, pernicious resolutions. Therefore, a Senate is necessary.

Numerous examples on this subject might be cited both from proceedings within the United States, as well as, the history of other nations. But there is no need to prove a position that will not be contradicted. All that need be said is that a body formed to correct this infirmity should be, itself, free from it. Consequently, it should be less numerous. Moreover, it should possess great stability through terms in office of considerable duration.

[10] Familiarity with Objectives, Principles

Third. Another defect corrected by a Senate involves a lack of familiarity with the objectives and principles of legislation.

Most members of the House of Representatives will be men with jobs in the private sector. They will have a short term in office with no reason to devote their time while in public service to the study of laws, affairs, and comprehensive interests of their country. If the House was the only legislative assembly, it would make a variety of important errors.

It may be proven, on the best grounds, that many of American's present embarrassments can be charged on the blunders of our governments. And they have come from the heads rather than the hearts of most of the authors of them.

Indeed, what are all the repealing, explaining, and amending laws that fill and disgrace our voluminous codes, but so many monuments to a lack of wisdom? Each legislative session discredits the preceding session, showing the value of the aids expected from a well-constituted Senate.

[11] Good Government => People's Happiness

A good government implies two things. First, it is faithful to government's objective—the happiness of the people. Second, it has knowledge of how this objective can be best attained.

Some governments are deficient in both these qualities. Most governments are deficient in the first. I do not hesitate to say that in American governments too little attention has been paid to the last. The federal Constitution avoids this error. And what merits special notice, it provides for the last in a way that increases the security for the first.

[12] Frequent Turnover Hampers Success

Fourth. The changes in public councils arising from a rapid succession of new members, however qualified they may be, highlights the absolute necessity of some stable institution in the government. Every new election in the States changes half the representatives. This turnover creates a change of opinions and, from a change of opinions, a change of legislation. But a continual change, even if it is good legislation, is inconsistent with every rule of prudence and every prospect of success. Private life verifies this observation. And it becomes more just and more important in national transactions.

[13] Frequent Legislative Changes Harmful

A history of the harmful effects of a mutable government would fill a volume. I will hint at a few only, each of which is a source of innumerable others.

[14] Mutable Government Forfeits Respect

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character.

All prudent people know that an individual who frequently changes his plans or carries on his affairs without any plan at all will quickly fall victim to his own unsteadiness and folly. His friendly neighbors may pity him, but all will decline to connect their fortunes with his. And more than a few people will seize the opportunity to make their fortunes out of his.

One nation is to another what one individual is to another, with perhaps one sad distinction. Nations, with fewer benevolent emotions than people, feel fewer restraints from taking undue advantage of the indiscretions of each other. Consequently, every nation whose affairs betray a lack of wisdom and stability may expect every possible loss to the more systematic policy of their wiser neighbors.

But the best instruction on this subject, unfortunately, is conveyed to America by the example of her own situation. She is ridiculed by her enemies. And she is prey to every nation that has an interest in speculating on her fluctuating councils and embarrassed affairs.

[15] Often Changing Laws Threatens Liberty

The domestic effects of a mutable policy are even more calamitous. It poisons the blessings of liberty itself.

It won't benefit the people that the laws are made by men of their own choice, if the laws are so voluminous that they cannot be read or so incoherent that they cannot be understood. Or if they are repealed or revised before they are promulgated or undergo such incessant changes that no man who knows what the law is today can guess what it will be tomorrow.

Law is defined to be a rule of action. But how can it be a rule when it is little known and less fixed?

[16] Laws Benefiting Only a Few Citizens

Another effect of public instability is the unreasonable advantage it gives the few sagacious, enterprising, and wealthy citizens over the industrious and uninformed mass of people.

Every new regulation concerning commerce or revenue or affecting property value presents a new opportunity to people who watch the change and can foresee its consequences, an opportunity created, not by themselves, but by the toils and cares of the great body of their fellow citizens. When this happens, it may truthfully be said that laws are made for the *few*, not for the *many.*

[17] Discourages Business, Commerce

From another point of view, great injury results from an unstable government. Lack of confidence in public councils discourages every useful undertaking where success and profit may depend on the existing laws continuing.

What prudent merchant will jeopardize his fortunes in a new branch of commerce when he doesn't know if his plans may be made unlawful before they can be executed? What farmer or manufacturer will commit himself to a specific cultivation or establishment when he has no assurance that his preparatory labors and investment will not make him a victim to an inconstant government?

In a word, no great improvement or praiseworthy enterprise can be pursued that requires the protection or security of a steady system of national policy.

[18] Mutability Damages Respect, Attachment

But the most deplorable effect of all is the reduced attachment and reverence that steals into the hearts of the people towards a political system that is so obviously weak and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable. Nor will it be truly respectable without possessing a certain portion of order and stability.

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Constitutional references:

Article 1, section 3	qualifications of Senators
Article 1, section 2	qualifications of Representatives
Article 1, section 3	number of Senators; 6-year term

63: IV. (con't) Number Senators, 6-Year Term

A fifth aim, continuing to illustrate the usefulness of having a Senate, is the importance of national reputation. As discussed in the previous paper, without a select, stable part of government, the esteem of foreign powers will be forfeited by an unenlightened and variable policy. Additionally, the national councils will not be sensitive to the opinion of the world, which is no less necessary to obtain than its respect and confidence.

[2] Importance of International Opinion

The judgment of other nations is important to every government for two reasons:

1) Independent of the merits of any specific plan or measure, it is desirable that other nations see it as coming from a wise and honorable policy.

2) In doubtful cases, particularly when the national councils may be warped by some strong passion or momentary concern, the opinion of the impartial world may be the best guide.

What has America lost because of her poor reputation with foreign nations? And how many errors and follies would she have avoided, if she had first examined whether her policies appeared just and proper to unbiased observers?

[3] Size, Term Effect Responsibility

Yet, however important a good national reputation may be, clearly this will never be achieved by a numerous and changing body. It can only be found in an assembly so small that each individual member may share the praise and blame for public measures. Or in an assembly with such a long term in office that the pride and consequence of its members may become part of the reputation and prosperity of the community.

Arguments based on how measures would be viewed by foreign nations, or even by the sister States, probably would have had little affect on the deliberations over grossly unjust laws by the half-yearly representatives of Rhode Island. However, if the concurrence of a second, select and stable legislative body had been necessary, its desire to be nationally respected, alone, would have prevented the calamities under which that misguided people now labor.

[4] Frequency of Elections => Responsibility

A *sixth* defect is the lack, in some important cases, of a due responsibility in the government to the people, arising from the frequency of elections that in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. Nevertheless, when explained, it must be acknowledged as undeniable as it is important.

[5] Long Term Governmental Goals, Policy

Responsibility must be reasonable and effectual.

To be reasonable, it must be limited to objects within the power of the responsible party.

To be effectual, it must relate to those operations of that power that the constituents can judge.

Governmental legislation can be divided into two general classes: measures affecting its immediate, day-to-day operations, and a series of connected measures that have a gradual and, perhaps, unobserved operation.

The importance of the latter to the permanent welfare of every country needs no explanation. Yet, clearly, a legislature elected for so short a term that it can provide only one or two links in a chain of measures essential to the general welfare should not be answerable for the final result, just as a steward employed for one year can be responsible for improvements that can't be accomplished in less than six years.

Nor is it possible for the people to estimate the *share* of influence that each annual assembly may have on an outcome produced by a variety of actions over several years. It is hard enough to preserve a feeling of personal responsibility in the members of a *numerous* body for the acts of the body that have an immediate, detached, and obvious operation on their constituents.

[6] Senate: Long Term Objectives

The remedy for this defect is an additional legislative body with members having long enough terms to provide for objectives that require constant attention and a train of measures, so they can be effectually answerable for the attainment of those objectives.

[7] Slow Deliberations Block Bad Legislation

Thus far I have considered the circumstances that make a well-constructed Senate necessary to represent the people.

To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I add that sometimes such an institution may be necessary to protect the people from their own temporary errors and delusions.

The cool, deliberate will of the community should ultimately prevail over the objectives of its rulers in all governments and actually will prevail in all free governments. However,

sometimes the people are stimulated by some irregular passion or illicit advantage, or misled by the artful misrepresentations of men with self-serving interests. Sometimes the people will call for laws that they themselves will afterwards be the most ready to lament and condemn. In these critical moments, will the interference of a temperate, respectable body of citizens to block the misguided course, suspending the blow planned by the people against themselves, until reason, justice, and truth can regain their authority over the public mind, have a salutary effect?

What bitter anguishes would have the Athenians escaped if their government had contained such a safeguard against the tyranny of their own passions? Popular liberty might have escaped the permanent blame for decreeing, to the same citizens, hemlock on one day and statues on the next.

[8] Size Doesn't Protect from Mass Hysteria

It may be suggested that when people are spread over an extensive region they cannot, like the crowded inhabitants of a small district, be infected by violent passions or the danger of conspiring to pursue unjust measures. I'm not denying that this difference is important. On the contrary, in a former paper I endeavored to show that it is one of the principal recommendations of a confederated republic.

At the same time, this advantage doesn't make auxiliary precautions unnecessary. The extended area will exempt Americans from some of the dangers incident to lesser republics. But it will also expose them to the inconvenience of living for a longer time under the influence of the misrepresentations passed by interested men.

[9] Senates in All Long-Lived Republics

Remember, history shows us no long-lived republic without a senate. Sparta, Rome, and Carthage are, in fact, the only examples.

The first two had a senate for life. The constitution of the senate in Carthage is less known. Circumstantial evidence makes it probable that in this area it was the same as the other two. It certainly had some quality that made it an anchor against popular fluctuations; a smaller council, drawn out of the senate, was both appointed for life and filled up vacancies itself.

Although these examples are as unfit for imitations as they are repugnant to the genius of America, when compared with the fleeting, turbulent existence of other ancient republics, they prove the necessity of some institution that will blend stability with liberty. I am aware of the circumstances that distinguish the American government from other popular governments, ancient, as well as, modern. Extreme caution and care is necessary when comparing the one case to the other. But after understanding and acknowledging their differences, their similarities make these examples worthy of our attention.

As we have seen, many of the defects that can only be corrected by a senate are common to a numerous assembly frequently elected by the people and to the people themselves. Some defects are specific to the numerous legislature, requiring the control of a senate. The people can never willfully betray their own interests, but they may be betrayed by their representatives. The danger is greater when the whole legislative trust resides in the hands of one body of men than when the agreement of separate, dissimilar bodies is required in every public act.

[10] Ancient Republics had Representatives

The difference most often mentioned between the American and other republics is the principle of representation. This is the pivotal point of the American republic. And it is supposed to have been unknown in the others, or at least to the ancient ones.

Earlier papers show that I neither deny the existence of this difference nor undervalue its importance. I now make the observation that ancient governments were not totally lacking representation. Without a complete discussion, which here would be misplaced, I will refer to a few known facts supporting my position.

[11] Greece had Representative Executives

In the most pure democracies of Greece, many executive functions were performed, not by the people themselves, but by officers elected by the people and *representing* the people in their *executive* capacity.

[12] Representation in Athens, Carthage

Prior to the reform of Solon, Athens was governed by nine Archons, annually *elected by the people at large.* The degree of their power is obscure.

After that period, we find an assembly, first of four and, later, 600 members annually *elected by the people* and *partially* representing them as legislators. They both made laws and had the exclusive right to propose legislation to the people.

The senate of Carthage, whatever its power or term in office, appears to have been *elected* by the votes of the people. Similar examples might be found in most, if not all, the popular governments of antiquity.

[13] Representatives in Sparta, Rome, Crete

Lastly, in Sparta we meet with the Ephori, and in Roman with the Tribunes. These two bodies were small in numbers, but annually

elected by the whole body of the people and considered the *representatives* of the people, almost in their *plenipotentiary* capacity.

The Cosmi of Crete were also annually *elected by the people* and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that representative body of Crete was elected by only a part of the people.

[14] Large Size, United States Advantage

From these facts, to which many others may be added, clearly the principle of representation was known to the ancients and included in their political constitutions.

The true distinction between these and the American governments lies in totally excluding the people, in their collective capacity, from any share in the American governments and not in the total exclusion of representatives of the people from the administration of the ancient governments.

However, having made this distinction, the United States has a most advantageous superiority. But to insure the full effect of this advantage, we must be careful not to separate it from the other advantage of an extensive territory. No form of republican government could have succeeded within the tiny area occupied by the democracies of Greece.

[15] Senate Becoming Tyrannical Aristocracy

To counter all the arguments that are suggested by reason, illustrated by examples, and enforced by our experience, the jealous adversary of the Constitution will probably content himself with repeating his arguments—that a senate not appointed directly by the people and for the term of six years must gradually acquire a dangerous pre-eminence in the government and, eventually, transform into a tyrannical aristocracy.

[16] Abuse of Liberty Endangers Liberty

To this, the general reply should be sufficient. Liberty can be endangered by the abuses of liberty, as well as by the abuses of power. There are numerous instances of the former as well as the latter. And the former, rather than the latter, are apparently most to be feared by the United States.

But a more specific reply can be given.

[17] Tyranny: Too Many People Involved

Before transforming into a tyrannical aristocracy, the Senate must first corrupt itself. Next it must corrupt the State legislatures. It must then corrupt the House of Representatives. And, finally, corrupt the people at large.

The Senate must be corrupted first before it can attempt establishing a tyranny. To do this, it must corrupt the State legislatures; if not corrupted, the State assemblies would periodically send new members to the Senate, regenerating the whole body.

If the House of Representatives wasn't corrupted, the opposition of that coequal legislative branch of the government would inevitably defeat the attempt.

And without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order.

Can any man seriously persuade himself that the proposed Senate can, by any possible means within human abilities, achieve the objectives of lawless ambition through all these obstructions?

[18] Maryland's Senate Alleviates Fears

If reason condemns the suspicion, the same sentence is pronounced by experience.

The Maryland constitution furnishes the best example. That senate is elected, as the federal Senate will be, indirectly by the people and for a term of only one year less than the federal Senate. It also has the remarkable prerogative of filling up its own vacancies within the term of its appointment and, at the same time, doesn't have rotating terms as provided for the federal Senate.

The Maryland senate has some other lesser differences that exposes it to objections that do not apply to the federal Senate. Therefore, if the federal Senate really contained the danger so loudly proclaimed, by this time some symptoms of a similar danger should have been seen in the Maryland senate. But no such symptoms have appeared. On the contrary, the suspicions entertained by men who feared the same problems as those expressed over the same part of the federal Constitution, have been gradually extinguished by the passage of time. And the Maryland constitution daily receives, from the beneficial operation of this part of it, a reputation probably not rivaled by any State in the Union.

[19] Britain: House of Commons More Powerful than Aristocracy

But if anything could silence the apprehensions on this subject it should be the British example.

The British senate [House of Lords], instead of being elected to a term of six years and being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles.

The British house of representatives [House of Commons], instead of being elected for two years by the whole body of the people, is elected for seven years and, most members, by a very small proportion of the people.

In Great Britain we should unquestionably see, in full display, the aristocratic usurpations and tyranny that are expected to happen in the United States. Unfortunately for the anti-federal argument, however, the British hereditary assembly has not been able to defend itself against the continual encroachments of the House of Commons. And it no sooner lost the support of the monarch than it was actually crushed by the weight of the popular branch.

[20] People's Representatives Stronger House

As far as antiquity can instruct us on this subject, its examples support our reasonings.

In Sparta, the Ephori, the annual representatives of the people, were an overmatch for the senate for life. It encroached on the senate's authority until it drew all power into its own hands.

It is well known that the Tribunes of Rome, the representatives of the people, prevailed in almost every contest with the senate for life and, in the end, gained the most complete triumph over it. This fact is even more remarkable since unanimity was required in every act of the Tribunes, even after their number was augmented by ten. This proves the irresistible force possessed by the branch of a free government that has the people on its side.

To these examples might be added that of Carthage. Polynius says that instead of drawing all power into its vortex, its senate had, at the commencement of the second Punic War, lost almost the whole of its original share of power.

[21] Senate must Gain People's Support

The conclusive evidence resulting from these facts shows that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent, aristocratic body.

Additionally, we have sufficient reason to believe that if such a revolution should ever happen from causes that man's foresight cannot guard against, the House of Representatives with the people on their side will at all times be able to bring the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate except a display of enlightened policy and an attachment to the public good that will gain the affections and support of the entire body of the people themselves.

PUBLIUS

Constitution reference:

Article 1, section 3 # of Senators, 6-yr term

64: President, with Advice and Consent of Senate, Makes Treaties

It is a legitimate, if not a new, observation that enemies of specific persons and measures, seldom confine their censures only to those parts worthy of blame. This can be the only explanation of the motives of people who condemn the entire proposed Constitution and their severe criticism of some of its most innocuous articles.

[2] Senate Must Ratify Treaties

Article 2, section two gives power to the President, "*by and with the advice and consent of the Senate, to make treaties,* provided two thirds of the senators present concur."

[3] Indirect Election of President, Senate

The power to make treaties is important, especially as it relates to war, peace, and commerce. And precautions should be taken to assure that qualified men exercise it, in the manner most conducive to the public good.

The convention has been attentive to both these points. The President is to be chosen by selected electors, deputed by the people for that express purpose. And the State legislatures appoint the senators.

This system has a vast advantage over direct elections by the people where the activity of party zeal, taking advantage of indifference, ignorance, and the hopes and fears of the unwary and uninterested, often places men in office by the votes of a small proportion of the electors.

[4] Most Qualified Men will be Chosen

The select assembly that chooses the President and the State legislatures who appoint the senators will generally be composed of the most enlightened and respectable citizens. We may presume that their attention and their votes will be directed to only those men who have become the most distinguished by their abilities and virtue, and in whom the people perceive solid grounds for confidence.

The Constitution pays particular attention to this objective. By excluding men under 35 from the first office and those under 30 from the second, it confines the candidates to men about whom the people have had time to form a judgment. They will probably not be deceived by brilliant appearances of genius and patriotism which, like transient meteors, sometimes mislead as well as dazzle.

If it is true that wise kings will always be served by able ministers, it is fair to argue that an assembly of select electors, to a greater degree than kings, have access to extensive and accurate information about men and characters, so their appointments bear at least equal marks of discretion and discernment.

We can infer that the President and Senators, so chosen, will always be among men who best understand our national interests, whether as related to the States or foreign nations, the men best able to promote those interests, and whose reputation for integrity inspires and merits confidence. The power of making treaties may be safely lodged with such men.

[5] Term, Rotating Elections => Stability

Although it is universally known and acknowledged that any business absolutely requires systems, the high importance of them in national affairs hasn't yet become sufficiently impressed on the public mind.

People who want the House of Representatives, composed of members constantly coming and going in quick succession, to make treaties seem to forget that such a body must necessarily be inadequate to the attainment of those objectives requiring steady contemplation in all their relationships and circumstances. This can only be approached and achieved by talents, exact information, and time. Therefore, the convention wisely gave the power of making treaties to able and honest men who remain in office a sufficient time to become thoroughly acquainted with our national concerns, and to form and introduce a system for the management of them.

During their term in office, they can expand their political information, making their accumulated experience more and more beneficial to their country.

The Constitution also has a prudent way to obviate the inconvenience of periodically transferring great affairs entirely to new men. By leaving a lot of the old ones in place, uniformity and order, as well as a constant succession of official information, will be preserved.

[6] Maintains Conformity in Trade

Most people will agree that the affairs of trade and navigation should be regulated by a system cautiously formed and steadily pursued. Both our treaties and our laws should correspond with and promote it.

It is important that this conformity be carefully maintained. Those who agree with this position will admit that making concurrence of the Senate necessary both to treaties and laws supports it.

[7] Treaties Drafted Secretly, Quickly

Frequently, treaties must be negotiated, of whatever nature, in perfect *secrecy* and require immediate *execution*.

Sometimes the most useful intelligence can be obtained if the persons possessing it can be free from the fear of discovery. This fear operates on people whether they have mercenary or friendly motives. And doubtlessly many people of both descriptions would rely on the secrecy of the President but would not confide in the Senate, let alone the larger House of Representatives.

The convention has done well, therefore, in dividing the power of making treaties so that although the President must, in forming them, act by the advice and consent of the Senate, he can manage the business of intelligence in such a manner as prudence suggests.

[8] President: Quick Reactions

People who study the affairs of men must see that there are cycles in them, cycles very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure.

People who preside over national affairs must discern and profit by these cycles. And men with experience at this inform us that there are occasions when days, nay, even when hours, are precious. The loss of a battle, the death of a prince, the removal of a minister, or other intervening circumstances change the posture and aspect of affairs, sometimes turning the most favorable cycle into a course opposite to our wishes.

As in the field, so in the cabinet. There are moments to seize as they pass. And people presiding in either should have the capacity to improve them.

Until now, we have often suffered from the lack of secrecy and speed. The Constitution would have been inexcusably defective if it had paid no attention to those objectives. Preparatory and auxiliary measures require the most secrecy and speed during negotiations but are not otherwise important in a national view, since they tend to facilitate attaining the objectives of the negotiation. For these, the President will be able to provide. And if anything occurs that requires the advice and consent of the Senate, he may at any time convene them.

The Constitution provides treaty negotiations with every advantage that can be derived from talents, information, integrity, and deliberate investigations on the one hand, and from secrecy and dispatch on the other.

[9] Objections Contrived

But to this plan, as to most others that have appeared, objections are contrived and urged.

[10] Objection: Treaty has Force of Law

Some are displeased with it not because of any errors or defect, but because ratified treaties will have the force of laws, so they should be made only by the legislature.

The gentlemen making this objection don't seem to consider that the judgment of our courts, and the commissions constitutionally given by our governor, are as valid and binding as the laws passed by our legislature. All constitutional acts of power, whether in the executive or judicial branch, have as much legal validity and obligation as if they proceeded from the legislature. Therefore, whatever name is given to the power of making treaties, or however obligatory they may be when made, it is certain that the people may, properly, commit the power to a distinct body from the legislature, the executive, or the judicial.

It doesn't follow that just because the power of making laws is given to the legislature that, therefore, they must have the power to do every other act of sovereignty by which the citizens are bound and affected.

[11] Objection: Treaty Becomes Supreme Law

Others, who are content that treaties should be made in the mode proposed, are averse to treaties being the *supreme* laws of the land. They insist, and profess to believe, that treaties, like legislative acts, should be repealable at pleasure.

This idea seems to be new and specific to this country. But new errors, as well as new truths, often appear.

These gentlemen should remember that a treaty is only another name for a contract. And no nation would make any contract with us that would be binding on them *absolutely*, but on us only so long and so far as we may think.

People who make laws may, without doubt, amend or repeal them. It will not be disputed that people who make treaties may alter or cancel them. But let us not forget that two contracting parties make treaties. Consequently, since the consent of both was essential to their formation, so must it ever afterwards be to alter or cancel them.

The proposed Constitution, therefore, hasn't extended the obligation of treaties. They are just as binding and far beyond the lawful reach of legislative acts now as they will be in the future period under any form of government.

[12] Fear: Treaties Bad for Some States

However useful jealousy maybe in republics, just like bile in the natural body, when it abounds too much in the body politic, the eyes become easily deceived by delusional appearances that the illness throws on surrounding objects. This is probably what causes the fears and apprehensions of some people that the President and Senate may

make treaties without an equal eye to the interests of all the States.

Others suspect two thirds of the Senate will oppress the remaining third and ask whether those gentlemen are made sufficiently responsible for their conduct. Whether, if they act corruptly, they can be punished. And if they make disadvantageous treaties, how are we to get rid of those treaties?

[13] Promoting Good of Whole Nation

Since all the States are equally represented in the Senate by men who are able and willing to promote the interests of their constituents, they will all have an equal degree of influence, especially while the proper people continue to be carefully appointed and their punctual attendance is demanded.

As the United States assumes a national form and character, the good of the whole will become more and more an object of attention. The government would have to be weak indeed if it forgets that the good of the whole can only be promoted by advancing the good of each of the parts that compose the whole.

Neither the President nor the Senate will have the power to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the community. And having no private interests distinct from those of the nation, they will be under no temptations to neglect the latter.

[14] Corruption Voids Treaty

As to corruption, the case is not imaginable. Anyone who can think it probable that the President and two-thirds of the Senate will ever be capable of such unworthy conduct, must either have been very unfortunate in his intercourse with the world or has a heart very susceptible to such impressions.

The idea is too gross and too invidious to be entertained. But if it should ever happen, the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the law of nations.

[15] Integrity, Fear Guarantee Responsibility

With respect to their responsibility, it is difficult to conceive how it could be increased. Every possible influence on the human mind, such as honor, oaths, reputations, conscience, love of country, and family affections and attachments, afford security for their fidelity.

In short, since the Constitution has taken the utmost care that they shall be men of talents and integrity, we have reason to believe that the treaties they make will be as advantageous as could be made, all circumstances considered.

And so far as the fear of punishment and disgrace can operate, the motive for good behavior is amply supplied by the article on the subject of impeachments.

Publius

Constitutional references:

Article 2, section 2	treaties
Article 1, section 3	impeachment
Article 2, section 1	election of President
Article 1, section 3	election of Senators
Article 1, section 3	Senators 6-year term
Article 2, section 1	minimum age for President
Article 1, section 3	minimum age for Senator

65: Senate as Court for Trial of Impeachments

The remaining powers that the Constitution allots only to the Senate are its participation, with the executive, in the appointment to offices and its judicial character as a court for the trial of impeachments.

Since the executive branch is the principle agent in regard to appointments, the provisions relating to it will be discussed in the examination of that branch.

We will, therefore, conclude this topic with a study of the judicial character of the Senate.

[2] Political Passions => Biased Opinions

A well-constituted court for the trial of impeachments is a difficult, but important, objective in a totally elected government.

Their jurisdiction extends to offenses proceeding from the misconduct of public men. Or, in other words, from the abuse or violation of some public trust. The offenses may properly be called political, since they relate chiefly to injuries done immediately to society itself. For this reason, the prosecution of them will seldom fail to agitate the passions of the whole community, and divide it into parties more or less friendly or hostile to the accused.

In many cases, the division will align with the preexisting factions, enlisting all their animosities, partialities, influence, and interest on one side or on the other. And in such cases, there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties, than by the real demonstration of innocence or guilt.

[3] Political Reputations

The delicacy and magnitude of trust deeply concerns the political reputation and existence of every man engaged in the administration of public affairs.

In a government entirely based on periodic elections, the difficulty of correctly placing trust is quickly understood when we consider that the most conspicuous people in government will often be, from that circumstances, the leaders or the tools of the most cunning or the most numerous faction. Because of this, they can hardly be expected to possess the required neutrality towards those people whose conduct may be the subject of scrutiny.

[4] Senate as Court of Impeachment

The constitutional convention, it appears, thought the Senate the most fit depository of this important trust. Those people who can best discern the intrinsic difficulty of the problem will be the least hasty in condemning this decision and most inclined to seriously consider the arguments that have produced it.

[5] House Impeaches, Senate Tries

What, it may be asked, is the true spirit of an impeachment court? Isn't it designed as a method of national inquest into the conduct of public men? If this is its design, who can more properly be the inquisitors for the nation than the representatives of the nation themselves?

It is not disputed that one house of the legislative body should have the power to originate the inquiry or, in other words, prefer the impeachment. Don't the same reasons that indicate this is proper strongly argue that the other house should share the inquiry?

The convention borrowed this model from Great Britain. The House of Commons prefers the impeachment; the House of Lords decides it.

Several State constitutions follow the example. Those States and Great Britain seem to regard the practice of impeachments as a bridle in the hands of the legislative body on the executive servants of the government. Isn't this the true light in which it ought to be regarded?

[6] Senators Act as Independent Judges

Where else than in the Senate could be found a tribunal sufficiently dignified or independent? What other body would be likely to feel *confidence enough in its own situation* to preserve, unawed and uninfluenced, the necessary impartiality between an *individual* accused, and the *representatives of the people, his accuser*?

[7] Impeachment Court Needs to be Large

Could we rely on the Supreme Court to fit this description?

It is doubtful that the members of that tribunal would, at all times, be endowed with the great fortitude needed to execute so difficult a task. And they probably wouldn't possess the degree of credibility and authority essential to reconcile the people on those occasions when their decision clashes with an accusation brought by the people's representatives.

A deficiency in fortitude would be fatal to the accused; a deficiency in credibility, would be dangerous to the public tranquility. In both these respects, the problems could only be avoided, if at all, by making the Supreme Court more numerous than consistent with a reasonable attention to economy.

The nature of an impeachment trial requires a numerous court. In common cases, the discretion of courts is limited in favor of personal security. An impeachment trial can never be tied down by strict rules, either in the delineation of the offense by the prosecutors

or in the construction of it by the judges. No jury will stand between the judges, who pronounce the sentence of the law and the party who is to receive or suffer it. The awful discretion that a court of impeachments must necessarily have, to doom to honor or infamy the most trusted and distinguished people of the community, forbids committing the responsibility to a small number of persons.

[8] Separate Court for Ordinary Prosecution

These considerations, alone, seem sufficient to support the conclusion that the Supreme Court, as a court of impeachments, would have been an improper substitute for the Senate.

Another consideration strengthens this conclusion. It is this: the punishment that may be the consequence of conviction upon impeachment is not the last chastisement of the offender. After being sentenced to perpetual ostracism from the esteem, confidence, honors, and emoluments of his country, he can be prosecuted and punished in the ordinary course of law. Would it be proper that the persons, who had disposed of his fame and his most valuable rights as a citizen in one trial, should, in another trial for the same offense, also be the people to dispose of his life and his fortune?

Wouldn't it be reasonable to fear that an error in the first trial would be the parent of error in the second? That the strong bias of the first decision would probably overrule the influence of any new information that might change the second? Those who know anything about human nature will not hesitate to answer these questions in the affirmative. They understand that, if the same people are judges in both cases, those being prosecuted would, in great measure, be deprived of the double security intended by a double trial.

If the same judges preside in both trials, when the first sentence of nothing more than dismissal from current office and disqualification from future offices is declared, the loss of life and estate would often be virtually included. It may be argued that the intervention of a jury, at the second trial, would obviate the danger. But juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts that refer the main question to the decision of the court. Who would be willing to stake his life and his estate on the verdict of a jury acting under the auspices of judges who had predetermined his guilt?

[9] Chief Justice, Senate Good Compromise

Would the plan have been improved by uniting the Supreme Court with the Senate to form the court of impeachment? This union would have had several advantages. But wouldn't they be overbalanced by the significant disadvantage, already stated, arising from the same judges presiding in the double prosecution to which the offender would be liable?

To a certain extent, the benefits of uniting the Supreme Court and the Senate will be obtained from making the chief justice of the Supreme Court the president of the court of impeachment, as proposed in the Constitution. At the same time, the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was, perhaps, the prudent compromise.

I restrain from commenting on how increasing the authority of the judiciary by the Supreme Court hearing impeachments trials would provide an additional pretext for clamor against the judiciary.

[10] Court of "Outsiders"

Would it have been desirable to have composed the court for the trial of impeachments of persons who are completely distinct from the other departments of the government? There are weighty arguments in favor and against such a plan.

This would increase the complexity of the political machine, not a trivial objection to some people. It would add a new department to the government, the utility of which would, at best, be questionable.

But an objection worthy of attention is this: such a court would either be very expensive or, in practice, subject to a variety of casualties and inconveniences. It must either have permanent officers based at the seat of government and, of course, entitled to fixed and regular stipends, or specific officers of the State governments who would be called upon whenever an impeachment was actually pending. It isn't easy to imagine any third mode materially different that could be rationally proposed.

Since the court, for reasons already given, should be numerous, every man who can compare the extent of the public wants with the means of supplying them will reject the first scheme.

The second will receive only cautious support after the following problems are seriously considered. The difficulty of collecting men dispersed over the whole Union. The injury to an innocent person from delayed decisions on the charges brought against them. The advantage of a delay to a guilty person, with its opportunities for intrigue and corruption. And, in some cases, the detriment to the State from the prolonged inaction of men whose firm and faithful execution of their duty might expose them to

the persecution of an intemperate or designing majority in the House of Representatives. Though this latter supposition may seem harsh, and might rarely happen, it should not be forgotten that the demon of faction will, at certain times, extend his scepter over all numerous bodies of men.

[11] Government Will Never Be Perfect

But even if one of the substitutes, or some other, might be thought preferable to this part of the Constitution, it doesn't follow that the entire Constitution should be rejected for this reason. If mankind agreed that there could be no government until every part of it had been adjusted to an exact standard of perfection, society would soon become an anarchy, and the world a desert. Where is the standard of perfection to renounce his *infallible* criterion for the *fallible* criterion of his more *conceited neighbor*?

Adversaries to the Constitution should prove, not merely that particular provisions are not the best that might be imagined, but that the whole plan is bad and pernicious.

Publius

Constitutional references:

Article 1, section 3	Senate as court for impeachment trials
Article 1, section 2	House of Representatives impeaches

66: Senate as Court of Impeachments

A review of the principal objections against the proposed court for the trial of impeachments will probably remove any unfavorable impression still existing in regard to this matter.

[2] Objection: Gives Legislature Judicial Power

The first objection is that the provision intermingles legislative and judiciary authority in the same body, in violation of the important, well-established maxim requiring a separation between the different branches of power.

The true meaning of this maxim has been discussed and ascertained in another place. It has been shown to be entirely compatible with a partial intermixture of those branches for special purposes, but usually keeping them distinct and unconnected.

In some cases, this partial intermixture is not only proper but also necessary to the mutual defense of the members of the government against each other. The executive authority to absolutely or partially negate legislative acts [presidential veto] is considered, by the best minds in political science, an indispensable barrier against the encroachments of the latter upon the former. It can be equally argued that impeachment powers are, as suggested before, an essential check in the hands of the legislature on the encroachments of the executive.

The division of impeachment powers between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges. And it guards against the danger of prosecution from a prevalent factious spirit in either one.

Since the concurrence of two-thirds of the Senate will be required to condemn, the security to the innocent, from this addition circumstance, will be as complete as can be desired.

[3] Senate Acts as Supreme Court in NY

The vehemence with which this part of the proposed Constitution is assailed on the principle of separation of power is curious because it is done by men who profess to admire, without exception, New York's constitution. It makes the Senate, together with the chancellor and judges of the Supreme Court, not only a court of impeachments, but also the highest judicatory in the State in all civil and criminal cases. The number of the chancellor and judges in proportion to the number of senators is so inconsiderable that the New York judiciary authority may be honestly said to reside in its Senate.

If the proposed Constitution is accused of departing form the celebrated maxim, so often mentioned but seemingly so little understood, how much more culpable must be the constitution of New York?*

[4] Objection: Makes Senate Too Powerful

A second objection to the Senate as a court of impeachments is that it contributes to an undue accumulation of power in that body, tending to give to the government too aristocratic a countenance.

The Senate will have concurrent authority with the Executive in forming treaties and appointing to offices. The objectors say that if the authority of deciding impeachments is added to the others, it will give a decided predominance to senatorial influence.

It isn't easy to find a precise answer to such an imprecise objection. To what measure or criterion can we appeal to determine what will give the Senate too much, too little, or barely the proper degree of influence? Won't it be safer, as well as simpler, to dismiss such vague, uncertain calculations, to examine each power by itself, and to decide, on general principles, where it may be held with most advantage and least inconvenience?

[5] Treaties, Appointments, Impeachments

If we take this course, it will lead to a more understandable, if not to a more certain result. If I am not mistaken, the disposition of the power to make treaties will appear to be fully justified by considerations stated in a former paper and in others to come.

The expediency of joining the Senate with the Executive in the power of appointing to offices will, I trust, be placed in a satisfactory light in future papers.

And I flatter myself that the observations in my last paper must have gone a ways to proving that it wasn't easy, if practical, to find a more fitting receptacle for the power of determining impeachments, than that which has been chosen. If this is truly the case, the hypothetical dread of the Senate having too great a weight ought to be discarded from our reasoning.

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* In the New Jersey constitution, also, the final judiciary authority is in a branch of the legislature. In New Hampshire, Massachusetts, Pennsylvania, and South Carolina, one branch of the legislature is the court for the trial of impeachments.—PUBLIUS

[6] House is Stronger Legislative Body

But this hypothesis, such as it is, has already been refuted by the remarks about the senators' term in office. It was shown, with historical examples and reasoning, that the part of every republican government with the representatives most directly elected by the people will be, generally, the favorite of the people and a full match, if not an overmatch, for every other part of government.

[7] House Powers that Senate Won't Have

But independent of this active, operative principle, to secure the equilibrium of the House of Representatives, the Constitution provides it several important counterbalances to the additional authorities conferred on the Senate.

The exclusive privilege of originating money bills will belong to the House of Representatives.

It will possess the sole right of instituting impeachments. Isn't this a complete counterbalance to that of determining them?

It will umpire all Presidential elections in which no one candidate gets a majority of the total number of electors, a case that will sometimes, if not frequently, happen. This constant possibility must be a fruitful source of influence to that body. The more contemplated, the more important this ultimate, though contingent, power—deciding the competitions of the most illustrious citizens of the Union for the first office in it. It is perhaps not rash to predict that as an influence, it will outweigh all the specific Senate attributes.

[8] Critics: Senate Approves Appointments

A third objection to the Senate as a court of impeachments is drawn from its role in the appointments to office. It is imagined that because it participated in an appointment, it would be too indulgent when judging the office holder's conduct.

This objection would condemn a practice seen in all the State governments, if not in all governments that we know about. By this I mean, making those who hold offices during pleasure dependent on the pleasure of those who appoint them. It could be alleged, with equal plausibility, that the favoritism of the people who make appointments to offices would always be an asylum for the misbehavior of the people appointed to them.

But that idea contradicts the presumption that those who make appointments will feel responsible for the fitness and competency of appointees. And that their interest in the respectable and prosperous administration of affairs will make them want to dismiss from participating in it anyone who has proved, by their conduct, unworthy of the confidence placed in them.

This presumption may not always be supported by facts. But if it is fundamentally sound, it destroys the supposition that the Senate, which will only sanction executive choices, would feel such a bias towards appointees that it would blind them to such extraordinary evidence of guilt that it induces the Representatives of the nation to become his accusers.

[9] Senate's Minor Role in Appointments

If further arguments are necessary to show the improbability of such a bias, they might be found in the nature of the Senate's part in the business of appointments.

The President will nominate and, with the advice and consent of the Senate, appoint. Of course, the Senate will have no part in the choice. They may defeat one choice by the Executive, forcing him to make another, but they cannot choose. The Senate can only ratify or reject the choice of the President.

The Senate may even prefer someone else at the very moment they assent to the one proposed, because there might be no specific grounds to oppose him. Additionally, they couldn't be sure that if they withheld their assent, the subsequent nomination would be their own favorite, or any other person who in their estimation was more meritorious than the one rejected.

Thus, the majority of the Senate would hardly feel any deeper satisfaction towards the appointee than as appearances of merit might inspire and the lack of proof will destroy.

[10] Objection: Senate Ratifies Treaties

A fourth objection to the Senate as a court of impeachments derives from its union with the Executive in the power of making treaties. It has been said that this would make the senators their own judges in every case of a corrupt or perfidious executive of that trust. That is, after they combined with the Executive to betray the interests of the nation in a ruinous treaty, it is asked whether there would be any hope of their suffering the punishment they deserved, when they were to decide themselves on the accusation brought against them for the treachery of which they have been guilty?

[11] Argument Based on False Foundation

This objection has been circulated with more earnestness and a greater show of reason than any other appearing against this part of the Constitution. Yet I am deceived if it doesn't rest on an erroneous foundation.

[12] Senate, House Exempt from Punishment for Acts Done as Collective Bodies

The security in the Constitution against corruption and treachery when forming treaties

is in the numbers and characters of those who are to make them.

The joint agency of the President and two-thirds of the members of the Senate, a body selected by the collective wisdom of the legislatures of the States, is designed to be the pledge for fidelity of the national councils in this matter.

The convention might have, with propriety, included the Executive's punishment for deviating from the Senate's instructions or a lack of integrity in his conduct during the negotiations. They might also have had in view the punishment of a few leading individuals in the Senate, if they prostituted their influence in that body as the mercenary instruments of foreign corruption. But they could not, with more or equal propriety, contemplate impeaching and punishing two-thirds of the Senate consenting to an improper treaty, any more than it could contemplate punishing a majority of the Senate, or any branch of the national legislature, consenting to a pernicious or unconstitutional law—a principle that, I believe, has never been admitted into any government.

How could a majority in the House of Representatives impeach themselves? It is evident that this is no better than two thirds of the Senate putting themselves on trial. Yet why should the majority of the House of Representatives, after sacrificing the interests of the society by an unjust and tyrannical act of legislation, escape with impunity, any more than two thirds of a Senate that sacrifices the same interests in an injurious treaty with a foreign power?

The truth is, in all such cases it is essential to the freedom and the necessary independence of the body' deliberations that the members be exempt form punishment for acts done in a collective capacity. Society's security depends on the care taken to confide the trust in proper hands, make it their interest to execute it with fidelity, and make it as difficult as possible for them to combine in any interest opposite to that of the public good.

[13] Senate Will Punish Abusers of Power

If the Executive misbehaves by perverting the instructions or contravening the views of the Senate, we need not worry that that body will not be disposed to punish the abuse of their confidence or vindicate their own authority. For this, we can count on their pride, if not their virtue. And as far as it might even involve the corruption of leading Senators, by whose influence the majority may have been lured into measures odious to the community, if corruption can be proved, the psychology of human nature will lead us to conclude that the body will want to divert the public resentment from themselves by sacrificing the authors of their mismanagement and disgrace.

Publius

Constitutional references:

Art 1, sec 2 House of Representatives impeaches
Art 1, sec 3 Senate tries impeachments
Art 2, sec 2 President cannot pardon for impeachment
Art 2, sec 4 impeachment for treason, bribery, or other high crimes and misdemeanors
Art 2, sec 2 President, with advice and consent of Senate, makes appointments, treaties
Art 2, sec 1 House of Representatives chooses President when no one get majority
Art 1, sec 3 State legislatures choose Senators
Art 1, sec 7 House of Representatives originates bills for raising revenues

67: Deceptive Arguments Against Proposed Executive

The structure of the executive department of the proposed government next claims our attention.

[2] Framing Executive Controversial

Hardly any part of the system was more difficult to arrange than this. And, perhaps, none is more vehemently complained about with less candor or criticized with less judgment.

[3] Critics Magnify President into Monarch

On this subject, the writers against the Constitution seem to have taken pains to showcase their talent for misrepresentation. Using the people's aversion to monarchy, they have encouraged all their fears in opposition to the intended President of the United States, claiming that it is not merely an embryo, but the full-grown child, of that detested parent. To establish the imagined relationship, they have even drawn arguments from fiction.

They have magnified the authorities of the chief executive, some less and some more than those of a governor of New York has, into more than royal prerogatives. They claim he will have more dignity and splendor than a British king. He has been shown to us with a crown sparkling on his brow and the imperial purple flowing in his train, on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates, in supercilious pomp and majesty. The image of Asiatic despotism and voluptuousness has scarcely been wanting to crown the exaggerated scene. We are to tremble at the terrific images of murdering guards, and blush at the unveiled mysteries of a future palace.

[4] Accurate Description Needed

The extravagant attempts to disfigure, even metamorphose, the presidency, make it necessary to look at its real nature and form. We must determine the true appearance, unmask the disingenuity and expose the fallacy of the counterfeit images that have been so insidiously, as well as industriously, propagated.

[5] Deceit Used to Pervert Public Opinion

In doing this, it's difficult to either look with moderation or treat seriously the issues, no less weak than wicked, that have been contrived to pervert public opinion on the subject. They so far exceed the usual unjustified license of party artifice that even people who are generally indulgent of their political adversaries' conduct feel unreserved indignation.

It is impossible not to accuse them of deliberate fraud and deception on the gross pretense of finding a similarity between a king of Great Britain and a magistrate of the character described for the President of the United States. It is even more impossible to withhold the accusation of fraud from the rash, barefaced expedients used in an attempt to make the deception successful.

[6] President and Senate Vacancies

In one instance, which I cite as a sample of the general spirit, they have had the nerve to ascribe to the President of the United States a power that the proposed Constitution *expressly* allots to the Executives of the individual States. I mean the power of filling casual vacancies in the Senate.

[7] False Conclusion Built on False Premise

This bold experiment to test the discernment of his countrymen has been tried by a writer who (whatever may be his real merit) has often been applauded his party.* And he has built a series of observations equally false and unfounded on this false, unfounded suggestion. Let him now be confronted with the evidence and let him, if he is able, justify or extenuate the shameful outrage he has offered to the dictates of truth and to the rule of fair dealing.

[8] Constitution: Executive Appointments

Article 2, section 2, clause 2 empowers the President of the United States "to nominate, and by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other *officers* of the United States whose appointments are *not* in the Constitution *otherwise provided for,* and *which shall be established by law*."

Immediately after this clause, another says: "The President shall have power to fill up all *vacancies*, that may happen *during the recess of the Senate,* by granting commissions which shall *expire at the end of their next session.*"

The pretended Presidential power to fill vacancies in the Senate has been deduced from this last provision. A slight attention to the connection of the clauses and their obvious meaning will satisfy us that the deduction is not even plausible.

[9] President Appoints Non-Constitutional Officers

The first of these two clauses, it is clear, only provides a mode for appointing officers, "whose appointments are *not otherwise*

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* See Cato, No. V. –PUBLIUS

provided for in the Constitution, and which *shall be established by law.*" Of course, it cannot extend to the appointment of senators, whose appointments are *otherwise provide for* in the Constitution,* and who are *established by the Constitution*, and will not require a future establishment by law. This position will hardly be contested.

[10] President Never Appoints Senators

It is equally clear that the last of these two clauses cannot be understood to include the power of filling vacancies in the Senate, for the following reasons:

First. The relationship of that clause to the other, which declares the general mode of appointing officers of the United States, shows that it is nothing more than a supplement to the first, establishing an auxiliary appointment method. The President and Senate *jointly* have the power to make appointments. Therefore appointments can only be made while the Senate is in session. However, vacancies might happen *in their recess*, which may need to be filled without delay. The second clause clearly authorizes the President, *singly*, to make temporary appointments "during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

Second. If this clause is a supplement to the one that precedes it, the *vacancies* must be construed to relate to the "officers" described in the preceding one. And this, we have seen, excludes members of the Senate.

Third. The time within which the power is to operate, "during the recess of the Senate," and the duration of the appointments, "to the end of the next session," also helps to make the provision clear. Therefore, if it included senators, it would have naturally referred to the time period when State legislatures were in recess for filling temporary vacancies, since they make the permanent appointments, and not to the recess of the national Senate, who have nothing to do with those appointments. And it would have extended the duration in office of the temporary senators to the next session of the State legislature where the vacancies had happened, instead of making it expire at the end of the ensuing session of the national Senate. The circumstances of the body authorized to make the permanent appointments would, of course, govern the modification of a power relating to temporary appointments. And since the national Senate is the only body mentioned in this clause, it must allude to vacancies in offices in which that body has a concurrent appointment agency with the President.

Lastly. Article 1, section 3, clauses 1 and 2 not only obviate all possibility of doubt but destroy the pretext of misconception. The former provides that "the Senate of the United States shall be composed of two Senators from each State, chosen *by the legislature thereof* for six years." And the latter directs that "if vacancies in that body should happen by resignation or otherwise, *during the recess of the legislature of* any state, the Executive thereof may make temporary appointments until the *next meeting of the legislature,* which shall then fill such vacancies."

The State Executives have the clear, unambiguous power to fill casual vacancies in the Senate by temporary appointments. This not only invalidates the supposition that the clause under examination is intended to confer that power on the President of the United States, but proves that this supposition, since it is not even plausible, must be intended to deceive the people. It is too obvious to be obscured by sophistry, too atrocious to be excused by hypocrisy.

[11] Example Proof of Misrepresentations

I carefully selected this misrepresentation and place it in a clear and strong light, as an unequivocal proof of the inexcusable cunning practiced to prevent a fair, impartial judgment of the real merits of the Constitution.

Nor have I, even in this flagrant case, made severely critical comments that would not be within the general spirit of these papers. I ask any candid, honest adversary of the proposed government, whether language can furnish severe enough epithets for so shameless an attempt to defraud the citizens of America.

Publius

Article 2, Sec 2 Executive appoints to officers
Article 1, Sec 3 State legislatures choose Senators
Article 1, Sec 3 Filling Senate vacancies

* Article 1, section 3, clause 1 –PUBLIUS

68: Method of Electing President

The method of appointing the chief Executive of the United States is almost the only part of the system that has escaped without severe censure, or that has received the slightest mark of approval from its opponents. The most plausible critic, to appear in print, has even deigned to admit that the election of the President is pretty well guarded.*

I'll go further and agree that, if the method isn't perfect, it is at least excellent. It clearly unites all the advantages wished for.

[2] Electing Presidential Electors

The will of the people should operate in the choice of the person who will hold such an important trust. To achieve this objective, the men who make the decision will be chosen by the people at the appropriate time for this specific purpose, rather than having any pre-established body make the decision.

[3] Small Group, Higher Qualifications

The men electing the President should be capable of analyzing the qualities suitable to the position. They should act under circumstances favorable to deliberation and a judicious combination of the reasons and inducements proper to govern their choice. A small number of persons, selected by their fellow citizens from the general public, will be most likely to possess the information and the discernment required in such complicated investigations.

[4] Electors Vote in Home State

There should also be as little opportunity as possible for tumult and discord, a dreaded evil when electing an executive with so important a job in the administration of the government as the President of the United States. But the precautions within the Constitution promise an effectual security against this mischief.

The people will choose *several* men to form an intermediate body of electors. By choosing several, the community is less likely to convulse with extraordinary or violent actions than if only *one* person was elected.

The electors are to assemble and vote in the State in which they are chosen. This detached, divided situation will expose them to much less heat and ferment than might be communicated from them to the people if they were all to be convened at one time in one place.

[5] Foreign Influence, Presidential Elections

Every practical obstacle against cabal, intrigue, and corruption must be erected. These most deadly adversaries of republican government might be expected to approach from more than one quarter, but chiefly from the desire of foreign powers to gain an improper influence in our councils. How better to do this than by raising a creature of their own to the chief executive of the Union?

But the convention has guarded against all danger of this sort with the most provident and judicious attention. The appointment of the President is not dependent on any pre-existing bodies of men who might be tampered with beforehand to prostitute their votes.

Instead, first the people of America choose electors for the temporary and sole purpose of making the appointment. Any people whose position might be suspected of too great a devotion to the President in office are not eligible for this trust. No Senator, Representative, or other person holding a place of trust or profit under the United States can be an elector. Thus, without corrupting all citizens, the presidential electors will at least enter on the task free from any sinister bias. Their transient existence and detached situation afford a satisfactory expectation that they will remain unbiased. The business of corruption, when it needs to embrace such a large number of people, requires time and means.

Nor would it be easy to suddenly start a corrupt conspiracy. The dispersal of electors over thirteen States is another protection. Between the appointment of electors and their election of the President, it wouldn't be easy for them to combine for motives that might not be corrupt, but might mislead them from their duty.

[6] President Elected by People

Another important goal was that the Executive be independent for continuing in office on all but the people themselves. Otherwise he might be tempted to sacrifice his duty to ingratiate himself with people whose favor was necessary to stay in office. This advantage will also be secured by making his re-election dependent on a special body of electors, delegated by society for the single purpose of making the important choice.

[7] Constitution Includes All Safeguards

The Constitution combines all these advantages. The people of each State will choose a number of electors, equal to the number of senators and representatives of

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* Vide *Federal Farmer*. –PUBLIUS

each State in the national government. The electors will assemble within the State and vote for some fit person as President. Their votes are to be transmitted to the seat of the national government and the person with a majority of the whole number of votes will be the President.

One man might not always receive a majority of the votes and it might be unsafe to permit less than a majority to be conclusive. Therefore, the Constitution provides that, if this happens, the House of Representatives will select the man who in their opinion is best qualified for the office from the candidates with the five highest number of votes.

[8] Election Method Assures Highest Quality

This process of election affords a moral certainty that the office of President will never be held by any man who is not eminently endowed with the required qualifications.

Talent for low intrigues and the charms of popularity may alone suffice to elevate a man to the first honors in single State. But it will require other talents and a different kind of merit to establish him in the esteem and confidence of the whole Union, or enough of it to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say that the station will probably be filled by men pre-eminent for their ability and virtue.

This will highly recommend the Constitution to people able to estimate the role the executive in every government necessarily has in its good or ill administration. Though we cannot agree in the political heresy of the poet who says:

For forms of government let fools contest—

That which is best administered is best—

yet we may safely pronounce that the true test of a good government is its aptitude and tendency to produce a good administration.

[9] Vice President Chosen Same Way

The Vice President is to be chosen in the same manner with the President, with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

[10] V-P Senate's President, May Be President

The appointment of an extraordinary person as Vice President has been objected to as superfluous, if not mischievous. It has been alleged that it would have been preferable to authorize the Senate to elect out of their own group an officer answering that description.

But two considerations seem to justify the ideas of the convention in this respect. First, to always secure a definite resolution, the Senate's President should have only a casting vote. And to take the Senator of any State from his seat as Senator and make him President of the Senate, would exchange, in regard to his home State, a constant for a contingent vote.

Second, the Vice President may occasionally become a substitute for the President. So, all the reasons recommending the mode of election prescribed for the one apply with great, if not equal, force to the manner of appointing the other.

This objection, as most others, could be made against the constitution of New York. We have a Lieutenant-Governor, chosen by the people at large, who presides in the senate and is the constitutional substitute for the Governor in casualties similar to those that would authorize the Vice President to exercise the authorities and discharge the duties of the President.

Publius

Constitutional references:

Article 2, Sec 1	electing President, Vice-President
Article 1, Sec 3	Vice-President is Senate President; casting vote

69: President's Constitutional Authority

I will now discuss the authorities of the Executive branch of the federal government, as defined in the proposed Constitution. This will highlight the unfairness of the representations made about it.

[2] One Person Has Executive Authority

First, a single person will hold most of the Executive authority, the President.

This feature doesn't help us determine whether the Executive authority, as defined in the Constitution, is appropriate. If, in this particular, it resembles the king of Great Britain, there is no less resemblance to the Grand Seignior, to the Khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York.

[3] Four-Year Term

The President will be elected for *four* years and is re-eligible as often as the people of the United States think him worthy of their confidence.

This is totally dissimilar to a king of Great Britain, who is a *hereditary* monarch, possessing the crown as a patrimony passed down to his heirs forever.

However, there is a close analogy between the President and a New York governor, who is elected for *three* years and is re-eligible without limitation or intermission. Establishing a dangerous influence in a single State would require much less time than establishing a similar influence throughout the United States. Therefore, we must conclude that the permanency of the President's *four*-year term is less dangerous than a *three*-year term for the top official in a single State.

[4] President Liable for Misdeeds

The President of the United States can be impeached, tried, and, on conviction of treason, bribery, or other high crimes or misdemeanors, removed from office. Afterwards he would be liable to prosecution and punishment in the ordinary course of law.

The king of Great Britain is sacred and inviolable. He is not accountable to any constitutional tribunal. And a national revolution is the only way he can be punished.

In the delicate and important area of personal responsibility, the President of the United States will stand on no better ground than the governor of New York. And he will have more personal liability than the governors of Massachusetts and Delaware.

[5] President's Qualified Negative: Veto

The President of the United States will have the power to return a bill that has passed the two branches of the legislature for reconsideration. The returned bill becomes law if, on reconsideration, it is approved by two thirds of both houses.

The king of Great Britain has an absolute negative on the acts of the two houses of Parliament. Just because that power hasn't been used for a long time doesn't change its existence. In fact, the only reason it hasn't been used is because the king has found a way to substitute influence for authority.

If the monarch used his authority to permanently veto legislation passed by Parliament, there would be some degree of agitation in the nation. Instead, he has learned the art of gaining a majority in one or the other of the two houses of Parliament. Therefore, the qualified negative of the President differs widely from this absolute negative of the British sovereign.

However, it matches the authority of the Council of Revision of New York, of which the governor is a member. In this respect, the power of the President exceeds that of the governor of New York because the President would possess, himself, what the governor shares with the chancellor and judges. But it is precisely the same as the governor of Massachusetts, from whose constitution this article seems to have been copied by the Constitutional Convention.

[6] Commander-in-Chief, Pardons

The President is to be the "commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States

"He is to have power to grant reprieves and pardons for offenses against the United States, *except in cases of impeachment;*

"to recommend to the consideration of Congress such measures as he shall judge necessary and expedient;

"he may, on extraordinary occasions, convene both houses of the legislature, or either of them, and, in case of disagreement between them *with respect to the time of adjournment*, to adjourn them to such time as he shall think proper;

"to take care that the laws be faithfully executed;

"and to commission all officers of the United States."

In most of these, the President's power resembles both the king of Great Britain and the governor of New York. The most important differences are these:

First. The President will only occasionally command the nation's militia, only after

Congress has called it into the actual service of the Union by legislative provision.

The king of Great Britain and the governor of New York are, at all times, in command of all the militia within their jurisdictions. In this authority, therefore, the power of the President is inferior to that of either the monarch or the governor.

Second. The President is to be commander-in-chief of the army and navy of the United States.

Both the President and the king of Great Britain have the title "commander-in-chief," but the President's authority is far more limited than the king's. It is nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Union.

The British king's power extends to the *declaring* of war and the *raising* and *regulating* of fleets and armies—all of which, by the proposed Constitution, falls under legislative authority.

The governor of New York, on the other hand, can only command the militia and navy. But the constitutions of several other States expressly declare their governors to be commander-in-chief, as well of the army as navy. And it may well be a question whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers on their respective governors than could be claimed by a President of the United States.

Third. The power of the President, in respect to pardons, would extend to all cases *except impeachment.*

The governor of New York can pardon even impeachment, except for treason and murder. Isn't the power of the governor, as far as political clout in this area, greater than that of the President? If a group of people plot and conspire against the State government but the plan hasn't matured into actual treason, the conspirators may be screened from punishment through the governor's prerogative of pardoning. For example, if a governor of New York led a conspiracy, until the design ripened into actual hostility, he could insure his accomplices entire impunity.

On the other hand, although the President of the United States can pardon treason when prosecuted in the ordinary course of law, he could not shelter an offender from the effects of impeachment and conviction.

Wouldn't the possibility of impunity for the preliminary steps be a greater temptation to continue a conspiracy led by the governor of New York against the public liberty, than the more limited possibility of an exemption from death and confiscation if the final execution of the plan and actual appeal to arms should miscarry? Would the expectation of a presidential pardon have any influence when the person expecting the exemption realizes that, because of the President's role in the conspiracy, he might be unable to supply the desired impunity? Remember that, by the proposed Constitution, the offense of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort." By the laws of New York, it is confined within similar bounds.

Fourth. The President can only adjourn Congress in the single case of disagreement about the time of adjournment.

The British monarch can adjourn or even dissolve the Parliament.

The governor of New York can also adjourn the State legislature for a limited time, a power that, in certain situations, may be employed to very important purposes.

[7] Senate Must Approve Treaties

The President will, with the advice and consent of the Senate, make treaties, provided two-thirds of the senators present concur.

The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. On his own, he can make treaties of peace, commerce, alliances, and of every other description. It has been insinuated that his authority, in this respect, is not total and that his treaties with foreign powers are subject to the revision and need the ratification of Parliament. But I believe this doctrine was never heard of until it was broached on the present occasion. Every jurist[12] of that kingdom and every other man acquainted with its constitution knows, as an established fact, that the prerogative of making treaties exists completely in the crown. And treaties made by the monarch have complete legal validity, independent of any other sanction.

Sometimes Parliament alters existing laws so that they conform to the stipulations in a new treaty and this may have given birth to the notion that its cooperation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause—the necessity of adjusting an artificial, intricate system of revenue and commercial laws to the changes resulting from the treaty, and adapting new provisions and precautions to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the limited presidential power and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature.

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12 *Vide* Blackstone's *Commentaries*, vol. I. p.257. – PUBLIUS

It must be admitted that, in this instance, the power of the federal Executive would exceed that of any State executive. But this arises naturally from the sovereign power relating to treaties. The question of whether governors have this delicate and important power would only come up if the Confederacy was dissolved.

[8] Greeting Ambassadors, Ministers

The President is also to be authorized to receive ambassadors and other public ministers. Although this provision has been a rich theme of declamation, this is more a matter of dignity than of authority. It will have no effect on the administration of the government. And this will be far more convenient than if the legislature, or one of its houses, had to convene every time a foreign minister arrived, even though he was only replacing a departing predecessor.

[9] Appoints Ambassadors, Judges, Etc.

The President is to nominate and, *with the advise and consent of the Senate*, appoint ambassadors and other public ministers, judges of the Supreme Court, and, in general, all officers of the United States established by law and whose appointments are not otherwise provided for by the Constitution.

The king of Great Britain is emphatically and truly called the fountain of honors. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure and dispose an immense number of church preferments.

In this area, the power of the President is clearly inferior to that of the British king. Nor is it equal to that of the governor of New York, if we interpret the New York State constitution by the practices used under it. The power of appointment is lodged in a council composed of the governor and four members of the Senate chosen by the Assembly. The governor *claims*¸ and has frequently *exercised*, the right of nomination and is *entitled* to a casting vote in the appointment. If he really has the right of nominating, in this respect his authority is equal to that of the President, and he exceeds it with the casting vote.

In the national government, if the Senate is divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale and confirm his own nomination.[13]

The New York governor, in private with an appointment council composed of, at most, four—and frequently only two—persons, appoints State officials. We can compare this with the publicity attending a presidential appointment, which needs a Senate confirmation. It would be much easier to influence the small number of people in an appointment council than the considerable number in the national Senate. Therefore, we cannot hesitate to pronounce that the power of the governor of New York to appoint State officers is, in practice, greatly superior to that of the President of the Union.

[10] President: Far Less Power than King

Hence it appears that, with the exception of the President's authority in making treaties, it is difficult to determine whether he would possess more or less power than the governor of New York.

More unequivocally, there is no rationale for the parallel that some people have attempted to make between him and the king of Great Britain. But to make the contrast still more striking, it may help to throw the principal dissimilarities into a closer group.

[11] President vs. Monarch's Authorities

The President of the United States would be elected by the people for *four* years; the King of Great Britain is a perpetual and *hereditary* prince.

The one could face personal punishment and disgrace; the other is sacred and inviolable.

The one would have a *qualified* negative on the acts of the legislative body; the other has an *absolute* negative.

The one would have a right to command the military and naval forces of the nation; the other, in addition to this, possess the authority of *declaring* war, and *raising* and *regulating* fleets by his own authority.

The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the *sole possessor* of the power to make treaties.

The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners, can erect corporations with all the rights incident to corporate bodies.

The one can prescribe no rules concerning the commerce or currency of the nation; the other is in several respects the arbiter of commerce, can establish markets and fairs, regulate weights and measures, can lay embargoes for a limited time, can coin money,

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13 Candor, however, demands an acknowledgment that I do not think the claim of the governor to a right of nomination is well founded. Yet it is always justifiable to reason from the practice of a government, until its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.—PUBLIUS

can authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church!

What answer shall we give to those who would persuade us that things so dissimilar resemble each other? The same that should be given to people who tell us that a government, with the whole power in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.

Publius

Constitutional references:

Art 2, Sec 1 one person holds executive authority
Art 2, Sec 1 our-year term for President
Art 2, Sec 4 impeachment of President
Art 1, Sec 3 prosecution after removal from office
Art 1, Sec 7 President's veto power
Art 2, Sec 2 President commander-in-chief
Art 2, Sec 2 Presidential pardons
Art 2, Sec 2 President, with Senate, makes treaties
Art 2, Sec 2 President nominates public officials
Art 2, Sec 3 President recommends legislation
Art 2, Sec 3 President adjourns Congress
Art 2, Sec 3 President receives ambassadors, etc
Art 2, Sec 3 President executes laws
Art 2, Sec 3 Pres commissions US military officers
Art 1, Sec 8 Congress calls militia into service
Art 1, Sec 8 Congress declares war
Art 1, Sec 8 Congress raises, equips, regulates military
Art 1, Sec 8 States appoint militia officers, train militia
Art 1, Sec 3 treason defined
Art 1, Sec 9 no nobility titles in U.S.
Art 1, Sec 8 Congress regulates commerce
Art 1, Sec 8 Congress coins money, regulates value; punish counterfeiting; weights, measures

70: One Person Holds Executive Authority

Some people say that a vigorous Executive is inconsistent with the genius of republican government. People who understand and support this type government must hope that there is no foundation for this idea. If it were true, it would condemn their belief in the principles of good government.

The executive branch of government must have the inherent powers to effectively accomplish its prescribed duties. Energy in the executive [powers equal to responsibilities] is a primary characteristic of good government.

It is essential to protect the community against foreign attacks. It is also essential to the steady administration of laws to protect property against irregular and high-handed conspiracies that sometimes interrupt the ordinary course of justice. And it is essential to secure liberty against the enterprises and assaults of ambition, faction, and anarchy.

Every man with even a little knowledge of Roman history knows how often that republic was obliged to take refuge in the absolute power of a single man with the formidable title of Dictator. He used his authority against both internal intrigues, when ambitious and tyrannical individuals threatened the existence of all government, and invasions by external enemies who tried to conquer and destroy Rome.

[2] Feeble Executive => Bad Government

This topic doesn't need multiple arguments or examples. A feeble executive implies a feeble execution of government. A feeble execution is just another way to say a bad execution. And whatever it may be in theory, in practice a government badly executed must be a bad government.

[3] Safe Republic, Energetic Executive

Therefore, assuming that all thinking men agree that an energetic executive is necessary, what are the ingredients that constitute this energy? How can they be combined with the ingredients that constitute safety, in the republican sense? And how well does the proposed Constitution combine an energetic executive with the safety of a republic?

[4] Qualities of Energetic Executive

The ingredients that constitute energy in the Executive are: (1) unity, (2) duration, (3) guaranteed compensation, and (4) competent powers.

[5] Qualities of Republican Safety

The ingredients that constitute safety, in the republican sense, are: (1) due dependence on the people, (2) due responsibility.

[6] One Executive; Numerous Legislature

The politicians and statesmen who are the most celebrated for sound principles and just views favor a single executive and a numerous legislature. They consider energy as the most important and necessary quality of the executive branch of government. And this is achieved when one person holds the executive power.

They consider the numerous legislature as best adapted to deliberation and wisdom, and best able to conciliate the people's confidence and secure their privileges and interests.

[7] Benefits of Unified Executive

Unity promotes energy. Decision, activity, secrecy, and dispatch will far more often characterize the proceedings of one man than the proceedings of any greater number. And proportionately, as the number increases, these qualities diminish.

[8] Executive Unity Destroyed

Unity may be destroyed in two ways: vesting the executive power in two or more people with equal status and authority, or vesting it ostensibly in one man who is subject, in whole or part, to the control and cooperation of others who act as counselors to him.

The two consuls of Rome serve as an example of the first. Of the last, we find examples in the constitution of several States. New York and New Jersey, if I recollect right, are the only States that entrust the executive authority totally to single men.[14]

Both methods of destroying the unity of the executive have supporters, but the numbers of people who want an executive council are more numerous. Although the two types of plurality in the executive are different, both are liable to similar objections and may be examined together.

[9] History: Plural Executives

The experiences of other nations give little instruction on this topic. However, as far as it teaches anything, it teaches us not to be captivated by the idea of having a plural executive.

The Achaeans, on experimenting with two Praetors, were forced to abolish one.

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[14] New York has no council except for the single purpose of appointing to offices. New Jersey has a council the governor may consult. But, I think, from the terms of the constitution, their resolutions do not bind him.--PUBLIUS

Roman history records many mischiefs to the republic from dissensions between the Consuls and the military Tribunes, who were at times substituted for the Consuls.

But history gives us no examples of any particular advantages of a plural executive. That disagreements between consuls were not more frequent or more fatal is astonishing, until we remember the Roman republic's almost constant situation. Circumstances required the prudent policy of dividing the government between the consuls. The aristocrats perpetually struggled with the common people to preserve their ancient authorities and dignities. The consuls, who were generally chosen from the aristocrats, often united to defend the privileges of their class.

In addition to this motive of union, after the military considerably expanded the bounds of the republican empire, it became the custom of the consuls to divide the administration between themselves by lot. One consul remained at Rome to govern the city and surrounding area. The other took command in the more distant provinces. No doubt this must have prevented collisions and rivalries that might otherwise have embroiled the peace of the republic.

[10] Logic Rejects Plural Executive

If we leave the dim light of historical research and use only logic and good sense, we discover more reasons to reject than approve the idea of a plural Executive under any modification whatever.

[11] Plural Executive: Animosity Inevitable

Wherever two or more persons are engaged in a common enterprise or pursuit, there is always danger of differences of opinion. If it is a public trust or office, where they are clothed with equal rank and authority, there is a real danger of personal envy and even animosity. Envy and animosity often cause bitter dissensions. These lessen the respectability, weaken the authority, and distract the plans and operations of the people they divide.

If envy and animosity attacked the supreme executives of a country, consisting of more than one person, they might impede or frustrate the most important measures of the government during critical state emergencies. And what is still worse, they might split the community into the most violent and irreconcilable factions, supporting the different individuals who compose the executive.

[12] Envy, Pride Motivate Opposition

Men often oppose a thing just because they had no part in planning it, or because people they dislike may have planned it. But if they have been consulted and have disapproved, their opposition becomes, in their estimation, an indispensable duty of self-love. They feel bound in honor and personal infallibility to defeat a plan that is contrary to their sentiments.

Men of upright, benevolent tempers have told too many horror stories of the desperate lengths this disposition is sometimes carried. And men have often had enough followers to sacrifice the great interests of society to their vanity, conceit, and obstinacy.

Perhaps the consequences of the question now before the public may give us sad proofs of the effects of this despicable frailty, or detestable vice, in the human character.

[13] Legislature Designed to Act Slowly

The principle of free government requires that the inconveniences just described must be tolerated from the legislature. But it is unnecessary and, therefore, unwise to introduce them into the executive branch. And they can be the most pernicious in the executive.

In the legislature, prompt decisions are more often an evil than a benefit. Although the differences of opinion and party haggling can sometimes obstruct good plans, they often promote deliberation and circumspection, serving to check excesses in the majority. Also, when a resolution is passed, the opposition must end. The resolution is a law and resistance to it is punishable.

But there are no favorable circumstances to mitigate or atone for the disadvantages of dissension in the executive branch. Here they are pure and unmixed. There is no point at which they cease to operate. They embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the conclusion. They constantly counteract the most necessary executive qualities—vigor and expedition—without any counterbalancing good.

During war, when executive energy is the bulwark of national security, everything would be feared from its plurality.

[14] Council Also Weakens Executive

It is confessed that these observations principally apply to the first case—that is, a plurality of executives with equal dignity and authority, a scheme that probably has few advocates.

But the same observations apply, not with equal but considerable weight, to a council whose concurrence is constitutionally necessary to the operations of the ostensible executive.

An artful cabal in the council would be able to distract and weaken the whole system of administration.

If no such cabal existed, the mere diversity of views and opinions, alone, would be sufficient to affect the exercise of the executive authority with a spirit of habitual feebleness and tardiness.

[15] Plurality Hides Faults, Responsibility

But one of the strongest objections to both types of plural executive is that it tends to conceal faults and destroy responsibility.

There are two types of responsibility: moral and legal. Therefore, irresponsibility leads to censure and to punishment. Censure is the more important, especially in an elective office. A man in public trust will more often act in such a manner that makes him unworthy of being trusted than in such a manner as to make him subject to legal punishment.

But when more than one person holds the position of Executive, detecting who is morally or legally responsible is more difficult. In fact, it often becomes impossible, amidst mutual accusations, to determine who to blame or punish for a pernicious measure or series of pernicious measures. Blame is shifted from one to another with so much dexterity and under such plausible appearances that the public is left in suspense about the real author.

The circumstances leading to any national misfortune are sometimes extremely complicated. If there are a number of actors with different degrees of responsibility, though we clearly see that there has been mismanagement, it may be impractical to pronounce who is truly responsible for the evil.

[16] Can't Determine Individual Responsibility

"I was overruled by my council."

"The council was so divided in their opinions that it was impossible to obtain any better resolution on the point."

These and similar pretexts are always available, whether true or false. And who will take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? If a citizen zealous enough to undertake the unpromising task is found and if there is a collusion between the parties involved, how easy is it to clothe the circumstances with so much ambiguity that it is uncertain what was the precise conduct of any of those parties?

[17] New York's Disastrous Experience

The governor of New York is coupled with a council for one duty, appointing to offices. And we have seen the mischiefs described. Scandalous appointments to important offices. Some cases, indeed, have been so flagrant that everyone agrees they are improper. When asked about them, the governor has blamed the members of the council who, on their part, charged it on his nomination.

Meanwhile, the people remain totally at a loss to determine who committed their interests to such manifestly unqualified and improper hands. In tenderness to individuals, I forbear to descend to particulars.

[18] Accountability, Plural Executive

These considerations show that the plurality of the Executive tends to deprive the people of the two greatest securities they have for the faithful exercise of any delegated power:

First. The restraints of public opinion lose their effectiveness because of the difficulty of dividing censure among a number of people and the uncertainty on whom it should fall.

Second. The misconduct of people holding the public trust will be difficult to discover with the facility and clearness needed to either effect their removal from office or their punishment, where appropriate.

[19] King Unaccountable, Perpetual Executive

In England, the king is the perpetual executive. For the sake of public peace, he is unaccountable for his administration and his person is sacred. Therefore, nothing can be wiser than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive branch—an idea inadmissible in a free government.

But the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of this office. He has total discretion to use or disregard the advice given to him.

[20] Council Would Damage U. S. Executive

But in a republic, where every executive should be personally responsible for his behavior in office, the reason for the British council not only ceases to apply, but turns against the institution.

In the monarchy of Great Britain, it substitutes for the prohibited responsibility of the chief executive, who serves in some degree as a hostage to the national justice for his good behavior.

In the American republic, it would destroy, or greatly diminish, the interested and

necessary responsibility of the Chief Executive himself.

[21] One Executive Safer

The idea of a council to the Executive, which is in many State constitutions, has come from the maxim of republican jealousy, which considers power as safer in the hands of a number of men than of a single man. If the maxim is felt to be applicable to this case, I would argue that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side.

But I do not think the rule is at all applicable to the national executive power. I clearly concur with the opinion on this subject with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious, that the executive power is more easily confined when it is one."[15] It is far safer to have a single object for jealousy and watchfulness of the people. And, in a word, all multiplication of the Executive is more dangerous than friendly to liberty.

[22] Easier for Group to Usurp Power

A little thought will satisfy us that the type of security sought for in the multiplication of the EXECUTIVE is unattainable. The number has to be so great that conspiracy is difficult or they become a source of danger rather than security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately.

Therefore, when power is placed in such a small number of men that their interests and views can be easily combined in a common enterprise by a talented leader, it becomes more liable to abuse and more dangerous when abused, than if it is lodged in the hands of one man who, from the very circumstances of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others.

The Decemvirs of Rome, whose name denotes their number,[16] were more to be dreaded in their usurpation than any one of them would have been.

No one would think of proposing an executive much more numerous than that body. From six to a dozen have been suggested for the number of the council. The largest of these numbers isn't too great for an easy conspiracy. And America would have more to fear from such a conspiracy than from the ambition of any single individual.

A council to an executive, who is himself responsible for what he does, is generally nothing better than a clog on his good intentions, often acts as the instruments and accomplices of his bad deeds, and is almost always a cloak to his faults.

[23] Plural Executive Expensive

I refrain from dwelling on the subject of expense. However, it is evident that if the council was numerous enough to fulfill the goal aimed at by instituting it, the salaries of the members who must be drawn from their homes to reside at the seat of government would create an item in the catalogue of public expenditures too serious to be incurred for an objective of equivocal utility.

I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any State who didn't admit, as the result of experience, that the unity of the New York executive is one of the best of the distinguishing features of our State constitution.

Publius

Article 2, Section 1

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15 DeLolme.—PUBLIUS

16 Ten.—PUBLIUS

71: Duration: President's Term in Office

The second requirement for energy in Executive authority is duration in office. This has two objectives: the executive's personal firmness in the employment of his constitutional powers and stable system of administration adopted under his auspices.

As to the first, clearly, the longer the duration in office, the greater will be the probability of obtaining so important an advantage.

It is a general principle of human nature that a man is interested in whatever he possesses in proportion to the firmness or precariousness of the tenure by which he holds it. He will be less attached to what he holds by a momentary or uncertain title. And, of course, he will be willing to risk more for the one he firmly holds than for the one he precariously holds.

This remark applies to a political privilege, honor, or trust just as to any article of ordinary property. The inference is that a chief executive who knows he *must* leave his office is apt to have so little interest in it that he won't take the chance of any significant censure or entanglement from the independent use of his powers. He won't act if he might even encounter some transient ill-humors from either a large part of society or a predominant faction in the legislative body.

Instead, if he only *might* leave office unless reelected, and if he wants to be reelected, his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity or debase his fortitude.

In either case, feebleness and irresolution become the characteristics of the executive office.

[2] *Leaders* Ignore Bad Fads

Some people regard the servile pliancy of the Executive to a prevailing current, either in the community or the legislature, as its best recommendation. But these people entertain very crude ideas about both the fundamental purpose of government and the true means of promoting public happiness.

The republican principle demands that the will of the community should govern the conduct of those entrusted with management of their affairs. But it does not require absolute compliance to every sudden breeze of passion or every transient impulse aroused within the people by clever men who flatter the community's prejudices to betray their interests.

It is true that the people commonly *intend* the public good. This often applies even to their errors. But the people's good sense would despise the adulator who pretends that they always *reason right* about the *means* of promoting it.

They know from experience that they sometime err. The wonder is that they so seldom err, beset as they continually are by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men possessing more confidence than they deserve, and of those who seek to possess rather than to deserve it. When the interests of the people are at variance with their inclinations, it is the duty of the people appointed to be the guardians of those interests, to withstand the temporary delusion and give them time and opportunity for more cool, sedate reflection.

Examples might be cited when this type of conduct saved the people from very fatal consequences of their own mistakes, procuring from the people lasting monuments of their gratitude to the leaders who had courage and magnanimity enough to serve them at the peril of their displeasure.

[2] Executive Should Act Independently

But even if we insist that the Executive completely comply with the will of the people, we can not properly argue that the legislature comply in the same way.

The legislature may sometimes stand in opposition to the executive. And at other times, the people may be entirely neutral. In either case, it is certainly desirable that the Executive should act on his own opinion with vigor and decision.

[4] Separation of Power Avoids Legislative Dominance

The rule that teaches the importance of a partition between the various branches of power teaches us that this partition should be constructed so that each is independent of the other. What is the purpose of separating the executive or the judiciary from the legislative, if the acts of both the executive and the judiciary can be absolutely voided by the legislative? Such a separation would be merely nominal and incapable of producing the ends for which it was established.

Being subordinate to the laws is different from being dependent on the legislative body. The first agrees with and the last violates the fundamental principles of good government. And despite the Constitution, it unites all power in the same hands.

As shown in some earlier papers, the legislative branch tends of absorb every other branch. In a pure republic, this tendency is almost irresistible. The representatives of the people in a popular assembly sometimes seem to believe that they are the people themselves, betraying strong symptoms of impatience and disgust at the least sign of opposition from any other quarter, as if when the executive or the judiciary exercises its rights, it is a breach of legislative privilege and an outrage to the representatives' dignity.

The legislature often seems to want imperial control over the other branches. And since they commonly have the people on their side, they act with a momentum that makes it very difficult for the other branches of the government to maintain the constitutional balance.

[5] Term Effects Executive Independence

How can the shortness of the duration in office affect the independence of the Executive on the legislature, unless the one has the power of appointing or displacing the other?

One answer comes from the principle already mentioned—that is, a man is apt to have little interest in a short-lived advantage and little inducement to expose himself to any considerable inconvenience or hazard. Another answer, perhaps more obvious though no more conclusive, results from the legislative body's influence over the people, influence that might be used to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, makes himself the target of its resentment.

[6] Short Term Protects from Ambition

Will a term of four years answer the proposed end? If not, should it be a shorter period, recommended because at least it provides a greater security against ambitious designs, rather than a longer period that was, at the same time, too short to inspire the desired firmness and independence of the executive.

[7] 4-Year Term Seems Best

It cannot be confirmed that four years, or any other limited duration, would completely answer the proposed end. But it would have a material influence on the spirit and character of the government. Between the beginning and termination of such a period, there would be a considerable interval in which the prospect of annihilation would be sufficiently remote not to have an improper effect on the conduct of a man with enough fortitude. He might reasonably promise himself that there was enough time to make the community aware of the propriety of the measures he wished to pursue.

It is probable that as reelection approached, his confidence and his firmness would decline. Yet both would also derive support from the opportunities during his time in office to establish himself in the esteem and good will of his constituents. So he might take a chance, in proportion to how well he had proven his wisdom and integrity, and acquired the respect and attachment of his fellow citizens.

On the other hand, a four-year term contributes to the firmness of the Executive sufficiently to render it a very valuable ingredient in the composition. On the other, it is not enough to justify any alarm for the public liberty.

From its most feeble beginnings, the British House of Commons has used *the mere power of agreeing or disagreeing to the imposition of a new tax* to quickly reduce and confine the prerogatives of the crown [their executive] and privileges of nobility [one house of their legislature] within the limits they conceived compatible with principles of a free government while raising themselves to the rank of a co-equal branch of the legislature. In one instance, they abolished both the royalty and the aristocracy, and overturned all the ancient establishments, in the Church as well as the State. On a recent occasion, it made the monarch tremble at the prospect of an innovation attempted by them.*

Therefore, what would be feared from an elected executive with a four-year term and with the limited authorities of a President of the United States? What, but that he might be unequal to the task assigned him by the Constitution?

I will only add that if his duration is such as to leave a doubt of his firmness, that doubt is inconsistent with the worry about his encroachments.

Publius

Article 2, Section 1 President's term

* This refers to Mr. Fox's India bill that was carried in the House of Commons, and rejected in the House of Lords, to the entire satisfaction, as it is said, of the people.--PUBLIUS

72: Presidential Term Limits

In its largest sense, the administration of government includes all the operations of the body politic, whether legislative or judicial. But in its usual, and perhaps most precise definition, it is limited to executive duties, falling specifically within the province of the executive department.

Government administration is understood to include actually conducting foreign negotiations, preparing financial plans, applying for and disbursing public money in conformity to the general appropriations of the legislature, directing the army and navy, and operations of war and other similar matters. Therefore, the managers of these different matters should be considered assistants or deputies of the chief executive. For this reason, he should appoint them or, at least, nominate and supervise them. This suggests the close connection between the chief executive's term in office and the stability of the system of administration.

To reverse and undo what a predecessor has done is very often considered by a successor as the best proof he can give of his own capacity and worthiness. And when the change is because of an election, the new person is warranted in supposing that the loss of his predecessor resulted from a dislike of his measures. And the less he resembles his predecessor, the more he will recommend himself to the favor of his constituents. These considerations, and the influence of personal confidences and attachments, would likely induce every new President to change the men filling offices.

Together, these causes could not fail to create a disgraceful and ruinous mutability in government administration.

[2] Re-election of Good Administrator

With a positive duration of considerable extent [four-year term in office], I connect the circumstance of re-eligibility [no term limit].

The four-year term gives the president the desire and resolution to function well, and it gives the community the time to observe his measures and form an opinion of their merits. Without term limits, the people, when they approve of his conduct, may re-elect him and prolong the utility of his talents and virtues, giving the government the advantage of permanency in a wise system of administration.

[3] Presidential Term Limit Bad Idea

Nothing appears more like a good idea at first glance nor more ill-founded on close inspection, than an idea that has some respectable advocates. I'm referring to the idea of continuing the president in office for a certain time, then excluding him from it, either for a limited period or forever.

This exclusion, whether temporary or perpetual, would have nearly the same effects. And these effects, for the most part, would be more pernicious than salutary.

[4] Possible Re-election Effects Behavior

One ill effect would be a reduction of inducements to good behavior. Most men feel much less zeal as they perform a duty when they know that the advantages connected with their office must be relinquished at a predetermined time, than when they are permitted to entertain a hope of *obtaining*, by *meriting,* a continuance in office.

This will not be disputed as long as we admit that the desire of reward is one of the strongest incentives of human conduct. Or that the best security for fidelity is to make a man's interest coincide with his duty.

The love of fame, the strongest passion of the noblest minds, would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself that he might be re-elected and, therefore, finish what he had begun. However, the desire for fame would deter him from undertaking the project when he foresaw that he must leave before finishing the work, giving both it and his reputation to a successor who might be unequal or unfriendly to the task. The most to be expected of men in such a situation is the negative merit of doing no harm, instead of the positive merit of doing good.

[5] Effect on Avaricious Office Holder

Another ill effect would be the temptation to sordid views, to embezzlement, and, in some instances, to usurpation. An avaricious man filling the office, who knows when he must give up the benefits he enjoys, could not easily resist the temptation to make the best use of the opportunity he enjoyed while it lasted. He might not hesitate to use the most corrupt methods to make the harvest as abundant as it was transitory.

Probably, the same man, with the possibility of re-election before him, might be content with the regular benefits of his situation. He might be unwilling to risk the consequences of abusing his opportunities. His avarice might be a guard on his avarice.

Perhaps the same man might be vain or ambitious, as well as avaricious. And if he expected to prolong his honors by his good conduct, he might hesitate to sacrifice his appetite for them to his appetite for gain. But with the prospect of being forced to leave office, his avarice would probably win over his caution, his vanity, or his ambition.

[6] Effect on Ambitious Office Holder

Also, when an ambitious man held his country's highest position of honor, looking toward when he must descend from the exalted eminence forever—and knowing no merit on his part could save him—he would be more violently tempted to find a way to prolong his power at every personal hazard, than if he could possibly be re-elected by doing his duty.

[7] Effect of Living Ex-Presidents

Would it promote the peace of the community or the stability of the government to have half a dozen men who had had enough respect to be raised to the seat of the supreme executive, wandering among the people like discontented ghosts, sighing for a place they are destined never more to possess?

[8] Experience Parent of Wisdom

A third ill effect would be to deprive the community of the advantage of the experience gained by the chief executive in the exercise of his office.

The adage that experience is the parent of wisdom is recognized as truth by the wisest, as well as, the simplest of mankind. Experience is the most desirable and essential quality in the head of a nation. Is it wise to constitutionally ban this desirable, essential quality, declaring that the moment it is acquired, its possessor will be compelled to abandon the station in which it was acquired and to which it is adapted?

This is, in fact, the precise meaning of regulations excluding men from serving their country by the re-election of their fellow-citizens, after having fitted themselves for doing it with greater utility through service.

[9] Effect of Changing During Crisis

A fourth ill effect would be banishing men from offices in which, during emergencies, their presence might be of the greatest importance to the public interest or safety. Every nation has, at one period or another, experienced an absolute necessity of the services of particular men in particular situations, perhaps even to preserve its political existence. Therefore, term limits prohibit a nation from making use of its own citizens in the manner best suited to its exigencies and circumstances!

Even if a man weren't essential, it is evident that changing Presidents as a war breaks out or at any similar crisis, even for a man of equal merit, would always be detrimental to the community. It would substitute inexperience for experience. And it would tend to unhinge and set afloat the already settled train of the administration.

[10] Effect of Policy Changes

A fifth ill effect would be a constitutional interdiction of stability in administration. By *requiring* a change of President, it would necessitate a mutability of measures. It can't be expected that men will vary and measures remain uniform. The contrary is normal. And we need not worry about too much stability when there is the option of changing.

Nor should we want to prohibit citizens from continuing their confidence where they think it may be safely placed and where, by re-election, they may prevent the fatal inconveniences of fluctuating councils and changing policy.

[11] Partial/Perpetual Term Limits

These are some of the disadvantages flowing from term limits, especially perpetual exclusion. But when we consider that partial exclusion always makes readmission of the former office holder a remote and precarious possibility, they apply nearly as fully to both cases.

[12] Advantages of Term Limits

What are the advantages of term limits promised to counterbalance these disadvantages? They are (1) greater independence in the executive, and (2) greater security to the people.

The first advantage can only be inferred if the exclusion is permanent. Couldn't he sacrifice his presidential independence to a future objective? Won't he have friends for whom he may sacrifice it? Might he be less willing to take decisive actions that could make personal enemies, when he knows that very soon he not only may, but must, be exposed to their resentments on an equal, even an inferior, footing?

It isn't easy to determine whether his independence would be more promoted or impaired by such an arrangement.

[13] Term Limits: People's Security

As to the second supposed advantage, there is a still greater reason to entertain doubts about it.

If exclusion were perpetual, a man of irregular ambition, of whom there could be apprehension, would, with infinite reluctance, yield to necessity and leave a post forever in which he had acquired a habitual passion for power and pre-eminence. And if he had been fortunate or adroit enough to conciliate the good will of the people, he might induce them to consider a provision calculated to debar them of the right of giving a fresh proof of their attachment to a favorite as very odious and an unjustifiable restraint.

Circumstances may be conceived in which this disgust of the people, seconding the thwarted ambition of such a favorite, might result in greater danger to liberty than could reasonably be dreaded from the possibility of continuing in office by the voluntary votes of the community, exercising a constitutional privilege.

[14] Disadvantages Outweigh Advantages

The idea of stopping the people from voting to continue in office men who in the people's opinion had entitled themselves to approbation and confidence has an excess of refinement. And the advantages are at best speculative and equivocal, and are overbalanced by disadvantages far more certain and decisive.

Publius

Constitutional references:

Article 2, section 2	President appoints executive officers
Article 2, section 1	President term 4 years

73: Executive Salary; Executive Powers, Veto

The third ingredient to instill vigor in the executive authority is an adequate provision for its support. Without this, the separation of the executive from the legislative branch would be trivial.

If the legislature had discretionary power over the salary and benefits of the Chief Executive, it could make him compliant to their will. They might reduce him by famine or tempt him by largess to their inclinations. These expressions, taken in all the latitude of the terms, would no doubt convey more than is intended.

There are men who could neither be distressed nor won over into sacrificing their duty. But this stern virtue is rare. Generally, power over a man's support is power over his will.

If so plain a truth needed confirmation by facts, examples wouldn't be lacking, even in this country, of the intimidation or seduction of the Executive by the terrors or allurements of the legislative pecuniary arrangements.

[2] Presidential Compensation Unalterable

Therefore, the judicious attention paid to this subject in the proposed Constitution cannot be commended too highly. It provides that "The President of the United States shall, at stated times, receive for his service a compensation *which shall neither be increased nor diminished during the period for which he shall have been elected;* and he *shall not receive within that period any other emolument* from the United States, or any of them."

It is impossible to imagine any provision more suitable than this. On the appointment of a President, the legislature will declare, once and for all, the compensation for his services during the time for which he has been elected. Once done, they will have no power to alter it, either an increase or decrease, until a new service period by a new election starts. They can neither weaken his fortitude by reducing his ability to pay for necessities nor corrupt his integrity by appealing to his avarice. Neither the Union nor any State will be at liberty to give, nor will he be at liberty to receive, any other benefits. He can, of course, have no monetary inducement to renounce or desert the independence intended for him by the Constitution.

[3] Appropriate Presidential Powers

The last enumerated requirement for a vigorous, effective executive is appropriate powers. Let us consider those which are proposed to be vested in the President of the United States.

[4] Qualified Negative: Presidential Veto

The first to capture our attention is the qualified negative [veto] of the President on the acts or resolutions of the two houses of the legislature. Or, in other words, his power of returning all bills with objections, preventing their becoming laws unless they should afterwards be ratified by two-thirds of each house of the legislature.

[5] Defense against Legislative Plundering

The propensity of the legislative branch to intrude on the rights and absorb the powers of the other branches has already been suggested. The insufficiency of a mere parchment delineation of the boundaries has also been remarked on. And the necessity of furnishing each with constitutional armies for its own defense has been inferred and proved.

The propriety of a negative, either absolute or qualified, in the Executive on legislative acts, results from these clear and indubitable principles. Without the one or the other, the Executive would be absolutely unable to defend himself against the plundering of the legislative. He might gradually be stripped of his authority by successive resolutions or annihilated by a single vote. And in one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands.

Even if the legislative body never felt a propensity to invade the rights of the Executive, the rules of just reasoning and theoretic propriety teach us that the one should not be left to the mercy of the other, but should possess a constitutional and effectual power of self-defense.

[6] Veto Defends against Bad Laws

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against improper laws. It establishes a check on the legislative body calculated to guard the community against the effects of faction, precipitancy, or any impulse unfriendly to the public good that might happen to influence a majority of that body.

[7] Critics: Improper Control over Legislature

Sometimes, the propriety of a veto has been refuted by the observation that it shouldn't be presumed that a single man would possess more virtue and wisdom than a number of men. And unless this presumption is seriously considered, it would be improper to give the executive any type of control over the legislative body.

[8] Closely Examine Laws Passed in Haste

But this observation, when examined, will appear more specious than solid. The veto power isn't proper because of the Executive's superior wisdom or virtue, but because the legislature won't be infallible

The love of power may sometimes betray itself by encroaching on the rights of other members of the government. A faction may sometimes pervert its deliberation. Momentary impressions may sometimes hurry it into measures which itself, on reflection, would condemn.

The primary inducement to conferring the power in question on the Executive is to enable him to defend himself.

The secondary one is to increase the chances in favor of the community against the passing of bad laws

through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversified situations of those examining it, the less must be the danger of the errors that flow from a lack of due deliberation or the missteps proceeding from the contagion of some common passion or interest. It is far less probable that culpable views of any kind would infect all parts of the government at the same moment and in relation to the same object, than that they should, by turns, govern and mislead each of them.

[9] Restraint on Excess Law-making

It may be said that the power of preventing bad laws includes that of preventing good ones and may be used for the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of inconstancy and mutability in laws that form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law making and keep the status quo, as much more likely to do good than harm, because it is favorable to greater stability in the system of legislation.

The injury possibly done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.

[10] Veto Rarely Used against People's Will

Nor is this all. In a free government, the superior weight and influence of the legislature, and the hazard to the Executive in a trial of strength with that body, give satisfactory security that the negative would generally be employed with great caution. In the exercise of it, a charge of timidity would more often be charged, than rashness.

A king of Great Britain with all his train of sovereign attributes and all the influence he draws from a thousand sources would, to this day, hesitate to put a negative on the joint resolutions of the two houses of Parliament. He would exert the utmost resources of his influence to strangle a measure disagreeable to him during its progress to the throne to avoid the dilemma of permitting it to take effect or risking the displeasure of the nation by opposing the will of the legislative body.

Nor is it probable that the king would ultimately venture to use his veto except when it was absolutely proper or necessary. All informed men in that kingdom will agree that this remark is truthful. A very long period has elapsed since the negative of the crown has been exercised.

[11] Cautious Use of Veto Power

If a magistrate as powerful and well fortified as a British monarch has scruples about using this power, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

[12] Rare, But Used When Needed

Clearly, there would be greater danger of his not using his power when necessary than of his using it too often or too much. Indeed, an argument against its expediency has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it doesn't follow that because it might be rarely used, it would never be used.

In the case for which it is chiefly designed, an immediate attack on the constitutional rights of the Executive, or in a case where the public good was clearly and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defense and listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office. In the latter, he'd be stimulated by the probability of the support of his constituents who, though they would normally agree with the legislative body in a doubtful case, wouldn't allow their partiality to delude them in a very plain case. I speak now of an executive possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

[13] Qualified Veto, Legislature Concurrence

But the convention chose a way that will both facilitate the use of the veto and make its effectiveness depend on the decision of a large part of the legislative body. Instead of an absolute negative, it gives the Executive the qualified negative already described. This power would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single veto, might not hesitate returning it for reconsideration subject to a final rejection only if more than one-third of each house concurs in his objections. He would be encouraged by the knowledge that if his opposition prevailed, it would be supported by a very respectable proportion of the legislative body, whose influence would unite with his in supporting the propriety of his conduct in the public opinion.

A direct, categorical negative appears more harsh and more apt to irritate than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. The less it might offend, the more apt it is to be exercised. For this reason, in practice it may be found more effectual. It is hoped that improper views will not often govern so large a proportion as two-thirds of both branches of the legislature at the same time, in spite of the counterbalancing weight of the Executive. At any rate, it is less probable than that such views would taint the resolutions and conduct of a bare majority.

The executive veto will often have a silent, unperceived, though forcible, operation. When men engaged in unjustifiable pursuits know that obstructions may come from a quarter they cannot control, they are often restrained, by the possibility of opposition, from doing what they would eagerly rush

into, if no such external impediments were to be feared.

[14] New York's Veto Successful

As has been elsewhere remarked, the qualified negative in New York is vested in a council, consisting of the governor with the chancellor and judges of the Supreme Court, or any two of them. It has been used on a variety of occasions and frequently with success. And its utility has become so apparent that people, who while compiling the constitution were violent opponents of it, have become its declared admirers.*

[15] Maintaining Independent Judiciary

In another place I have remarked that the convention, when forming this part of the plan, departed from the model of New York State's constitution in favor of that of Massachusetts.

Two strong reasons may be imagined for this preference. One is that the judges, who are interpreters of the law, might be improperly biased from having given a previous opinion in their revisionary capacities. The other is that because they are often associated with the Executive, they might be too vested in the political views of that executive, eventually cementing a dangerous combination between the executive and judiciary branches.

It is impossible to keep the judges too separate from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation where they could be either corrupted or influenced by the Executive.

Publius

Article 2, section 1 executive compensation
Article 1, section 7 President's veto power

* Mr. Abraham Yate, a warm opponent of the Constitution, is of this number.—PUBLIUS

74: Commander-in-Chief, Reprieves, Pardons

The President of the United States is to be "commander-in-chief of the army and navy of the United States, and the militia of the several States *when called into the actual service* of the United States."

The propriety of this provision is so evident and is, at the same time, so consistent with the precedent of the State constitutions in general, little need be said to explain or enforce it. Most of the people who have, in other areas, coupled the chief executive with a council, have concentrated the military authority in him alone.

Of all the cares or concerns of government, the direction of war specifically demands qualities that distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength. And the power of directing and employing the common strength forms an essential part in the definition of the executive authority.

[2] Reports from Executive Departments

"The President may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective officers."

I consider this a mere redundancy in the Constitution since the right it provides would result, anyway, from the office.

[3] Reprieves, Pardons

He is also to be authorized to grant "reprieves and pardons for offenses against the United States, *except in cases of impeachment.*"

Humanity and good policy dictate that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. Every country's criminal code is so necessarily severe that, without easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too vicious and cruel.

Feelings of responsibility are stronger as fewer people are involved. Therefore, it may be inferred that a single man would most carefully study the motives that might plead for a mitigation of the rigor of the law, and least apt to yield to considerations calculated to shelter a proper target of its vengeance. The reflection that the fate of a fellow creature depended on his *sole fiat* would naturally inspire scrupulousness and caution. Equal caution, though of a different kind, would arise from the dread of being accused of weakness or connivance.

On the other hand, since men generally derive confidence from their numbers, a group of men with this power might often encourage each other's inflexibility and might be less attuned to suspicious apprehensions or censure for an injudicious or affected clemency. For these reasons, one man appears to be a more eligible dispenser of the government's mercy than a body of men.

[4] Pardons for Treason

The expediency of vesting the power of pardoning in the President has been only contested, if I'm not mistaken, in relation to the crime of treason. It has been urged that this should depend on the assent of one or both houses of the legislature.

There are strong reasons for requiring this concurrence. Since treason is a crime against the society, when the guilt of the offender has been determined, it seems fit to refer the expediency of an act of mercy towards him to the judgment of the legislature. And this ought to be the case, as the supposition of the connivance of the Chief Executive ought not to be entirely excluded.

But there are also strong objections to such a plan. There is no doubt that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives that may plead for and against a pardon, than any numerous body whatever.

It deserves particular attention that treason will often be connected with seditious acts embracing a large proportion of the community, as recently happened in Massachusetts. In every such case, we might expect to see the people's representatives tainted with the same spirit that had given birth to the offense. And when parties are pretty equally matched, the secret sympathy of friends of the condemned person, working on the good nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary.

On the other hand, when the sedition proceeded from causes that inflamed the resentments of the majority party, they might often be found obstinate and inexorable when policy demands forbearance and clemency.

But the principal argument for reposing the power of pardoning in this case to the Chief Executive is this: in seasons of insurrection or rebellion, there are often critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the nation. And if the time passed with no action, it may never be possible afterwards to recall. The lengthy process of convening the legislature or one of its houses for the purpose of obtaining its sanction to the measure would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal.

If it is suggested that a discretionary power might occasionally be conferred on the President in such a situation, it may be answered in two ways. First, it is questionable whether, in a limited Constitution, the power could be delegated by law. Second, it would generally be unwise to take any step before hand that might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

Publius

75: President, with Senate Approval, Makes Treaties

The President will have the power, "by and with consent of the Senate, to make treaties, provided two thirds of the senators present concur."

Although this provision has been vigorously attacked on different grounds, I believe it is one of the most unexceptional parts of the Constitution.

One objection is based on the trite topic of intermixing powers. Some contend the President alone should possess the power to make treaties. Others, the Senate.

Others object to the small number of people who can make a treaty. Some people making this objection believe the House of Representatives should be involved, while others seem to think that nothing more is necessary than to substitute two thirds of *all* the members of the Senate for two thirds of the members *present.*

Since I flatter myself that remarks made in an earlier paper about this must have placed it, to a discerning eye, in a very favorable light, I will only offer a few additional remarks, addressing the objections just stated.

[2] Treaty Roles, Separation Rule

As to the mixing of powers, I will rely on the explanations given in other papers of the true meaning of the separation of powers rule. By inference, I assume the union of the Executive with the Senate when forming treaties is no infringement of that rule. I venture to add that because of the nature of treaties, the union is particularly proper.

Although several writers say it is an executive authority, this is evidently an arbitrary classification. If we carefully study how treaties operate, they have more legislative than executive characteristics, though it doesn't seem to fall strictly within the definition of either of them.

The essence of legislative authority is to enact laws or, in other words, to prescribe rules that regulate society. The execution of the laws and employment of the common strength seem to comprise all the function of the executive.

The power to make treaties is plainly not one or the other. It doesn't relate to executing existing laws or to enacting new ones and, still less, to an exertion of the common strength. Treaties are contracts with foreign nations that have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subjects, but agreements between sovereign and sovereign. Therefore, this power seems to form a distinct category, belonging to neither the legislative nor the executive.

The qualities listed elsewhere as indispensable in the management of foreign negotiations, show that the Executive is the best agent in those transactions. At the same time, the vast importance of the trust and the operation of treaties as laws plead strongly for the participation of the whole or a portion of the legislative body in the office of making them.

[3] Foreign Influence, President Acted Alone

However proper or safe it may be to give an hereditary monarch, who is chief executive, the entire power to make treaties, it would be utterly unsafe and improper to entrust that power to an elected chief executive with a four-year term.

It was said earlier, and is unquestionably true, that an hereditary monarch, though often an oppressor of his people, has personally too much stake in the government to be in any material danger of being corrupted by foreign powers.

But for a man raised from private citizen to chief executive, with a moderate or small fortune, and knowing that in the not too distant future he will again be a private citizen, the temptation to sacrifice his duty to his interest would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, with the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct doesn't warrant the exalted opinion of human virtue required for a nation to commit such delicate and momentous interests, ones concerning its intercourse with the rest of the world, to the sole disposal of an executive like a President of the United States.

[4] Advantages of President's Involvement

Entrusting the Senate alone with the power to make treaties would relinquish the benefits of the President's constitutional participation in the conduct of foreign negotiations. The Senate could employ a person in this capacity, but they would have the option of letting it alone. Animosity or cabal might induce the latter rather than the former.

Besides this, the ministerial officer of the Senate could not be expected to receive the same degree of the confidence and respect of foreign powers as the constitutional representatives of the nation and, of course, would not be able to act with an equal degree of influence or efficacy. The Union would lose a considerable advantage in the management of its external concerns. And the people would lose the additional security resulting from the cooperation of the Executive.

Though it would be imprudent to confide in the Executive, alone, so important a trust, it cannot be doubted that his participation would materially add to society's safety.

It must be clear that the joint power, by the President and Senate, to make treaties affords a greater prospect of security than the separate possession of it by either of them. Additionally, anyone who has seriously studied how the President will be elected knows that the office will always be filled by men of such character that, because of their wisdom and integrity, their concurrence in forming treaties will be especially desirable.

[5] House Too Inexperienced, Large

The remarks in an earlier paper, and alluded to here, conclusively show that the House of Representatives shouldn't share in the formation of treaties. Because of the fluctuating and, with its future growth, multitudinous composition of the House, we can't expect it to have the qualities essential to properly executing such a trust. Accurate and comprehensive knowledge of foreign politics, a steady and systematic adherence to the same views, a uniform sensibility to national character, decision, *secrecy*, and dispatch are incompatible with the genius of a body so variable and numerous.

The need to have so many different people concur, alone, would be a solid objection. The need for more and longer sessions of the House of Representatives to sanction the progressive stages of a treaty would be so great an inconvenience and expense that it, alone, should condemn the idea.

[6] Two-Thirds Ratification, Minority Rule

The last objection is to substitute the proportion of two-thirds of all members of the Senate, to that of two-thirds of the members *present*.

We have discussed that when more than the majority of any body is required to pass resolutions, it tends to impede governmental operations. And it tends to indirectly subject the will of the majority to that of the minority. This important consideration supports our opinion that the convention has gone as far as necessary to secure the advantage of numbers in the formation of treaties as can be reconciled either with the activity of the public councils or with a reasonable regard to the majority will of the community.

If two thirds of the whole number of members were required, in many cases it would be, from the non-attendance of some members, the same as requiring unanimity. The history of every political body using this principle is a history of impotence, perplexity, and disorder. Proofs might be adduced from the examples of the Roman Tribune, the Polish Diet, and the States-General of the Netherlands, if an example at home didn't make foreign precedents unnecessary.

[7] Proposed Senate, Current Congress

To require a fixed proportion of the whole Senate would probably not add to the advantages of requiring a proportion of the attending members.

Requiring a specific number to pass every resolution diminishes the reasons for punctual attendance. But making the legal authority of the body dependent on a *proportion* that can vary by the absence or presence of a single member has the contrary effect. Promoting punctuality tends to keep the body complete. It is likely that Senate resolutions would be decided by as many members in this case as if two thirds of all members were required, with far fewer reasons for delay.

Under the existing Confederation two members *may*, and usually *do*, represent a State. Consequently, Congress, which currently holds *all the powers* of the Union, rarely consists of more people than the proposed Senate. Additionally, members currently vote by States. When only a single member from a State is present, a State vote is lost. This justifies the assumption that the Senate, where members will vote individually, would rarely have fewer active voices than in the existing Congress.

When we include the President of the Senate, we won't hesitate to infer that the people of America would have greater security against an improper use of the power of making treaties under the new Constitution than they now enjoy under the Confederation. And when we go one step further, looking forward to the probable augmentation of the Senate by new States, we will not only be confident there will be enough members to entrust the power, but we will probably conclude that a larger body than the Senate will likely become would not be fit for the proper discharge of the trust.

Publius

Constitutional references:

Article 2, Section 2	President, with Senate, makes treaties
Article 1, Section 3	Senate president votes to break ties

76: President Nominates, Senate Approves, Appointments

The President is "to *nominate*, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, or in the courts of law, or in the heads of departments. The President shall have the power to fill up *all vacancies* which may happen *during the recess of the Senate,* by granting commissions which shall *expire* at the end of their next session."

[2] Best Method of Appointing Officers

A former paper observed that "the true test of a good government is its aptitude and tendency to produce a good administration." If this is true, the method of appointing the officers of the United States as stated above, when examined, is entitled to special commendation. It isn't easy to think of a better way to promote a judicious choice of men for filling the offices of the Union. And no proof is needed that the character of government administration depends on this point.

[3] Possible Appointment Methods

Of course, having the people at large make appointments is impractical. If nothing else, it would leave them little time to do anything else. Therefore, the power of appointment, in ordinary cases, should be modified in one of three ways. It should either be vested in a single man, or a *select* group of a moderate number, or in a single man with the concurrence of such a group.

In the following discussion, when a group or body of men is mentioned, it refers to a select body as just described. The people collectively, from their number and dispersal, cannot be coerced by the spirit of cabal and intrigue, the chief objections to giving the power to a group of men.

[4] One Man Best Judge

People who have thought about the subject, or paid attention to observations made in the other papers relating to electing the President, will, I presume, agree there will always be a great probability that he will be a man of abilities, at least respectable. On this premise, I'll put down the rule that one man of discernment can do a better job analyzing the qualities for specific offices than a group of men of equal, or even superior, discernment.

[5] Reasons Group Decision Bad

The sole, undivided responsibility of one man will produce a keener sense of duty and regard to reputation. He will feel a stronger obligation and be more interested in carefully investigating the qualities required to fill the offices. And he will impartially prefer the persons who may have the most qualifications.

He will have *fewer* personal attachments to gratify than a group of men who each may have an equal number. So, he will be much less liable to be misled by friendship and affection. A single, well-directed man cannot be distracted and warped by the diversity of views, feelings, and interests that frequently distract and warp the resolution of a collective body.

Nothing agitates the passions of mankind like personal considerations, whether related to ourselves or others, who are to be the objects of our choice or preference. Hence, every time a group of men exercise the power of appointing to offices, we must expect to see a full display of all private and party likes and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the group. The choice made under such circumstances will be the result either of a victory gained by one party over the other or a compromise between the parties. In either case, the intrinsic merit of the candidate will often not be considered.

In the case of a victory of one party over the other, the qualifications best adapted to uniting the party's votes will be more important than the qualifications that fit the person to the job. If a compromise, the coalition will commonly come up with a trade-off: "Give us the man we wish for this office, and you can have the one you wish for that." This will usually be the bargain. Public good will rarely be the primary objective of either party victories or party negotiations.

[6] Nominate vs. Direct Appointment

The intelligent people who find fault with this constitutional provision know this is true. They say the President should be solely authorized to make federal government appointments.

But every advantage expected from such an arrangement will be, in substance, derived from the power of *nomination*, as proposed. At the same time, several disadvantages that might accompany the absolute power of appointment will be avoided.

In the act of nomination, his judgment alone will be exercised. Since he will nominate a man who, with the Senate's approval, will fill an office, his responsibility will be as complete as if he was to make the final appointment.

In this respect, there is no difference between nominating and appointing. The same motives will influence a proper discharge of his duty in both cases. No man could be appointed without being nominated, so every man appointed will be, in fact, the President's choice.

[7] Senate Rejections Rare

But might not his nomination be overruled? I grant it might, but he will make the next nomination. The person ultimately appointed will be his preference, though perhaps not his first. And his nomination will probably not be overruled very often.

If the Senate preferred a different person, they couldn't be tempted to reject the proposed nomination because they couldn't be sure that the person they wanted would be the second or any subsequent nomination. They couldn't even be certain that a future nomination would be a candidate any more acceptable to them. And since their dissent might cast a stigma on the individual rejected, and might appear to be a reflection on the judgment of the President, their sanction will rarely be refused except when there are special and strong reasons for the refusal.

[8] Senate Restraint on President

Then why require the cooperation of the Senate? I answer: the necessity of their concurrence will have a powerful though, in general, silent operation. It will be an excellent check on presidential favoritism and will tend to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition, it will be an efficacious source of stability in the administration.

[9] Thoughtful Nomination

It's easily understood that a man with sole power to dispense offices is governed more by his private inclinations and interests than when he must submit the propriety of his choice to the discussion and determination of an entire house of the legislature. The possibility of rejection is a strong motive to take care when making a nomination. The danger to his own reputation and his political existence from betraying favoritism, or an unbecoming pursuit of popularity, to the scrutiny of a body whose opinion has great weight in forming public opinion, would operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative federal offices, candidates with no other merit than coming from the same State, or being in some way personally allied to him, or possessing the necessary insignificance and pliancy to make them the obsequious instruments of his pleasure.

[10] Executive Influence on Senate

From this reasoning some have objected, saying the President's influence through the nomination power may secure the complaisance of the Senate to his views. Assuming that human nature is universally weak is as much an error in political reasoning as assuming universal integrity.

Delegated power implies that mankind has a portion of virtue and honor that may be a reasonable foundation of confidence. And experience justifies the theory. It has existed in the most corrupt periods of the most corrupt governments.

The British House of Commons has long been accused of venality both in Britain and the United States. And it can't be doubted that the charge is, to a considerable extent, well founded. But a large part of the House of Commons always consists of independent, public-spirited men who have influence on the nation's councils. Hence (the present reign not excepted) it often controls the inclination of the monarch, both with regard to men and to measures.

Therefore, the President may occasionally influence some individuals in the Senate. But the supposition that he could purchase the integrity of the whole body is forced and improbable. A man with a realistic view of human nature, neither flattering its virtues nor exaggerating its vices, will be confident in the integrity of the Senate. He knows that it will be impractical for the President to corrupt or seduce a majority of the Senate. And his need for its cooperation in appointments will be a considerable and salutary restraint on the conduct of the President.

Nor is the integrity of the Senate the only reliance. The Constitution provides some important guards against the danger of executive influence on the legislative body: it declares that "no senator or representative shall, during the time *for which he was elected*, be appointed to any civil office under the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office."

Publius

Constitutional references:

Ar 2, Sec 2 President appoints United States officers

Ar 1, Sec 6 Senators, Representatives appointment to government offices

77: Executive Appoints Administration Officers

One advantage expected from Senate cooperation in appointments is that it will contribute to the stability of the administration of government. The Senate's consent will be necessary to displace as well as appoint. Therefore, a change of the Chief Executive will not be the occasion of such a violent or general a revolution in governmental officers as might be expected if he was the sole disposer of offices. Where a man in any job has proved his fitness for it, a new President will be restrained from attempting a change in favor of a person he wants by fear that the Senate's disapproval might frustrate the attempt, bringing some degree of discredit on himself.

People who believe a steady administration is valuable will prize a provision connecting the official existence of public men with the approval or disapproval of the Senate. It's greater permanency will probably be less subject to inconstancy than any other part of the government.

[2] Balanced Plan

It has been suggested that sometimes the union of the Senate and President when making appointments will give the President too much influence over the Senate. And others say it will have an opposite tendency—a strong proof that neither suggestion is true.

[3] No Undue Influence over Senate

By stating the first opposition in its proper form, it is easy to refute it. It amounts to this: the President will have an improper *influence over* the Senate because the Senate will have the power of *restraining* him.

This is an absurdity in terms. There is no doubt that if he had the entire power of appointment he could more easily establish a dangerous empire over the Senate than having the mere power of nomination, subject to its control.

[4] Senate Influencing Appointments

Let us view the converse of the proposition: "the Senate will influence the Executive."

As I have said several times, the impreciseness of the objection forbids a precise answer. How is this influence to be exerted? In relation to what?

As used here, the power to influence a person implies a power of conferring a benefit on him. How could the Senate confer a benefit on the President by using their right of negative on his nomination? If it is said that they might sometimes gratify him by an acquiescence to a favorite choice when public motive might dictate differently, I answer that the President will be too rarely personally interested in the result to be materially affected by the compliance of the Senate.

The person or group with the power to *originate* the disposition of honors and emoluments is more likely to attract than be attracted to the power that can merely obstruct them.

If "influencing" the President means *restraining* him, this is precisely what is intended. And it has been shown that the restraint will have a beneficial effect while not destroying any advantage that might come from the uncontrolled agency of the Executive. The right of nomination produces all the good of an appointment and will avoid most of its evils.

[5] Public Evaluates Appointments

When comparing the plan for appointing offices in the Constitution with that established by the constitution of New York, a decided preference must be given to the former. In the New York constitution, the power of nomination is unequivocally vested in the Executive.

The Constitution makes it necessary to submit each nomination to the judgment of an entire house of the legislature. Because of this, the appointment process becomes a public issue. And the public can determine what part was performed by the different actors. The blame for a bad nomination will fall on the President singly and absolutely. The censure for rejecting a good one will likely lie entirely at the door of the Senate, aggravated by the consideration of their having counteracted the good intentions of the Executive. If a bad appointment is made, the Executive, for nominating, and the Senate, for approving, will participate in different degrees in the disgrace.

[6] NY Appointments Veiled in Secrecy

The reverse of all this characterizes the manner of appointment in New York. The council of appointment consists of three to five people, one of who is the governor. This small body executes their trust shut up in a private apartment, impenetrable to the public eye.

It is known that the governor claims the right of nomination on the strength of some ambiguous expressions in the constitution. But it is not known to what extent or what manner he exercises it or on what occasions he is contradicted or opposed.

Because of the uncertainty of its author, giving no target, the censure of a bad appointment has neither poignancy nor duration. And when a field for cabal and intrigue lies wide open, all responsibility is lost. The most that the public can know is that the governor claims the right of nomination. *Two* out of the small number of *four* men can too often be managed without much difficulty. If some of the members of the council happen to have an uncomplying character, it is frequently possible to get rid of their opposition by regulating meeting times so their attendance is inconvenient. And from whatever cause, a great number of very improper appointments are sometimes made.

Does a governor of New York avail himself of the dominance he must necessarily have in this delicate and important part of the administration? Does he prostitute that advantage by advancing people whose chief merit is their implicit devotion to his will, supporting a despicable and dangerous system of personal influence? These questions, unfortunately for

the community, can only be the subjects of speculation and conjecture.

[7] Appointment Counsel

Every appointment council, however constituted, will be a conclave in which cabal and intrigue would have their full scope. Without an unwarrantable increased expense, their number cannot be large enough to exclude easy conspiracy.

Each member would have friends and connections to provide for, so mutual gratification would beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied. But to satisfy the private attachments of a dozen, or of twenty men, a few families might end up holding a monopoly of government offices. This would lead more directly to an aristocracy or an oligarchy than any measure that could be contrived.

If the people composing the council changed frequently, to avoid an accumulation of offices, this would involve the mischiefs of a mutable administration in their full extent. Such a council would be more apt to influence the executive than the Senate because they would be fewer in number and their actions would be less under public inspection. Such a council, as a substitute for the proposed Constitution, would increase expense, multiply the evils that spring from favoritism and intrigue in the distribution of public honors, decrease stability in the administration of the government, and diminish the security against an undue influence of the Executive. And yet such a council has been warmly contended for as an essential amendment in the proposed Constitution.

[8] House: No Part in Appointments

I couldn't properly conclude my observations on the subject of appointments without mentioning an idea with only a few advocates. I mean that of uniting the House of Representatives in the power of making them.

However, I will do little more than mention it, as I can't imagine that it is likely to gain the approval of any considerable part of the community. A body so fluctuating, and at the same time so numerous, can never be deemed proper for the exercise of that power. Its unfitness will be clear to anyone who remembers that in only fifty years it may consist of three or four hundred people. All the advantages of stability, both of the Executive and of the Senate, would be defeated by including the House of Representatives, and infinite delays and embarrassments would happen. The example of most of the States in their local constitutions encourages us to reject the idea.

[9] Other Executive Powers

The only remaining powers of the Executive include: giving information to Congress on the state of the Union, recommending to their consideration measures he judges expedient, convening Congress, or either house, on extraordinary occasions, adjourning them when they cannot themselves agree on the time of adjournment, receiving ambassadors and other public ministers, faithfully executing the laws, and commissioning all the officers of the United States.

[10] Convene Congress; Receive Ambassadors

Except some trivial objections about the power of convening *either* house of the legislature and receiving ambassadors, no objection has been made to this class of authorities. Nor could there be any. Indeed, it required an insatiable avidity for censure to invent exceptions to the parts that have been excepted.

Regarding the power of convening either house of the legislature, I will only remark that in respect to the Senate, at least, we can quickly discover a good reason for it. Since it has a concurrent power with the Executive in making treaties, it might often be necessary to call it together with a view to this objective when it would be unnecessary and improper to convene the House of Representatives.

As to the reception of ambassadors, what I have said in a former paper will furnish a sufficient answer.

[11] Safety of Executive

We have completed a survey of the structure and powers of the executive department. I have endeavored to show that it combines all the requisites to energy, as far as republican principles will permit.

The remaining inquiry is: does it also combine the required safeties, in a republican sense—a due dependence on the people, a due responsibility?

The answer has been anticipated in the investigation of its other characteristics and is satisfactorily deduced from these circumstances: The President is elected once in four years by persons immediately chosen by the people for that purpose. He will be at all times liable to impeachment, trial, dismissal from office, incapacity to serve in any other, and forfeiture of life and estate by subsequent prosecution in the common course of law.

But these precautions, great as they are, are not the only ones provided in favor of the public security in the Constitution. In the only instances in which the abuse of executive authority may materially to be feared, the Chief Executive of the United States will, by the Constitution, be subjected to the control of a house of the legislative body. What more could be desired by an enlightened and reasonable people?

Publius

: Article 2:
Section 2 Executive power to appoint officers, fill vacancies during Senate recess, treaties
Section 3 state-of-the-Union; recommends measures, convenes, adjourns legislature, receives ambassadors, President insures laws are faithfully executed, commissions officers of the United States, liable to punishment according to the law
Section 4 President impeachable

78: Federal Judiciary: Hold Office during *Good Behavior*

We will now examine the judiciary branch of the proposed government.

[2] Federal Judiciary Necessary

After studying the defects in the existing Confederation, the utility and necessity of a federal judicature is clear. Those considerations don't need to be repeated because the propriety of the institution in the abstract is not disputed.

The only questions that have been raised relate to its structure and its extent. Our observations, therefore, will be confined to these points.

[3] Structure of Federal Judiciary

The structure of the federal judiciary seems to include:

1) the mode of appointing judges,
2) their tenure in office, and
3) the partition of judiciary authority between different courts and their relationship to each other.

[4] 1. Appointing Judges

The mode of appointing judges is the same as that of appointing other officers of the Union. This has been so fully discussed in the last two papers that nothing can be said here that wouldn't be useless repetition.

[5] 2. Tenure

The tenure of judges, the conditions by which they hold their offices, chiefly concern their duration in office, provisions for their support, and precautions for their responsibility.

[6] Duration in Office: Good Behavior

According to the Constitution, all judges appointed by the United States will hold their offices *during good behavior*. This conforms to the most approved State constitutions, including New York's.

Adversaries of the Constitution have questioned whether this is proper. This criticism is a symptom of the rage for objections that disorders their imaginations and judgments. The standard of good behavior for judges continuing in office is one of the most valuable modern improvements in government.

In a monarchy, it is an excellent barrier to the despotism of the prince. In a republic, it is no less an excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient devised, in any government, to secure a steady, upright, and impartial administration of the laws.

[7] Least Threat to Constitutional Rights

Anyone who studies the different departments of governmental power must see that, when they are constitutionally separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution because it will have the least capacity to annoy and injure them.

The executive not only dispenses honors but holds the community's sword.

The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated.

The judiciary, however, has no influence over either the sword or the purse. It directs neither the strength nor wealth of society. It can take no active resolution whatever.

The judiciary may be said to have neither force nor will, merely judgment. It even depends on the aid of the executive arm for the efficacy of its judgments.

[8] Permanency in Office: Independence

This simple view suggests several important consequences. The judiciary is incontestably the weakest of the three branches of power.[17] It can never successfully attack the other two. And all possible care is required to enable it to defend itself against their attacks.

It also proves that although the courts of justice may be, now and then, responsible for individual oppression, as long as the judiciary remains truly distinct from both the legislature and the executive, they can never endanger the general liberty of the people. I agree that "there is no liberty, if the power of judging is not separated from the legislative and executive powers."[18]

Liberty has nothing to fear from the judiciary alone, but everything to fear from its union with either of the other branches. This union, with its negative effects, would happen if the judiciary were dependent on the other branches, despite a nominal and apparent separation.

Because of its natural feebleness, the judiciary is continually in jeopardy of being overpowered, awed, or influenced by the legislative and executive branches. Nothing contributes so much to its firmness and independence as permanency in office. Therefore, it lastly proves that permanency in office can be regarded as indispensable and, to a great measure, as the citadel of public justice and public security.

[9] Enforce Limited Legislative Authority

The complete independence of the courts of justice is particularly essential in a limited Constitution.

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17 The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing." *Spirit of Laws,* Vol. I, page 186.—PUBLIUS

18 *Idem*, page 181.

By a limited Constitution, I mean one that contains certain specific exceptions to the legislative authority.

For example, that it shall pass no bills of attainder, no *ex post facto* laws, etc. Limitations like these can only be preserved in practice through courts of justice with the duty to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of specific rights or privileges would amount to nothing.

[10] Power to Void Unconstitutional Laws

The courts will have the right to pronounce legislative acts void because they are contrary to the Constitution. Because of this, some people have imagined that this implies that the judiciary power will be superior to the legislative power. It has been argued that the authority to declare the acts of another void must be superior to the one whose acts may be declared void.

Since this is an important doctrine in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

[11] Congress: Actions Limited

Every act of a delegated authority that is contrary to the meaning of its commission is void. This concept couldn't be based on clearer principles. Therefore, no legislative act contrary to the Constitution can be valid.

Denying this would affirm that the deputy is greater than his principal, the servant is above his masters, the representatives of the people are superior to the people themselves, that man acting by virtue of powers may do, not only what their powers do not authorize, but what they forbid.

[12] Authority: Constitution vs. Legislature

It may be argued that the legislative body is the constitutional judge of its own powers and that the other branches must accept the interpretation it puts on the powers. But this is not a logical conclusion from any provision in the Constitution.

It can't be supposed that the Constitution intends to enable the people's representatives to substitute their *will* for that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature. Among other things, the courts keep the legislature within the limits assigned to their authority.

Interpretation of the laws is the proper and specific province of the courts. A constitution is, in fact and must be regarded by the judges as, a fundamental law. Therefore, the courts ascertain its meaning, as well as the meaning of specific legislative acts. If the two should happen to have an irreconcilable variance, the one with the superior obligation and validity should, of course, be preferred.

Or, in other words, the Constitution should be preferred over the statute, the intention of the people to the intention of their agents.

[13] People's Constitution Superior to Both

This conclusion, in no way, means the judicial is superior to the legislative power. It only supposes that the power of the people is superior to both.

Where the will of the legislature, declared in its statutes, is in opposition to that of the people, as declared in the Constitution, judges should be governed by the latter rather than the former. They should regulate their decision by the fundamental laws rather than those that are not fundamental.

[14] Decide Validity of Contradictory Laws

The judicial discretion of determining between two contradictory laws is exemplified by a familiar circumstance. Sometimes two existing statutes clash in whole or in part with each other, and neither contains any repealing clause or expression. When this happens, the courts have the authority and duty to liquidate and fix their meaning and operation.

So far as they can be reconciled with each other, by any fair construction, reason and law conspire to dictate that this should be done. When this is impractical, it becomes necessary to give effect to one and exclude the other.

The prevailing rule in the courts to determine their relative validity is that the more recent shall be preferred to the first. But this rule is not derived from any positive law. It is only a rule of construction from the nature and reason of the thing. It is not enjoined on the courts by legislative provision, but adopted because it is consistent with truth and propriety, to direct their conduct as interpreters of the law. They thought it reasonable that between conflicting acts of an *equal* authority, the last indication of its will should have preference.

[15] Constitution Superior to Laws

But when a superior, original authority and a subordinate, derivative authority produce conflicting acts, by their very nature, reason indicates that the converse of that rule as proper to be followed. The prior act of a superior authority should be preferred to the subsequent act of an inferior and subordinate authority.

Accordingly, whenever a particular statute contravenes the Constitution, judicial tribunals will have the duty to adhere to the latter and disregard the former.

[16] Courts Negating Legislative Will

The argument that the courts, on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature carries no weight. This could happen in the case of two contradictory statutes. Or it could during the adjudication of any single statute.

The courts must declare the meaning of the law. And if they were inclined to exercise their will instead of judgment, their pleasure would be substituted for the pleasure of the legislative body. If this observation proves anything, it proves that there should be no judges distinct from the legislature.

[17] Permanent Tenure of Constitutional Guardians

If the courts of justice are to be considered the bulwarks of a limited Constitution against encroachments by the legislature, this duty is a strong

argument for the permanent tenure of judicial offices. Nothing will contribute to the independent spirit in judges, which is essential to the faithful performance of so arduous a duty, as permanent tenure.

[18] Independent Judges Protect Liberty

This independence of the judges is equally required to guard the Constitution and the rights of individuals from the effects of ill humors caused by designing men or the influence of particular conjunctures that sometimes disseminate among the people themselves. Even though they speedily give place to better information and more deliberate reflection, they have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

I trust the friends of the proposed Constitution will never agree with its enemies[19] in questioning that fundamental principle of republican government—that the people have the right to alter or abolish the established Constitution whenever they find it inconsistent with their happiness. But it is not to be inferred from this principle that the representatives of the people whenever a momentary inclination, which is incompatible with the provisions in the existing constitution, happens to lay hold of a majority of their constituents would, because of this, be justifiable in a violation of those provisions. And the courts would not be under a greater obligation to agree to infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding on them collectively, as well as individually. And no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act.

It is easy to see that judges need an uncommon amount of fortitude to do their duty as faithful guardians of the Constitution after legislative invasions of it had been instigated by the majority voice of the community.

[19] Restraint on Bad Legislation

But it is not only with a view to infraction of the Constitution that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of specific classes of citizens by unjust and partial laws.

Here, also, the permanency of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It both moderates the immediate mischiefs of laws that have been passed and it operates as a check on the legislative body in passing them. The legislature, realizing that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts.

This restraint on bad legislation is meant to have more influence on the character of our governments than many people know. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one. And though they may have displeased people whose sinister expectations they have disappointed, they must have commanded the esteem and applause of all virtuous and disinterested people.

Thoughtful men of every description should prize whatever will tend to create or fortify that temper in the courts. No man can be sure that he may not be tomorrow the victim of a spirit of injustice by which he gains today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence and replace it with universal distrust and distress.

[20] Owe Allegiance Only to Constitution

Inflexible and uniform adherence to the rights of the Constitution and of individuals, which is indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission.

Appointments made for a certain period, however regulated or by whomsoever made, would be fatal to their necessary independence in some way or other. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper acquiesce to the branch making the appointment.

If it were a joint appointment by both, there would be an unwillingness to hazard the displeasure of either. If the people appointed judges, or if they were appointed by persons chosen by the people for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

[21] Limited Number of Qualified People

There is yet another, more important reason for the permanency of the judicial offices that arises from the nature of the qualifications they require.

It's frequently said, properly, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid arbitrary decisions, the courts should be bound by strict rules and precedents that define and point out their duty in every case that comes before them. Because of the variety of controversies that grow out of the folly and wickedness of mankind, those precedents will swell to a very considerable bulk. Long and laborious study will be needed to acquire a competent knowledge of them. Hence, only a few men in the society will have sufficient skill in the laws to qualify them for the stations of judges.

After people are disqualified for the ordinary depravity of human nature, the number of people who unite the requisite integrity with the requisite knowledge to become judges is still smaller.

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19 *Vide* "Protest of the Minority of the Convention of Pennsylvania," Martin's Speech, etc.—PUBLIUS

These considerations show us that the government has limited choices between people of fit character. A temporary duration in office would naturally discourage such people from quitting a lucrative line of practice to accept a seat on the bench. Temporary tenure would tend to throw the administration of justice into hands less able and less well qualified to conduct it with utility and dignity.

In our present circumstances, and in those in which it is likely to be for a long time to come, the disadvantages of temporary tenure would be greater than they may at first appear. However, it must be confessed that they are far inferior to those that present themselves under the other aspects of the subject.

[22] *Good Behavior* Important Inclusion

On the whole, there is no doubt that the convention acted wisely in copying from the models of those constitutions that have established *good behavior* as the tenure for judges.

Rather than being blamed for including this, their plan would have been inexcusably defective if it didn't include this important feature of good government. The experience of Great Britain illustrates the excellence of the institution.

Publius

Constitutional references:

Article 2, section 2 appointment of judges

Article 3, section 1 judges hold office during good behavior

79: Judicial Branch: Independence, Salary, Impeachment

To assure independent judges, after permanency in office [a lifetime appointment], nothing is more important than a fixed provision for their support. The comment made about the President applies equally here. Psychologically, *a power over a man's subsistence amounts to a power over his will.*

The complete separation of the judicial from the legislative power will never happen if judges are dependent on the legislature for occasional pay.

Some State constitutions don't have precise and explicit precautions about paying judges. And the enlightened friends of good government lament this omission.

Some State constitutions declare that *permanent*[20] salaries should be established for judges. But, in practice, the wording has not been precise enough to make legislative evasion impossible. Something more positive and unequivocal is clearly required. Therefore, the Constitution provides that the judges of the United States "shall at *stated times* receive for their services a compensation which shall not be *diminished* during their continuance in office."

[2] Judicial Salary Can't Be Reduced

Considering all possible scenarios, this is the best provision that could have been devised. Because of the fluctuations in the value of money and the state of society, the Constitution couldn't state a fixed rate of compensation. An amount that might be extravagant today, could be penurious and inadequate in half a century. Therefore, it was necessary to leave it to the discretion of the legislature to vary the provision in conformity to the variations in circumstances. However, the legislature is restricted from lowering a judge's pay. Because of this, a judge can be sure of the ground on which he stands and not be deterred from his duty by fears that his salary will be diminished.

The clause quoted combines two advantages. The salaries of judicial officers may, from time to time, be altered when necessary, but the salary of a specific judge can never be lower than when he was appointed.

The convention set up the compensation for the President and for judges differently. The President's compensation can neither be increased nor diminished. Judges' compensation can only not be diminished. This difference probably arose from the difference in the terms in office. The President is elected for no more than four years. Therefore, an adequate salary, fixed at the time he enters office, will almost always be adequate until the end of the four years.

Judges, if they behave properly, will be secured in their places for life. It may happen, especially in the early states of the government, that a stipend, which is sufficient at their appointment, will become too small over the time of their service.

[3] Judicial Independence

This provision for the support of the judges appears prudent and effective. It may be safely said that, together with the permanent tenure in office, it makes the federal judges more independent than any of the State judges, as detailed in their constitutions.

[4] Judges Can Be Impeached

To assure judges will act responsibly, they are liable to be impeached by the House of Representatives and tried by the Senate. If convicted, a judge may be dismissed from office and disqualified for holding any other. This is the only provision that could be made that is consistent with the necessary independence of the judicial character. It is also the only one found in the New York State constitution in respect to our own judges.

[5] Judges Mental Ability

There is no provision for removing judges because they are unable to do their job. This has been a subject of complaint. However, intelligent men will realize that such a provision would either not be used or it would be more often abused than used properly.

I don't believe that science has found a way to measure the faculties of the mind. If an attempt were made to fix the boundary between mental ability and mental inability, personal and party attachments and enmities would probably be a greater influence than the interests of justice or the public good. The result, except in the case of insanity, would be mostly arbitrary. And insanity, without any formal or express provision in the Constitution, may be safely said to be a virtual disqualification to become a judge.

[6] No Forced Retirement

The New York constitution, to avoid investigations that would be vague and dangerous, has selected a specific age as the criterion of inability. No man can be a judge beyond age sixty. I believe that most people disapprove of this provision. There is no office or position that it applies less to than a judge. For men who survive past age sixty, the mental facilities needed to deliberate generally preserve their strength much past that age. And when we also consider how few men outlive their time of intellectual vigor, and how improbable it is that it would be any considerable portion of the bench at any given time, we will be ready to conclude that limitations of this sort have little to recommend them.

In a republic, where fortunes are not affluent and pensions not expedient, dismissing men from offices where they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, should have a better apology to humanity than is found in the imaginary danger of a superannuated bench. Publius

Ar 3, sec 1 lifetime term, judges' compensation
Ar 1, sec 2 House of Reps impeaches
Ar 1, sec 3 Senate tries impeachment

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20 Vide *Constitution of Massachusetts,* chapter 2, section 1, article 13. –PUBLIUS

80: Extent of Federal Judicature

To accurately judge the proper extent of the federal judicature, it is necessary to first consider its proper objectives.

[2] Cases Heard in Federal Court

It doesn't seem to be controversial to say that the judicial authority of the Union should extend to several types of cases:

1. Cases that concern the execution of the provisions in the Constitution.
2. Cases that arise out of the laws of the United States passed through the constitutional power of legislation.
3. Cases in which the United States is a party.
4. Cases involving the peace of the confederacy, whether they relate to the intercourse between the United States and foreign nations or between the States themselves.
5. Cases that originate on the high seas and are of admiralty or maritime jurisdiction;
6. Cases in which the State courts cannot be expected to be impartial and unbiased.

[3] 1. Constitutional Provisions

The first type seems obvious. There should always be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would be the point of having restrictions on the authority of State legislatures if the Constitution didn't provide a method of enforcing them?

For instance, the States, in the new Constitution, are prohibited from doing a variety of things. Some are incompatible with the interests of the Union. Others are incompatible with the principles of good government.

Taxing imported articles and issuing paper money are examples. No rational man will believe that such prohibitions would be scrupulously obeyed if the federal government didn't have the power to restrain or correct the infractions of them. There must be either a federal power to veto State laws or an authority in the federal courts to overrule any clear violation of the Union's Constitution. I can't think of any other methods. The convention seems to have thought the latter preferable to the former and, I assume, it will be more agreeable to the States.

[4] 2. Federal Legislation

As to the second type, no argument or comment will make it clearer than it already is. If political axioms exist, the propriety of the government's judicial power being as extensive as its legislative power would be one.

National laws must be interpreted uniformly. Thirteen independent courts of final jurisdiction over the same cases, arising out of the same laws, is a hydra in government that will produce nothing but contradiction and confusion.

[5] 3. Nation vs. States or Citizens

Even less needs to be said about the third type. Controversies between the nation and its States or citizens can only be properly referred to the national courts. Any other plan would be contrary to reason, precedent, and decorum.

[6] 4. U. S. vs. Foreign Nations, Citizens

The fourth type rest on the proposition that the peace of the whole should never depend on a part. Undoubtedly, the Union will be answerable to foreign powers for the conduct of its States. And the responsibility [liability] for an injury should always be accompanied with the ability to prevent it.

The denial or perversion of justice by the sentences of courts, as well as in any other manner, is classed among the **just causes of war** [Number 3]. Therefore, the federal judiciary should have jurisdiction in all causes concerning the citizens of other countries. This is essential to both the public faith and the public tranquility.

There may seem to be a distinction between treaties and the laws of nations, and mere municipal laws. Treaties and the laws of nations may seem proper for federal jurisdiction and municipal laws for State jurisdiction. It does seem, however, that any unjust sentence against a foreign citizen, where the subject of controversy was wholly relative to the *lex loci*, would be seen as, if not corrected, an aggression on his sovereign, as well as a violation of a treaty stipulation or the general laws of nations.

And an even greater objection to the distinction [federal vs. municipal laws] would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one type and those of the other. Such a great proportion of cases in which foreigners are parties involve national questions, it is by far safer and more expedient to refer all cases involving foreign citizens to the national courts.

[7] Between States, Citizens of Different States

The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps just as essential to the peace of the Union as the one just examined.

History gives us a horrid picture of the dissensions and private wars that distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian towards the end of the fifteenth century. It informs us, at the same time, of the vast influence of the Imperial Chamber in appeasing the disorders and establishing the tranquility of the empire. This was a court invested with authority to make the final decision in differences among the members of the Germanic states.

[8] Territorial Disputes

Even the imperfect system that has held the States together up until now had a method of deciding territorial disputes between the States under the authority of the federal government. But there are many other sources of bickerings and animosities among the members of the Union, besides conflicting claims of boundary

We have witnessed some of these already. It will be quickly seen that I allude to the fraudulent laws that have been passed in many of the States. And although the proposed Constitution establishes specific guards against the repetition of those cases, it is legitimate to worry that the same spirit that produced them will assume a new shape, which could not be foreseen nor specifically provided against.

Any practices that tend to disturb the harmony between the States are proper objectives of federal superintendence and control.

[9] Universal Citizenship

It is the **foundation of the Union** that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." And if every government *ought to possess the means of executing its own provisions by its own authority,* it follows that to preserve that equality of privileges and immunities, to which the citizens of the Union are entitled, the national judiciary should preside in all cases in which one State or its citizens are opposed to another State or its citizens.

This fundamental a provision can be effective only in a court free of all evasion and subterfuge, a court with no local attachments, and a court that probably will be impartial between the different States and their citizens because it owes its official existence to the Union. Therefore, it probably won't have any bias unfavorable to the principles on which it is founded.

[10] 5. Maritime Jurisdiction

There will be little criticism of the fifth type. The most bigoted idolisers of State authority haven't yet denied the national courts jurisdiction of maritime causes. These are so often based on the laws of nations and so often affects the rights of foreigners that they fall within the considerations relating to the public peace. The most important part of them are, under the present Confederation, submitted to federal jurisdiction.

[11] 6. When State Courts Can't Be Impartial

The reasonableness of having the national courts decide cases in which the State courts cannot be expected to be impartial speaks for itself.

No man should be a judge in his own cause or in any cause in respect to which he has the least interest or bias. This principle was important in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it should have the same operation in regard to some cases between citizens of the same State.

Claims to land under grants of different States, founded on adverse pretension of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, tying the courts to decisions in favor to the grants of the State to which they belong. And even where this had not been done, it would be natural that the judges, as men, would feel a strong predilection to the claims of their own government.

[12] Constitution, Federal Judiciary Principles

These are the principles that should regulate the construction of the federal judiciary. Now we will test, using these principles, its powers, according to the Constitution.

The federal judiciary is to decide "all cases in law and equity arising under the Constitution, the laws of the United States,

"and treaties made, or which shall be made, under their authority;

"to all cases affecting ambassadors, other public ministers, and consuls;

"to all cases of admiralty and maritime jurisdiction;

"to controversies to which the United States shall be a party;

"to controversies between two or more States; between a State and citizens of another State; between citizens of different States;

"between citizens of the same State claiming lands and grants of different States;

"and between a State or the citizens thereof and foreign states, citizens, and subjects."

This is the entire judicial authority of the Union, as stated in the Constitution. Let us now review it in detail. It extends to:

[13] Constitutional, Federal Law Cases

First. To all cases in law and equity *arising under the Constitution* and *the laws of the United States.* This corresponds with the two first types of cases, enumerated above and shown to be proper jurisdictions of the United States.

It has been asked what is meant by "cases arising under the Constitution," as distinct from those "arising under the laws of the United States"?

The difference has been already explained. All the restrictions on the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money. This interdiction comes from the Constitution and will have no connection with any law of the United States. If paper money, notwithstanding, is emitted, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary meaning of those terms. This serves as an example.

[14] "Equitable" Jurisdiction

It has also been asked why the word "equity" is needed. What equitable causes can grow out of the Constitution and laws of the United States?

There is hardly a subject of litigation between individuals that may not involve *fraud, accident, trust,* or *hardship* that would render the matter an object of equitable rather than of legal jurisdiction as the distinction is known and established in the States.

It is the specific province, for instance, of a court of equity to relieve against what are called hard bargains. These contracts may not involve direct fraud or deceit sufficient to invalidate them in a court of law but may take such undue and unconscionable advantage of the necessities or misfortunes of one of the parties that a court of equity would not tolerate them. In such cases, where foreigners are concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction.

Agreements to convey lands claimed under the grants of different States affords another example of the necessity of an equitable jurisdiction in the federal courts. This reasoning may not be as obvious in those States where the formal and technical distinction between law and equity is not maintained, as in New York, where it is exemplified every day in practice.

[15] Federal Judicial Authority

The judiciary authority of the Union is to extend:

[16] Treaties, Ambassadors

Second. To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace.

[17] Admiralty, Maritime

Third. To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the jurisdiction of the national courts.

[18] United States a Party

Fourth. To controversies to which the United States shall be a party. These constitute the third of those classes.

[19] Between States

Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes and partake, in some measure, of the nature of the last.

[20] Land Disputes, Citizens of the Same State

Sixth. To cases between the citizens of the same State, claiming lands under grants of different States. These fall within the last class and are the only instances in which the proposed Constitution directly contemplates the jurisdiction of disputes between the citizens of the same State.

[21] State, Citizen vs. Foreign Country, Citizen

Seventh. To cases between a State and the citizens thereof and foreign countries, citizens or subjects. These have been already explained to belong to the fourth of the enumerated classes and have been shown to be, specifically, the proper subject of the national judicature.

[22] Federal Judiciary Conforms to Principles

From this review of the specific powers of the federal judiciary, as marked in the Constitution, it appears that they all conform to the principles that should govern the structure of that department and that are necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, remember that the national legislature will have ample authority to make such *exceptions* and prescribe such regulations as are calculated to obviate or remove these inconveniences. The possibility of specific mischiefs can never be viewed, by a well-informed mind, as a solid objection to a general principle that is calculated to avoid general mischiefs and to obtain general advantages.

Publius

Constitutional references:

Article 3, section 2	federal court jurisdiction
Article 4, section 2	State citizen treated equally in other States
Article 1, section 10	States can't issue money
Article 1, section 10	States can't tax imports

81: Authorities of Supreme, Inferior Federal Courts

Let us now return to the division of the judiciary authority between different courts and their relationship to each other.

[2] Supreme Court, Inferior Courts

"The judicial power of the United States is" (by the Constitution) "to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."[21]

[3] Supreme Court as Part of Legislature

There probably will not be any arguments that there should be one court of supreme and final jurisdiction. The reasons for this have been given in another place. And they are too obvious to need repetition.

One question has been raised: should the supreme court be a distinct body or a branch of the legislature? This involves the same contradiction discussed in several other cases.

The same men who object to the Senate as a court of impeachments, saying it is an improper intermixture of powers, seem to want to give the ultimate decision of all causes, in the whole or in a part, to the legislative body.

[4] Supreme Court as Legislative Body

This charge is founded on arguments, or rather suggestions, of this type:

"The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of interpreting the laws, according to the *spirit* of the Constitution, will enable that court to mold them into any shape it thinks proper. And it will be superior to the legislature because its decisions will not be in any way subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous.

"In Britain, the judicial power, in the last resort, resides in the House of Lords, a branch of the legislature. And this part of the British Government has been imitated in the State constitutions. The Parliament of Great Britain and the legislatures of the States can at any time rectify, by law, the exceptionable decisions of their respective courts. But the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless."

On examination, this will be found made of completely false reasoning on misconceived fact.

[5] Judging Constitutionality of Laws

In the first place, not a syllable in the proposed Constitution *directly* empowers the national courts to construe the laws according to the spirit of the Constitution. Nor does it give them any greater latitude in this respect than may be claimed by the courts of every State.

I admit that the Constitution should be the standard of construction for the laws and that wherever there is an evident opposition, the Constitution should take precedence over the laws. But this doctrine is not deducible from anything in the proposed Constitution, but from the general theory of a limited constitution. And, as far as this doctrine is true, it applies to most, if not to all, the State governments.

Therefore, any objection to the federal judicature based on this reason can be made against the local judicatures in general. And it will not help to condemn every constitution that attempts to set bounds to legislative discretion.

[6] Legislators, Judges: Different Talents

But perhaps the objection is to the specific organization of the Supreme Court.

The Supreme Court will be composed of a separate body of magistrates. It will not be one of the branches of the legislature as in the government of Great Britain and New York State.

If the authors of the objection insist that the Supreme Court must be part of the legislative branch, they must renounce the meaning that they have worked to give to the celebrated separation of power maxim.

Admittedly, by the interpretation given to the maxim in these papers, it is not violated by vesting the ultimate power of judging in a *part* of the legislative body. This would not be an absolute violation of the rule, but it is so close to violating it that, on this account alone, making the federal judiciary part of the legislative branch is less eligible than the structure in the Constitution.

Even if the legislature was only partly responsible for passing bad laws, we could rarely expect that the same branch would have the disposition to temper and moderate them in the application. The same spirit that made them would probably interpret them.

There would be even less chance that men who had infringed the Constitution in the character of legislators would be disposed to repair the breach when they acted as judges.

Nor is this all. Every argument that recommends the tenure of good behavior for judges argues against placing the judiciary power, in the last resort, in a body composed of men chosen for a limited period. It is absurd to determine causes, first, in inferior courts where judges have permanent standing, then have the final appeal to judges who are temporarily in office.

It is even more absurd to subject the decision of judges, selected for their knowledge of the laws acquired by long and laborious study, to the revision and control of legislators who don't have the same advantage and are deficient in that knowledge. The members of the legislature will rarely be chosen because they have the qualifications of a judge. Because of this, there will be great reason to expect all the ill consequences of defective information.

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[21] Article 3, Section 1. --PUBLIUS

Since legislatures naturally divide according to party, there is reason to fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshaled on opposite sides will probably stifle the voice both of law and of equity.

[7] Most States: Separate Supreme Court, Legislature

These considerations teach us to applaud the wisdom of the States that have committed the judicial court of last appeals, not to a part of the legislature but to distinct, independent bodies of men.

Contrary to the opinions of the men who say that, in this respect, the Constitution is novel and unprecedented, it is a copy of the constitution of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. And the preference given to those models is highly to be commended.

[8] Legislature Changing Supreme Court's Ruling

Secondly, the future legislature of the United States will be able to overrule objectionable decisions just as the Parliament of Great Britain and the legislatures of the States do. The theory authorizes the revisal of a judicial sentence by a legislative act. It is not forbidden in the proposed Constitution, any more than in either Britain or the States. In both, the impropriety of the thing, on the general principles of law and reason, is the sole obstacle.

A legislature, without exceeding its authority, cannot reverse a determination once made in a specific case. But it can prescribe a new rule for future cases. This is the principle. And it applies in all its consequences, exactly in the same manner and extent, to the State governments, as to the national government now under consideration. Not the least difference can be pointed out in any view of the subject.

[9] Legislature can Impeach Judges

Lastly, the danger of judiciary encroachments on the legislative authority has been often mentioned. It is in reality a phantom. Specific misconstructions and contraventions of the will of the legislature may now and then happen. But they can never be so extensive as to amount to an inconvenience or in any way, which can be noticed, affect the order of the political system.

This is inferred from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force.

This conclusion is greatly fortified by the important constitutional check on the judiciary—that one part of the legislative body can impeach judges and the other, try them.

This is alone a complete security. There never can be danger that judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the legislative body while it could punish their presumption by removing them from office.

While this should remove all worries on the subject, it also is a good argument for constituting the Senate as the court for the trial of impeachments.

[10] Inferior Federal Courts

Having now examined and, I trust, removed the objections to the independent organization of the Supreme Court, I proceed to consider the propriety of the power of constituting inferior courts,[22] and the relationship between these and the Supreme Court.

[11] Lower Courts with Federal Jurisdiction

The power of constituting inferior courts takes away the necessity of going to the Supreme Court in every case of federal jurisdiction. It is intended to enable the national government to institute or *authorize*, in each State or district of the United States, a court competent to determine matters of national jurisdiction within its limits.

[12] State Courts Hearing Federal Cases

Couldn't this have been achieved using State courts? This has several answers.

Even if the State courts are competent to handle federal cases, this constitutional power is necessary. Before the State courts could try federal cases, the national legislature would have to give them jurisdiction over causes arising out of the national Constitution. That action, conferring the power of deciding federal cases on the existing State courts, would perhaps fulfill the requirement "to constitute tribunals" as creating new courts with the same power.

But should the Constitution have a more direct and explicit provision in favor of the State courts? In my opinion, there are substantial reasons why it shouldn't.

It's impossible to foresee how much a local spirit may disqualify the local tribunals for the jurisdiction of national causes. And every man may discover that the structure of some of the State judiciary systems would be improper channels of the judicial authority of the Union.

State judges that hold their offices during pleasure, or from year to year, will not be independent enough to be relied on for an inflexible execution of the national laws. If there was a necessity for confiding the original hearing of causes arising under national laws to them, there would be a correspondent necessity for leaving the door of appeal as wide as possible. The facility or difficulty of appeals should be in proportion to the grounds of confidence in, or distrust of, the subordinate tribunals. And although I am satisfied the appellate jurisdiction, as defined by the Constitution, is proper, I consider everything calculated to give, in practice, an *unrestrained course*

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[22] This power has been absurdly represented as intended to abolish all the county courts in the States, which are commonly called inferior courts. But the expression in the Constitution is, to constitute "tribunals INFERIOR TO THE SUPREME COURT." The provision is evidently designed to enable the institution of local courts, subordinate to the Supreme Court, either in States or larger districts. It is ridiculous to imagine that this means county courts. –PUBLIUS

to appeals a source of public and private inconvenience.

[13] Federal Court Districts

I am not sure, but it may be found highly expedient and useful to divide the United States into four or five or half a dozen districts and institute a federal court in each district in lieu of one in every State. The judges of these courts, with the aid of the State judges, may hold circuits for the trial of causes in the parts of the respective districts. Justice through them may be administered with ease and dispatch. And appeals may be safely circumscribed within a narrow compass.

This plan appears to me the best of any that could be adopted. And in order to do it, it is necessary that the power of constituting inferior courts should exist, as it is in the Constitution.

[14] Inferior Federal Courts Imperative

These reasons seem sufficient to satisfy a candid mind that the lack of a power to establish inferior federal courts would have been a great defect in the Constitution.

Let us now examine in what manner the judicial authority is to be distributed between the Supreme and the inferior courts of the Union.

[15] Ambassadors, Consuls, States

The Supreme Court will be invested with original jurisdiction only "in cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party."

Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are directly connected with the public peace. To preserve the public peace and out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted, in the first instance, to the highest judicatory of the nation.

Although consuls are not strictly diplomatic, they are the public agents of the nations to which they belong. So the same observation is in a great measure applicable to them.

In cases with a State as a party, it would ill suit its dignity to be turned over to an inferior tribunal.

[16] Citizens Suing State for Debt

Although it may be a digression from the subject of this paper, I will mention here an assumption that has excited alarm on very mistaken grounds.

It has been suggested that an assignment of public securities of one State to the citizens of another would enable the citizen to prosecute the State in the federal courts for the amount of those securities. The following considerations prove that this assumption has no foundation.

[17] Idea Conflicts with State Sovereignty

It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent.* This is the general sense and the general practice of mankind. And the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Therefore, unless there is a surrender of this immunity in the Constitution, it will remain with the States.

And the danger intimated must be merely ideal. The circumstances that are necessary to produce an alienation of State sovereignty were discussed when taxation was discussed and need not be repeated here. Remembering the principles discussed there satisfies us that the State governments would not, by adopting the Constitution, be divested of the privilege of paying their own debts in their own way, free from every constraint but that flowing from the obligations of good faith.

The contracts between a nation and individuals are only binding on the conscience of the sovereign and have no pretensions to a compulsive force. They confer no right of action independent of the sovereign will.

What would be the purpose of authorizing suits against States for the debts they owe? How could recoveries be enforced? Clearly, it couldn't be done by waging war against the State. And to ascribe to the federal courts, by mere implication, the ability to destroy a pre-existing right of the State governments would be altogether forced and unwarrantable.

[18] Supreme Court Hears 2 Types of Causes

Let us resume the train of our observations.

We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature that rarely occur.

All other cases of federal jurisdiction would appertain to the inferior tribunals and the Supreme Court would have nothing more than an appellate jurisdiction "with such *exceptions* and under such *regulations* as the Congress shall make."

[19] Appeals Based on Law, Facts

In regard to matters of law, the propriety of this appellate jurisdiction has been rarely questioned. But the clamors have been loud against it as applied to matters of fact.

Some well-intentioned men in New York, deriving their notions from the language and forms that apply to New York courts, have been induced to consider it as an implied supersedure of the trial by jury in favor of the civil-law mode of trial that prevails in our courts of admiralty, probate, and chancery. A technical meaning has been affixed to the term "appellate" that, in New York law parlance, is commonly used in reference to appeals in the course of the civil law.

However, I don't believe the same meaning would have been given to it in any part of New England. There an appeal from one jury to another is familiar both in language and practice. It is a matter of course until there have been two verdicts on one side.

The word "appellate," therefore, will not be understood in the same sense in New England as in New York. This shows the impropriety of a technical interpretation derived from the jurisprudence of any one State.

The expression, taken in the abstract, denotes nothing more than the power of one tribunal to review the proceedings of another, either as to the law or fact, or both. The mode of doing it may depend on ancient customs or legislative provision (in a new government it must depend on the latter) and may be with or without the aid of a jury, as may be judged advisable.

Therefore, if the re-examination of a fact once determined by a jury should in any case be admitted under the proposed Constitution, it may be so regulated as to be done by a second jury, either by remanding the cause to the court below for a second trial of the fact or by directing an issue immediately out of the Supreme Court.

[20] Re-examination of Facts Not Imperative

But it does not follow that the re-examination of a fact once ascertained by a jury will be permitted in the Supreme Court.

Might not it be said, with the strictest propriety, that when a writ of error is brought from an inferior to a superior court of law in New York, that the latter has jurisdiction of the fact as well as the law? It is true it cannot institute a new inquiry concerning the fact, but it takes jurisdiction of it as it appears on the record and pronounces the law arising on it.[23] This is jurisdiction of both fact and law.

Nor is it even possible to separate them. Although the common-law courts of New York State ascertain disputed facts by a jury, they unquestionably have jurisdiction of both fact and law. Accordingly, when the former is agreed in the pleadings, they have no recourse to a jury, but proceed at once to judgment. Therefore, on this ground, I contend that the expressions, "appellate jurisdiction, both as to law and fact," do not necessarily imply a re-examination in the Supreme Court of facts decided by juries in the inferior courts.

[21] Appellate Court May Review Facts

The following train of ideas could have influenced the convention in relation to this particular provision.

The appellate jurisdiction of the Supreme Court (they may have argued) will extend to causes determinable in different modes, some in the course of the common law, others in the course of the civil law. In the former, the proper province of the Supreme Court will only be the revision of the law. In the latter, the re-examination of the fact is agreeable to usage and, in some cases (prize causes, for example), might be essential for the preservation of the public peace. It is therefore necessary that the appellate jurisdiction should, in certain cases, extend in the broadest sense to matters of fact.

Cases originally tried by jury cannot be expressly excluded because in some States *all causes* are tried in this mode.[24] Such an exception would preclude the revision of matters of fact when proper as well as when it might be improper.

To avoid all inconveniences, it will be safest to declare, generally, that the Supreme Court will possess appellate jurisdiction both as to law and *fact*, and that this jurisdiction will be subject to such *exceptions* and regulations as the national legislature may prescribe. The government will be able to modify it in such a manner as will best answer the ends of public justice and security.

[22] Trial by Jury Not Abolished

Some people have said that this provision *abolishes* trial by jury. This view of the matter, at any rate, shows this is fallacious and untrue. The legislature of the United States would certainly have full power to provide that in appeals to the Supreme Court there should be no re-examination of facts where juries had tried the original causes. This would certainly be an authorized exception. But if, for the reason already suggested, it is thought too extensive, it might be qualified with a limitation to only causes determinable at common law in that mode of trial.

[23] Summary: Judicial Branch

The observations made on the authority of the judicial branch are these:

It has been carefully restricted to those causes that are manifestly proper for the cognizance of the national judicature.

In the partition of this authority, a very small portion of original jurisdiction has been preserved to the Supreme Court and the rest consigned to the subordinate tribunals.

The Supreme Court will possess an appellate jurisdiction both as to law and fact in all the cases referred to them, both subject to any *exceptions* and *regulations* that may be thought advisable.

This appellate jurisdiction does, in no case, *abolish* the trial by jury.

And an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary without exposing us to any of the inconveniences that have been predicted.

Publius

Article 3, sec 1 establishes federal courts
Article 3, sec 1 federal judges hold their offices during good behavior
Article 3, sect 2 federal court jurisdiction, Supreme Court original jurisdiction, Supreme Court appellate jurisdiction, trial by jury
Article 2, section 4 judges impeachable
Article 1, section 3 Senate has sole power to try impeachments

[23] This word is composed of JUS and DICTO, *juris, dictio,* or a speaking or pronouncing of the law.—PUBLIUS

[24] I hold that the States will have concurrent jurisdiction with the subordinate federal judicatories in many cases of federal cognizance, as will be explained in my next paper. –PUBLIUS

82: Federal-State Judiciary

No matter how carefully or wisely a new government is created, there are intricate questions. This is especially true when a constitution is founded on the total or partial incorporation of a number of distinct sovereignties. Only time can mature and perfect so compound a system, clarify the meaning of all the parts, and adjust them into a harmonious and consistent whole.

[2] State Court Jurisdiction

Such questions have arisen about the proposed Constitution, and specifically about the judiciary branch. The main question concerns the relationship of the State courts to causes following under federal jurisdiction.

Is the federal jurisdiction to be exclusive? Or will the State courts have a concurrent jurisdiction? If the latter, in what relation will they stand to the national tribunals?

Wise men make these inquiries. And they certainly deserve attention.

[3] Federal Authorities Defined

A former paper established the principle that the States will retain all *pre-existing* authorities not exclusively delegated to the federal government. This exclusive delegation exists in three cases:

1) where an exclusive authority is granted, in express terms, to the Union,

2) where a specific authority is granted to the Union and the exercise of a like authority is prohibited to the States,

3) or where an authority is granted to the Union and a similar authority in the States would be utterly incompatible.

Although these principles may not apply with the same force to the judiciary as to the legislative power, I am inclined to think that they apply to each. And under this impression, I will lay it down as a rule that the State Courts will *retain* the jurisdiction they now have, unless it appears to be taken away in one of the three ways.

[4] Concurrent State/Federal Jurisdiction

The only thing in the Constitution that confines the causes of federal jurisdiction to the federal courts is contained in this passage: "The judicial power of the United States *shall be vested* in one Supreme Court and in *such* inferior courts as the Congress shall from time to time ordain and establish."

This might be construed in two ways. It could mean that the supreme and subordinate courts of the Union should have, alone, the power of deciding causes to which their authority is to extend. Or it could simply denote that the organs of the national judiciary should be one Supreme Court and as many subordinate courts as Congress appoints. In other words, the United States should exercise its judicial power through one supreme tribunal and a number of inferior ones.

The first excludes, the last includes, the concurrent jurisdiction of the State tribunals. And as the first would alienate State power by implication, the last appears to me the most natural and the most defensible interpretation.

[5] Concurrent Jurisdiction Unless States Specifically Excluded

But the doctrine of concurrent jurisdiction applies only to causes in which the State courts have jurisdiction before the Constitution is adopted. It is not equally evident in relation to cases that may grow out of, and are *specific* to, the Constitution because not allowing the State courts jurisdiction in such cases can't be considered an abridgment of a pre-existing authority.

I do not mean to say that the United States, through legislation, may not commit the decision of causes arising from a specific regulation to the federal courts alone, if such a measure seems expedient. But I maintain that the State courts will be divested of no part of their primitive jurisdiction further than may relate to an appeal.

And I believe when States are not expressly excluded by the future acts of the national legislature, they will, of course, take jurisdiction of the causes to which those acts may give birth.

I infer this from the nature of judiciary power and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws. And, in civil cases, it lays hold of all subjects of litigation between parties within its jurisdiction, even if the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion in our courts.

The State and national governments are kindred systems and parts of one whole. It seems conclusive that the State courts have a concurrent jurisdiction in all cases arising under the laws of the Union when not expressly prohibited.

[6] Final Appeal to Supreme Court

Here another question arises: what relationship would exist between the national and State courts in cases with concurrent jurisdiction?

I answer that an appeal could be made to the Supreme Court of the United States.

The Constitution, in direct terms, gives an appellate jurisdiction to the Supreme Court in all the cases of federal jurisdiction where it doesn't have original jurisdiction, without confining its operation to the inferior federal courts.

The objects of appeal, not the courts from which it is made, are alone contemplated. From this circumstance and from logic, it extends to the State courts. Either this is the case or the local courts must be excluded from a concurrent jurisdiction in matters of national concern. If this was not true, the judiciary authority of the Union could be eluded at the pleasure

of every plaintiff or prosecutor. Neither of these consequences should be involved without clear necessity. The latter would be entirely wrong because it would defeat some of the most important and avowed purposes of the proposed government and would embarrass its measures. Nor do I perceive any foundation for such a supposition.

As mentioned, the national and State systems are to be regarded as one whole. The State courts will be natural auxiliaries to the execution of the laws of the Union. And an appeal from State courts will naturally lie in the court that unites and assimilates the principles of national justice and the rules of national decisions—the federal judiciary.

The clear aim of the Constitution is that all the causes of the specified classes shall, for important public reasons, receive their original or final determination in the courts of the Union. If the appellate jurisdiction of the Supreme Court were confined to appeals from the subordinate federal courts instead of allowing their extension to the State courts, it would abridge the latitude of the terms in subversion of the intent, contrary to every sound rule of interpretation.

[7] Appeal to Lower Federal Courts

But could an appeal be made from the State courts to the subordinate federal judicatories? This question is more difficult than the former. The following considerations suggest an affirmative answer.

First, the Constitution authorizes the national legislature "to constitute tribunals inferior to the Supreme Court."*

Next, it says, "the judicial power of the United States *shall be vested* in one Supreme Court, and in such inferior courts as Congress shall ordain and establish."

It then enumerates the cases to which this judicial power extends.

Afterwards, it divides the jurisdiction of the Supreme Court into original and appellate but doesn't define the jurisdiction of the subordinate courts. They are only described as "inferior to the Supreme Court" and won't exceed the specified limits of the federal judiciary.

Whether the lower courts' authority is original or appellate or both is not defined. This seems left to the discretion of the legislature. And this being the case, I can see no impediment to the establishment of an appeal from the State courts to the subordinate national tribunals. Many advantages of doing it may be imagined. It would diminish the motives to the multiplication of federal courts and allow arrangements calculated to contract the appellate jurisdiction of the Supreme Court. The State tribunals may then be left with a more entire charge of federal causes, and most appeals, instead of being carried to the Supreme Court, may be made to lie from the State courts to district courts of the Union. Publius

Ar 3, sect 1 federal judicial power
Ar 1, sect 8 legislative power to constitute courts inferior to Supreme Court
Ar 3, sect 2 federal court jurisdiction

* Section 8, article 1. –PUBLIUS

83: Trial by Jury

An objection based on the lack of constitutional provision for the trial by jury in civil cases has met with great success in New York, and perhaps several other States. The disingenuousness of this objection has been repeatedly exposed, but it is still used in all the conversations and writings of the opponents of the Constitution.

The proposed Constitution says nothing about *civil causes.* Opponents claim this means that trial by jury is being abolished. And their rhetoric is artfully calculated to create the idea that this pretended abolition is complete and universal. That it extends not only to all civil but even *criminal causes.*

To argue the latter, however, is as vain and fruitless as to attempt the serious proof of the *existence of matter*, or to prove any proposition that, by its own internal evidence, force belief when expressed in language adapted to convey its meaning.

[2] Silence Doesn't Imply Prohibition

Regarding civil causes, subtleties almost too contemptible to refute have been used to support the conclusion that a thing that is only *not provided for* is entirely *abolished*.

Every man of discernment understands the wide difference between *silence* and *abolition*.

The inventors of this fallacy have tried to support it by perverting the true meaning of *legal maxims* of law interpretation. Therefore, it may be useful to explore their arguments.

[3] Legal Maxim Cited

They base their arguments on maxims of this nature: "A specification of particulars is an exclusion of generals;" or "The expression of one thing is the exclusion of another."

Therefore, say they, since the Constitution has established the trial by jury in criminal cases and is silent in respect to civil cases, this silence is an implied prohibition of trial by jury in civil cases.

[4] Interpretation of Laws: Common Sense

The rules of legal interpretation are rules of *common sense* adopted by the courts in the construction of the laws. Therefore, the true interpretation of its application is whether it conforms to the source from which it is derived.

Let me ask, is it common-sense to assume that a provision that says criminal causes must be tried by juries negates the legislature's right to authorize or permit trial by jury in other causes?

Is it natural to suppose that a command to do one thing is a prohibition against another, when there was a previous power to do it and it is not incompatible with the thing commanded to be done? If such a supposition is unnatural and unreasonable, it cannot be rational to maintain that an injunction of the trial by jury in certain cases is an interdiction of it in others.

[5] Create Courts => Determine Trial Mode

A power to constitute courts is a power to prescribe the mode of trial. Consequently, if the Constitution said nothing about juries, the legislature could either adopt trial by jury or not.

This discretion in regard to criminal causes is abridged by the express injunction within the Constitution of trial by jury in those cases. But there is silence on the subject of civil causes.

The obligation to try all criminal causes by jury excludes the obligation of employing the same mode in civil causes. But it does not abridge *the power* of the legislature to exercise that mode if thought proper. Therefore, to pretend that the national legislature would not be free to submit all federal civil causes to juries is a pretense destitute of all just foundation.

[6] Maxim Used Incorrectly

We must conclude that trial by jury in civil cases would not be abolished. And using the maxims in this way is contrary to reason and common sense, and therefore not admissible.

Even if the precise technical meaning of these maxims were consistent with how they are being used in this case, which it is not, they would not be applicable to a constitution of government. In a constitution, the natural and obvious meaning of its provisions, apart from technical rules, is the true criterion of construction.

[7] Example: Restricts Legislative Authority

The maxims have been misused. I will show their proper use and true meaning by examples.

The Constitution declares that the power of Congress, or, in other words, of the *national legislature,* shall extend to certain enumerated cases. This list of specific authorities clearly excludes a general legislative authority, because an affirmative grant of special powers would be absurd and useless, if a general authority was intended.

[8] Federal Judicial Authority Limited

Similarly, the Constitution lists the specific cases within federal jurisdiction. The federal courts cannot extend their jurisdiction beyond these precise limits. The objects of their jurisdiction are enumerated. This specification would be pointless if it did not exclude all ideas of more extensive authority.

[9] Examples Illustrated Maxims

These examples illustrate the maxims and show how they should be used. But so there may be no misunderstanding, I will add one more case, to demonstrate the proper use of these maxims and how they have been abused.

[10] Another Example

Suppose that, by New York law, a married woman was incapable of conveying her estate, and that the legislature, considering this an evil, enacts a law that says she can dispose of her property by deed executed in the presence of a magistrate. In this case, the

specification excludes all other modes of conveyance because the woman had no previous power to alienate her property and the specification determines the specific mode that she is to use.

But let us further suppose that a subsequent part of the same act says that no woman should dispose of any estate of a **specific value** without the consent of three of her nearest relatives, signified by their signing the deed. Could it be inferred from this regulation that a married woman could not get the approval of her relations when conveying property of inferior value? The position is too absurd to merit a refutation. Yet this is precisely the position of those who contend that trial by juries in civil cases is abolished because it is expressly provided for in criminal cases.

[11] Civil Causes: State Jurisdiction

Clearly, the Constitution doesn't abolish trial by jury.

It is equally true that for civil causes between individuals, in which the public is likely to be interested, trial by jury will remain precisely in the same situation as it is placed by the State constitutions. It will not be altered or influenced by the adoption of the Constitution.

This assertion is based in the fact that the national judiciary will have no cognizance of them. They will continue to be heard in the State courts, in the manner that the State constitutions and laws prescribe.

All land causes, except those involving claims under the grants of different States, and all other controversies between the citizens of the same State, unless they involve positive violations of the Constitution by acts of the State legislatures, will belong exclusively to the jurisdiction of the State tribunals.

Additionally, admiralty causes and almost all causes of equity jurisdiction are determined under our own government without the intervention of a jury.

We infer from these facts that the institution, as it presently exists, cannot be affected to any great extent by the proposed change in our system of government.

[12] Trial by Jury Valuable

The friends and adversaries of the Constitution, if they agree in nothing else, concur in the value they set on the trial by jury. Or if there is any difference between them, it is this: friends of the Constitution regard it as a valuable safeguard to liberty, adversaries of the Constitution represent it as the very palladium of free government.

For my own part, the more I study trial by jury, the more reasons I have to hold it in high estimation. It would be superfluous to examine how much it deserves to be esteemed useful or essential in a representative republic. Or how much more merit it has as a defense against the oppression of a hereditary monarch than as a barrier to the tyranny of magistrates in a popular government. Discussions of this kind are more curious than beneficial, since everyone is satisfied that the institution is useful and friendly towards liberty.

But I must admit that I cannot readily see the inseparable connection between the existence of liberty and the trial by jury in civil cases.

Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments on arbitrary convictions, have always appeared to me to be the great engines of judicial despotism. And these all relate to criminal proceedings. Therefore, trial by jury in criminal cases, aided by the *habeas-corpus* act, is important. And both of these are provided for, in the most ample manner, in the Constitution.

[13] Safeguard Against Oppressive Taxes

It's been said that trial by jury is a safeguard against an oppressive taxation. This observation deserves to be studied.

[14] Tax Collection

Clearly, trial by jury can have no influence on the legislature in regard to the *amount* of taxes to be laid, to the *objects* on which they are to be imposed, or to the *rule* by which they are to be apportioned.

It's only influence, therefore, must be on the mode of collection and the conduct of the officers entrusted with the execution of the revenue laws.

[15] Recover Taxes: Jury Inappropriate

As to the mode of tax collection in New York, under our constitution, the trial by jury is in most cases out of use. The taxes are usually levied by the more summary proceeding of distress and sale, as in cases of rent. And everyone agrees that this is essential to the efficacy of the revenue laws.

The delay of a trial to recover the taxes imposed on individuals would neither suit the needs of the public nor promote the convenience of the citizens. It would often cost more than the original sum of the tax to be levied.

[16] Officers' Conduct Criminal Offense

As to the conduct of the revenue officers, the provision in favor of trial by jury in criminal cases will give the security aimed at.

Willful abuses of a public authority, to the oppression of the subject, and every type of official extortion are offenses against the government. The persons who commit them may be indicted and punished according to the facts of the case.

[17] Corrupting Officers of the Court

The excellence of the trial by jury in civil cases appears to depend on circumstances other than the preservation of liberty. Security against corruption is the strongest argument in its favor.

Since there is more time and opportunities to tamper with judges than with a jury summoned for one trial, perhaps a judge could more easily be corrupted than a jury. The force of this argument is, however, diminished by others.

The sheriff summons ordinary juries. The clerks of courts nominate special juries. Both are standing officers and, acting individually, they might be more accessible to corruption than the judges, who are a collective body. Those officers could select jurors who would serve the purpose of the party as well as a corrupted bench.

In the next place, it may be fair to suppose that there would be less difficulty in corrupting some of the jurors, which are randomly taken from the public mass, than in gaining men [judges] who had been chosen by the government for their probity and good character.

Despite these considerations, trial by jury is still a valuable check on corruption. It greatly multiplies the blocks to its success.

As matters now stand, it would be necessary to corrupt both court and jury. When the jury has been clearly wrong, the court will generally grant a new trial. In most cases, it would be useless to practice on the jury unless the court could be likewise gained. Here then is a double security.

This complicated agency tends to preserve the purity of both institutions. By increasing the obstacles to successful corruption, it discourages attempts to seduce the integrity of either. The temptations for judges must be much fewer when the cooperation of a jury is necessary, than if they exclusively determined all causes.

[18] Constitutional Definition Difficult

Despite my doubts as to whether trial by jury in civil cases is essential to liberty, I admit that in most cases, under proper regulations, it is an excellent method of determining questions of property. Because of this alone it would be entitled to a constitutional provision if it were possible to define the limits within which it should be used.

However, in all cases, there is great difficulty in this. And men not blinded by enthusiasm must realize that in a federal government—a composition of societies whose ideas and institutions materially vary from each other—that difficulty increases. As I study the subject, I become more convinced that there were real obstacles that, we have been informed, prevented the insertion of a provision on this subject in the Constitution.

[19] Judiciary in State Constitutions

Within the States, the use of the jury trial varies widely. And this difference is not generally understood. An explanation of the differences is necessary before we make a judgment about the omission being complained about.

The New York judicial system most resembles Great Britain's. New York has courts of common law, courts of probates (analogous in some ways to the spiritual courts in England), a court of admiralty, and a court of chancery. The trial by jury prevails only in the courts of common law and there are some exceptions. In all the others, a single judge presides and proceeds, following either cannon or civil law, without the aid of a jury.[25]

In New Jersey, a court of chancery is like New York's. But it has neither courts of admiralty nor of probates, in the sense of the New York courts. The New Jersey courts of common law have the jurisdiction in cases that in New York are determined in the courts of admiralty and of probates. And, of course, the jury trial is more extensive in New Jersey than in New York.

In Pennsylvania this is perhaps still more the case, for there is no court of chancery in that State, and its common-law courts have equity jurisdiction. It has a court of admiralty, but none of probates, at least like New York's.

Delaware, in this area, imitated Pennsylvania.

Maryland is more like New York, as is Virginia, except that the latter has a plurality of chancellors.

North Carolina is most like Pennsylvania, South Carolina like Virginia.

I believe, however, that in some of the States that have separate courts of admiralty, the cases have jury trials.

Georgia has only common-law courts. An appeal, of course, lies from the verdict of one jury to another, called a special jury, which has a specific mode of appointment.

In Connecticut, they have no distinct courts of chancery or admiralty. And their courts of probates have no jurisdiction of causes. Their common-law courts have admiralty and, to a certain extent, equity jurisdiction. In cases of importance, their General Assembly is the only court of chancery. In Connecticut, therefore, the trial by jury extends in *practice* further than in any other State yet mentioned.

The situation in Rhode Island is, I believe, pretty much the same as Connecticut. Massachusetts and New Hampshire, in regard to the blending of law, equity, and admiralty jurisdictions, are in a similar predicament. In the four Eastern States, trial by jury not only stands on a broader foundation than in the other States, but it is attended with a peculiarity unknown, in its full extent, to any of them. There is an appeal *of course* from one jury to another, until there have been two verdicts out of three on one side.

[20] State Standard Couldn't Be Used

This summary shows there is significant diversity in the institution of trial by jury in civil cases in the States. From this fact these obvious reflections flow:

First, the convention couldn't make a general rule that corresponded with the circumstances of all the States.

And secondly, there would have been as many or more problems if the system of any one State had been made the standard, as by omitting a provision altogether and leaving the matter, as has been done, to legislative regulation.

[21] Federal Judiciary New Institution

Suggestions for supplying the omission have illustrated the problem rather than corrected it.

The minority of Pennsylvania proposed this mode of expression: "Trial by jury shall be as heretofore." This, I maintain, would be senseless and worthless.

All general provisions in the Constitution refer to the United States, in their united or collective capacity. Although trial by jury with various limitations is known in

[25] It has been erroneously insinuated that the Court of Chancery generally tries disputed facts by a jury. The truth is, juries in that court are rare and are not necessary except where the validity of a devise of land comes into question.—PUBLIUS

each State individually, in the United States, *as such*, it is at this time altogether unknown, because the present federal government has no judiciary power whatever. Consequently, there is no proper antecedent or previous establishment to which the term *heretofore* could relate. It would have no precise meaning and be inoperative from its uncertainty.

[22] Federal Cases Tried by Geography

On the one hand, this provision would not fulfil the intent of the people proposing it. On the other, if I properly understand their intent, it would be in itself inexpedient.

I presume that they mean that cases in the federal courts should be tried by jury if, in the State where the courts sat, that mode of trial would apply in a similar case in the State courts. That is to say, admiralty causes should be tried in Connecticut by a jury, in New York without one.

The capricious operation of so dissimilar a method of trial in the same cases, under the same government, is of itself sufficient to indispose every sound judgment towards it. Whether the case should be tried with or without a jury would depend, in many cases, on the accidental situation of the court and parties.

[23] Technical Knowledge Important

But this is not, in my estimation, the greatest objection. I strongly believe that trial by jury is not appropriate for all cases. This is particularly true in cases that concern the public peace with foreign nations—that is, in most cases where the question turns wholly on the laws of nations.

Of this nature, among others, are all prize causes. Juries cannot be assumed competent to investigations that require a thorough knowledge of the laws and usages of nations. And they will sometimes be under the influence of impressions that will not allow them to pay sufficient attention to the considerations of public policy that should guide their inquires. There would be the danger that the rights of other nations might be infringed by their decisions, giving reasons for reprisal and war.

Although the proper province of juries is to determine matters of fact, in most cases, legal consequences are complicated with fact in such a manner as to render a separation impractical.

[24] Treaties Often Specify Trial Types

Also, treaties with European powers often state the method of determining prize causes.

By treaty, in Great Britain they are determined in the last resort before the king himself, in his privy council, where the fact as well as the law undergoes a re-examination.

This alone demonstrates the impolicy of inserting a fundamental provision in the Constitution that would make the State systems a standard for the national government in the article under consideration. And it shows the danger of encumbering the government with any constitutional provisions that are not indisputably proper.

[25] Separating Equity, Law Jurisdictions

My convictions are equally strong that great advantages result from the separation of the equity from the law jurisdiction. The causes that belong to the former would be improperly committed to juries.

The great and primary use of a court of equity is to give relief *in extraordinary cases*, which are *exceptions*[26] to general rules. To unite the jurisdiction of such cases with the ordinary jurisdiction would unsettle the general rules and subject every case that arises to a *special* determination. A separation of the one from the other has the opposite effect, rendering one a sentinel over the other and keeping each within the expedient limits.

Besides this, the circumstances surrounding equity cases are often so intricate that they are incompatible with the genius of trials by jury. They often require long, deliberate, and critical investigation. It would be impractical to call men from their jobs and oblige them to decide the case before they could return to them.

The simplicity and expedition that distinguishes trial by jury requires that the matter to be decided should be reduced to some single and obvious point. While the litigations usual in chancery frequently include a long train of minute and independent particulars.

[26] When Combined, Jury Not Used

It is true that the separation of the equity from the legal jurisdiction is unique to the English system of jurisprudence. The model has been followed in several of the States.

But it is equally true that the trial by jury has been unknown in every case in which they have been united. And the separation is essential to preserve that institution in its pristine purity.

The nature of a court of equity will readily permit the extension of its jurisdiction to matters of law. But the attempt to extend the jurisdiction of the courts of law to matters of equity will probably not only be unproductive of the advantages derived from courts of chancery, as established in New York, but will tend gradually to change the nature of the courts of law and to undermine the trial by jury, by introducing questions too complicated for a decision in that mode.

[27] Pennsylvania Suggestion Rejected

These are conclusive reasons against incorporating the systems of all the States in the formation of the national judiciary, by using the system proposed by the Pennsylvania minority.

Let's now examine if the Massachusetts proposition will remedy the imagined defect.

[28-29] Massachusetts Suggests Tiny Change

It is in this form: "In civil actions between citizens of different States, every issue of fact, arising in *actions*

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[26] It is true that the principles by which that relief is governed are now reduced to a regular system. But it is no less true that they are usually applicable to SPECIAL circumstances that form exceptions to general rules.—PUBLIUS

at common law, may be tried by a jury if the parties, or either of them, request it."

This, at best, defines one type of cause. We can infer that either the Massachusetts convention considered it the only class of federal causes proper for trial by jury or that, if they wanted a more extensive provision, they found it impractical to devise one.

If the first, the omission of such a minor regulation can never be considered a material imperfection in the Constitution. If the last, it corroborates the extreme difficulty of the thing.

[30] What cases entitled to jury trial?

But this is not all. Let's return to the observations already made about the courts that exist in the States and the different powers exercised by them. No expressions appear more vague and indeterminate than those used to characterize *what* type of causes are entitled to a trial by jury.

In New York, the boundaries between actions at common law and actions of equitable jurisdiction conform to the rules in England. In many of the other States, the boundaries are less precise.

In some of them, every cause is to be tried in a court of common law and, on that basis, every action may be considered as an action at common law to be determined by a jury, if the parties, or either of them, choose it. Hence the same irregularity and confusion would be introduced by a compliance with this proposition that I have already mentioned as resulting from the regulation proposed by the Pennsylvania minority.

In one State, a cause would be determined by a jury, if the parties, or either of them, requested it. But in another, the same cause must be decided without a jury, because the State judicatories vary as to common-law jurisdiction.

[31] Same Jurisdictions Among States

Obviously, therefore, the Massachusetts proposition cannot operate as a general regulation until a uniform plan, with respect to the limits of common-law and equitable jurisdictions, is adopted by all the States. To devise a plan of that kind is an arduous task, requiring much time and reflection. It would be extremely difficult, if not impossible, to suggest any general regulation acceptable to all the States or that would perfectly conform with the State institutions.

[32] Choosing One State System Not Work

It may be asked, Why couldn't a reference be made to the constitution of New York, taking that, which I admit is a good one, as a standard for the United States?

I answer that it is not very probable the other States would entertain the same opinion of our institutions as we do ourselves. It is natural to suppose that they are more attached to their own, and that each would struggle for the preference.

If the convention thought of using the plan of one State as a model, we can presume that its adoption would have been made difficult by the predilection of each representative in favor of his own government. And it must be uncertain which State would have been taken as the model. It has been shown that many of them would be improper ones.

And I leave it to conjecture whether New York's or some other State's provision would have been preferred. But even if the convention could have made a judicious selection, there would have been great danger of jealousy and disgust in the other States at the partiality shown to the institutions of one. The enemies of the Constitution would have had a fine pretext for raising a host of local prejudices against it that might have endangered its ratification.

[33] Trial by Jury in All Cases

To avoid the embarrassments of defining the cases that trial by jury should embrace, men of enthusiastic tempers sometimes suggest that a provision might have been inserted for establishing it in all cases.

For this, I believe, no precedent is found in any State. And the points stated in discussing the proposition of the minority of Pennsylvania must satisfy every sober mind that the establishment of the trial by jury in *all* cases would have been an unpardonable error in the plan.

[34] Possible Source of Opposition

In short, the more it is considered the more arduous will appear the task of fashioning a provision in such a form as not to express too little to answer the purpose or too much to be advisable. Or which might not have opened other sources of opposition to the essential objective of introducing a firm national government.

[35] Conclusions of This Discussion

I believe that the different views of the subject in this paper will remove most apprehensions on the point. They have shown the following:

The security of liberty is materially concerned only in the trial by jury in criminal cases, which is provided for in the most ample manner in the Constitution.

Most civil cases, and those of interest to the great body of the community, will use that mode of trial, as established in the State constitutions, untouched and unaffected by the Constitution.

Trial by jury is not abolished[27] by the Constitution.

And there are great, if not insurmountable, difficulties in the way of making any precise and proper provision for it in a Constitution for the United States.

[36] Trial by Jury May Be Over-used

The best judges of the matter will be the least anxious for a constitutional establishment of the trial by jury in civil cases. And they will be most ready to admit that the continual changes in society may render a different mode of determining questions of property preferable in many cases in which that mode of trial now prevails.

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[27] *Vide* Number 81 in which the supposition of its being abolished by the appellate jurisdiction in matters of fact being vested in the Supreme Court is examined and refuted.—PUBLIUS

For my part, I believe that even in New York it might be advantageously extended to some cases to which it does not at present apply and might as advantageously be abridged in others.

All reasonable men concede that it should not be used in all cases. The examples of innovations that contract its ancient limits, in these States as well as in Great Britain, show that its former extent has been found inconvenient, and give room to suppose that future experience may discover the propriety and utility of other exceptions. I suspect it is impossible, because of its nature, to fix the salutary point at which the operation of the institution should stop. This is a strong argument for leaving the matter to the discretion of the legislature.

[37] Constitution: General Principles

This is now clearly understood to be the case in Great Britain. It is equally so in Connecticut.

More encroachments have been made on the trial by jury in New York since the Revolution, though provided for by a positive article of our constitution, than has happened in the same time either in Connecticut or Great Britain. It may be added that these encroachments have generally originated with the men who endeavor to persuade the people they are the warmest defenders of popular liberty but who have rarely suffered constitutional obstacles to arrest them in a favorite career.

The truth is only the general GENIUS of a government can be relied on for permanent effects. Particular provisions, though not altogether useless, have far less virtue and efficacy than commonly ascribed to them. And the want of them will never be, with men of sound discernment, a decisive objection to any plan exhibits the characteristics of a good government.

[38] Criticism Extremely Harsh

It certainly sounds both harsh and extraordinary to affirm that there is no security for liberty in a Constitution that expressly establishes the trial by jury in criminal cases, because it does not do it in civil also. It is a notorious fact that Connecticut, which is always regarded as the most popular State in the Union, can boast of no constitutional provision for either.

PUBLIUS

84: Bill of Rights; Capital; Debts due Union; Expenses

In this review of the Constitution, I have endeavored to answer most of the objections that have appeared against it. However, there are few that either did not fall naturally under any specific topic or were forgotten in their proper places. These will now be discussed. But because of the great length of this discussion, I will try to be brief and put all my observations on these miscellaneous points in a single paper.

[2] Bill of Rights

The most important of the remaining objections is that the new Constitution contains no **bill of rights**. As I've said several times, some of the State constitutions also have no bill of rights.

New York is one of these. Yet people who oppose the new Constitution, people in New York who profess an unlimited admiration for New York's constitution, are among the most intemperate partisans demanding a bill of rights. To justify their zeal, they allege two things:

1) that although the constitution of New York has no bill of rights attached to it, it contains, in its body, various provisions in favor of specific privileges and rights that, in substance, amount to the same thing; and

2) that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.

[3] Many Rights within Constitution

To the first, I answer that the proposed Constitution, like the New York state constitution, contains a number of such provisions.

[4] Clauses Assuring Rights

Besides clauses that relate to the structure of the government, we find the following:

Article 1, section 3, clause 7: "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law."

Section 9, clause 2: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

Clause 3: "No bill of attainder or *ex-post-facto* law shall be passed."

Clause 7: "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state."

Article 3, section 2, clause 3: "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

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

Article 3, section 3, clause 3: "The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

[5] Habeas Corpus, Ex-Post-Facto Laws

Are these not, on the whole, of equal importance with any found in the constitution of New York?

The establishment of the writ of *habeas corpus*, the prohibition of *ex-post-facto* laws, and of TITLES OF NOBILITY, *to which we have no corresponding provision in the New York constitution,* are perhaps greater securities to liberty and republicanism than any it contains.

The creation of crimes after the commission of the act or, in other words, punishing men for things that, when they were done, broke no law, and the practice of arbitrary imprisonment, have been, throughout the ages, the favorite and most formidable instruments of tyranny.

The observations of the judicious Blackstone are well worthy of recital: "To bereave a man of life, (says he) or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government." [28]

To remedy this fatal evil, Blackstone emphatically praises the *habeas corpus* act. One place he calls it "the BULWARK of the British Constitution."[29]

[6] Prohibits Titles

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be called the cornerstone of republican government. As long as titles are excluded, there can never be serious danger that the government will be any other than that of the people.

[7] "Bills of Rights" Limit Government

To the second—that is, to the pretended establishment of the common and statute law by the Constitution, I answer, that they are expressly made

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[28] *Vide* Blackstone's *Commentaries*, vol. 1., p. 136. –PUBLIUS

[29] *Vide* Blackston's *Commentaries*, vol. Iv., p. 438. –PUBLIUS

subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." Therefore, they may, at any moment, be repealed by the ordinary legislative power and, of course, have no constitutional sanction.

The declaration was only used to recognize the ancient law and remove doubts that might have been caused by the Revolution. Consequently, this is not part of a declaration of rights that under our constitutions must be intended as limiting the power of the government itself.

[8] Constitution: People Retain All Power

It has been said several times, correctly, that bills of rights are stipulations between kings and their subjects. Bills of rights abridge prerogatives in favor of privilege, reserving to citizens rights not surrendered to the prince.

Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were later confirmations of the Magna Charta by succeeding princes. Such was the *Petition of Right* assented to by Charles the First in the beginning of his reign. Such, also, was the Declaration of Rights presented by the Lords and Commons to the Prince of Orange in 1688 and then made into an act of parliament called the Bill of Rights.

Therefore, according to their original meaning, they don't belong in constitutions professedly founded on the power of the people and executed by their immediate representatives and servants. Here, strictly speaking, the people surrender nothing. And since they retain everything, they have no need of specific reservations.

"We, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this Constitution for the United States of America."

This is a better recognition of popular rights than volumes of those aphorisms that make up several of our State bills of rights that would sound much better in a treatise on ethics than in a constitution of government.

[9] Constitution: General Structure

But a minute detail of specific rights is even less applicable to a Constitution like the one under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution that regulates every type of personal and private concern. Therefore, if the loud clamors against the new Constitution, on this point, are well founded, the constitution of New York must be severely condemned. But the truth is that both contain all that, in relation to their objectives, is reasonably to be desired.

[10] Statement of Rights Might Imply a Governmental Power

I go further and affirm that a bill of rights, in the sense and to the extent some people want one, is not only unnecessary in the proposed Constitution, but would even be dangerous. It would contain various exceptions to powers not granted. And, on this account, would afford a colorable pretext to claim more powers than were granted. Why declare that things shall not be done when there is no power to do it?

For instance, why say that the liberty of the press shall not be restrained when no power is given to impose restrictions? I will not argue that such a provision would confer a regulating power; but it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might argue with some logic that it is absurd to say there is no authority when the Constitution has a provision against the abuse of that authority. And that the provision against restraining the liberty of the press clearly implies that the national government has a power to regulate it.

This may serve as an example of the numerous handles that would be given to the doctrine of constructive powers by the indulgence of an injudicious zeal for bills of rights.

[11] Liberty of the Press

On the subject of the liberty of the press, as much as has been said, I cannot help adding a remark or two.

In the first place, there is not a syllable about it in New York's constitution.

In the next, I contend that what has been said about it in other State constitutions amounts to nothing. What signifies a declaration that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition that would not leave the utmost latitude for evasion?

I believe it is impractical. And, from this, I infer that its security, whatever fine declarations are inserted in any constitution regarding it, must completely depend on public opinion and the general spirit of the people and of the government.[30] And this is, after all, as is intimated on another occasion, where we must look for the only solid basis of all our rights.

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30 To show that there is a power in the Constitution that may affect the liberty of the press, the power of taxation has been used. It is said that duties on publications may be so high as to amount to a prohibition. I don't know by what logic it could be argued that the declaration in the State constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties on publications by the State legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press.

Newspapers are taxed in Great Britain and yet it is notorious that the press nowhere enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, regulated by public opinion. So, general declarations respecting the liberty of the press will give it no greater security than it will have without them. The same invasions of it may be effected under the State constitutions that contain those declarations through the means of taxation, as under the proposed Constitution, which has nothing of the kind. It would be quite as significant to declare that government should be free, that taxes should not be excessive, etc., as that the liberty of the press should not be restrained.—PUBLIUS

[12] Constitution as Bill of Rights

In conclusion, there is only one other view of this matter. The truth is, after all the declarations we have heard, that the Constitution is itself, in every rational sense and to every useful purpose, A BILL OF RIGHTS.

The several bills of rights in Great Britain form its constitution and, conversely, the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union.

Does a bill of rights specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the new Constitution, which includes various precautions for the public security that are not to be found in any of the State constitutions.

Should a bill of rights also define certain immunities and modes of proceeding in personal and private concerns? This, we have seen, has also been included, in a variety of cases, in the Constitution.

Therefore, referring to what is meant by a bill of rights, it is absurd to allege that it is not to be found in the proposed Constitution. It may be said that it does not go far enough, though it will not be easy to make this point. But it can not, with propriety, be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of citizens, if they are to be found in any part of the instrument that establishes the government. Hence, it is apparent that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing.

[13] Capital too Far from States

Another frequent objection has been of this nature: "It is improper (say the objectors) to confer such large powers, as are proposed, on the national government, because the seat of that government must, necessarily, be too remote from many of the States for the citizens to have proper knowledge of the conduct of the representative body."

This argument, if it proves anything, proves there should be no federal government whatever. For the powers that everyone seems to agree should be vested in the Union cannot be safely entrusted to a body that is not under every requisite control.

But satisfactory reasons show that the objection is, in reality, baseless. Most of the arguments relating to distance are entirely imaginary.

How do the people in Montgomery County receive the information they use to judge the conduct of their representatives in the State legislature? Not by personal observation. This is confined to the citizens on the spot. Therefore, they must depend on the information of intelligent men who they trust. And how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives and with other persons who reside in the state capital.

This doesn't apply only to Montgomery County, but to all the counties that are distant from the seat of government.

[14] Information about National Government

Clearly, the same sources of information will be open to the people in relation to the conduct of their representatives in the federal government. And the impediments to prompt communication created by distance will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be sentinels over the persons employed in every department of the national administration. It will be in their power to adopt and pursue a regular and effectual system of intelligence. Therefore, they will know the behavior of those who represent their constituents in the national councils and can readily communicate their knowledge to the people. They can be relied on to tell the community of whatever may prejudice its interests from another quarter, if only from the rivalship of power.

We may conclude, with assurance, that the people, through that channel, will be better informed of the conduct of their national representatives than they can be, by any means they now possess, of that of their State representatives.

[15] Capital Citizens Inform Distant Ones

It should also be remembered that the citizens who live in or near the capital will, in all questions that affect general liberty and prosperity, have the same interest with those who are at a distance. They will stand ready to sound the alarm when necessary and to point out the actors in any pernicious project.

The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union.

[16] Debts due to United States

Among the many curious objections against the Constitution, the most extraordinary and the least colorable is the lack of a provision respecting the debts due to the United States.

This has been represented as a tacit relinquishment of those debts and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this subject. Yet it is clear that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made on the subject in another place, I will only observe that just as it is a plain dictate of common-sense, so it is also an established doctrine of political law, that "*states neither lose any of their rights, nor are discharged from any of their obligations, by a change in the form of their civil government.*"[31]

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31 *Vide* Rutherford's *Institutes,*vol. ii, book II, chap. x., sects, xiv, and xv. *Vide* also Grotius, book 11, chap. ix., sects. Viii. And ix.--PUBLIUS

[17] Expense of Federal Government

The last objection of any consequence, that I presently remember, is expense. However, even if adopting the proposed government meant a considerable increase in expense, it would not be an objection against the Constitution.

[18] Division of Powers Necessary

Most citizens of America are, with reason, convinced that Union is the basis of their political happiness. Most men of sense agree that it cannot be preserved under the present system without radical alterations. They agree that new and extensive power should be granted to the national government. And that these powers require a different organization of the federal government—a single body being an unsafe depositary of such ample authorities.

In conceding all this, the question of expense must be given up. It is impossible, with any degree of safety, to narrow the foundation on which the system is to stand.

In the beginning, the two houses of the legislature will consist of only sixty-five people, the same number as the Congress under the existing Confederation. This number will increase, but this is to keep pace with the progress of the population and resources of the country. Clearly, a smaller number would be unsafe and continuing the present number as the population grows would be a very inadequate representation of the people.

[19] Expense of New Offices

From where is the dreaded increase of expense to come? One source mentioned is the multiplication of offices under the new government. Let us examine this a little.

[20] Federal Employees

The principal departments of the administration under the present government are the same as those required under the new.

There is now a Secretary of War, a Secretary of Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury—consisting of three persons—a Treasurer, assistants, clerks, etc. These officers are indispensable under any system and will suffice under the new as well as the old.

As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters and where they reside more respectable, and their services more useful.

As to persons employed to collect revenues, these will form a very considerable addition to the number of federal officers. But it does not follow that this will increase public expense. It will mostly be an exchange of State for national officers. For instance, in the collection of all duties, the persons employed will be totally of this description. The States, individually, will have no need of any revenue agents for this purpose. What is the difference in the expense to pay customs officers appointed by the State or by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former.

[21] Federal Judges

Where do we look, then, for the additional articles of expense that will swell the account to the enormous size represented to us?

The chief item that occurs to me is the support of the judges of the United States.

I do not add the President because there is now a president of Congress, whose expenses may not be far, if any, short of those that will be incurred by the President of the United States.

The support of the judges will clearly be an extra expense but the extent will depend on the specific plan adopted. But in no reasonable plan can it amount to a sum of material consequence.

[22] Congress Less Expensive

Let's see what counterbalances any extra expenses accompanying the establishment of the proposed government.

First, the President will transact much of the business that now keeps Congress sitting through the year. Even the management of foreign negotiations will devolve on him, according to general principles, concerted with the Senate and subject to their final concurrence. Hence, both the Senate and the House of Representatives will need to be in session for only part of the year. We may suppose about a fourth for the latter and a third, or perhaps half, for the former. The extra business of treaties and appointments may make the Senate sessions longer.

From this we infer that, until the House of Representatives is increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress.

[23] Less Burden on State Legislatures

But there is another circumstance of great importance in the view of economy. Up until now, the business of the United States has occupied the State legislatures as well as Congress. Congress has made requisitions that the State legislatures have had to fulfill. Therefore, the sessions of the State legislatures have been much longer than necessary for the execution of the local business of the States. More than half their time is frequently employed in matters that related to the United States.

There are now more than two thousand members of the State legislatures. And they preformed the same duties that, under the new system, will be done, initially, by sixty-five people. And, in the future, the number will probably not grow to more than 400 or 500 people.

The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures. Henceforth, State legislatures will attend only to the affairs of their specific States, and will not have to sit nearly as long as they have done until now.

The shorter sessions of the State legislatures will be a clear gain and will, alone, be a saving equivalent to any additional expense from adopting the new system.

[24] Expenses Balanced by Savings

These observations show that the additional expense from the establishment of the proposed Constitution are much fewer than may be imagined. They are counterbalanced by considerable saving. And while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union.

PUBLIUS

Constitutional references:
Bill of Rights
Article 1, section 3 impeachments, limits punishment
Article 1, section 9 habeas corpus
Article 1, section 9 no ex-post-facts laws
Article 1, section 9 no titles of nobility
Article 3, section 2 trial by jury
Article 3, section 3 2 witnesses to treasonous act
Article 3, section 3 treason punishment limited to guilt person

Preamable of Constitution

85: In Conclusion, Ratify Now, Amend Later

According to the subjects announced in my first paper, two points appear to remain to be discussed: "the analogy of the proposed government to your own State constitution," and "the additional security that its adoption will give to republican government, to liberty, and to property."

However, these topics have been so fully anticipated and exhausted in these Papers that now I could only repeat, in a more dilated form, what has been said before, which this late date and the time already spent on it, conspire to forbid.

[2] Same "Defects" in NY Constitution

The proposed Constitution resembles New York's constitution in many of its imagined defects, as well as the real excellences.

Among the imagined defects are no term limits for the Executive, no executive council, no formal bill of rights, and no provision for the liberty of the press.

These and others discussed in these papers may be charged against the existing constitution of New York as well as the one proposed for the Union. And a man isn't very consistent if he can rail at the latter for imperfections that he easily excuses in the former.

And there is no better proof of the insincerity and affectation of some of the zealous adversaries of the new Constitution, who say they are devoted admirers of the New York state government, than the fury of their attacks on the Constitution for matters to which the New York constitution is equally or more vulnerable.

[3] New Constitutional Securities

Adopting the Constitution will provide additional securities to republican government, to liberty, and to property.

Chiefly, preserving the Union will impose restraints on local factions and insurrections, and on the ambition of powerful individuals in single States who may acquire credit and influence enough from leaders and favorites to become the despots of the people.

It will diminish the opportunities for foreign intrigue that would be invited and facilitated by the dissolution of the Confederacy.

It will prevent extensive military establishments that would grow out of wars between the States if disunited.

It will guaranty a republican form of government to each State.

It will absolutely and universally exclude titles of nobility.

And it will guard against the States repeating acts that have undermined the foundations of property and credit, planted mutual distrust in the hearts of all classes of citizens, and caused an almost universal prostration of morals.

[4] Presented Rational Arguments

Thus have I, fellow-citizens, executed the task I assigned to myself. With what success, your conduct must determine.

I trust, at least, you will admit that I have not failed in the assurance I gave you about spirit with which my endeavors would be conducted. I have addressed myself purely to your judgments. And I have studiously avoided the harshness that often disgraces political disputes and has been provoked by the language and conduct of the opponents of the Constitution.

The advocates of the new Constitution have been indiscriminately charged with conspiracy against the liberties of the people. This charge is too wanton and malignant not to excite the indignation of every man who feels in his own heart a refutation of the calumny. The perpetual changes rung on the wealthy, the well born, and the great, inspire the disgust of all reasonable men. And the unwarrantable misrepresentations that have kept the truth from the public eye demand the reprobation of all honest men. Because of these circumstances, I may have occasionally used intemperate expressions that I did not intend. I have frequently struggled between sensibility and moderation. If the former sometimes prevailed, my excuse is that it has not been often or much.

[5] Every Man Must Now Decide

Let us now pause and ask ourselves whether, in these papers, the Constitution has been satisfactorily vindicated from the aspersions thrown on it. And whether it has been shown worthy of public approval and necessary for the public safety and prosperity.

Every man must answer these questions to himself, according to his conscience and understanding. And he must act according to the genuine, sober dictates of his judgment. This is a duty without dispensation. It is one that he is called on, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party. Let him reflect that the object on which he is to decide is not a particular interest of the community, but the very existence of the nation. And let him remember that a majority of America has already ratified the plan that he is to approve or reject.

[6] Constitution Best Solution for Us

I admit that I am confident of the arguments that recommend the Constitution to your adoption. And I am unable to discern any real force in the opposing arguments. I believe it is the best for our political situation, habits, and opinions, and superior to any the revolution has produced.

[7] Constitution Admittedly Imperfect

Concessions on the part of the friends of the new Constitution, that it isn't absolutely perfect, have become a small triumph to its enemies. "Why," say they, "should we adopt an imperfect plan? Why not amend it and make it perfect before it is irrevocably established?"

This may be plausible enough, but it is only plausible. In the first place, these concessions have been greatly exaggerated. They are stated as amounting to an admission that the plan is radically defective and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as I understand the concessions, is an entire perversion of their meaning. No advocate of the Constitution can be found who will not declare that the system, though it may not be perfect in every part, is, on the whole, a good one. It is the best that the present views and circumstances of the country will permit. And it promises every type of security that a reasonable people can desire.

[8] Group Decisions Never Perfect

I answer, next, that it is extremely imprudent to prolong the precarious state of our national affairs and expose the Union to the jeopardy of successive experiments in the chimerical pursuit of a perfect plan.

I never expect to see a perfect work from imperfect man. The deliberations of all groups must necessarily result in a compound of errors and prejudices, as well as good sense and wisdom, of the individuals of whom they are composed. The compact used to embrace thirteen States in a common bond of amity and union, must be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

[9] New Convention Not Good Idea

An excellent pamphlet, recently published in New York City,[32] gives the reasons why a new convention probably couldn't be assembled under circumstances as favorable to producing a good constitution as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments, as I presume the pamphlet has had an extensive circulation. Every friend to his country should certainly read it.

There is, however, one view of amendments that remains to be considered, a view that has not been publicly discussed. I cannot conclude without discussing it.

[10] Amend After Ratification

Clearly, it will be far easier to obtain subsequent than previous amendments to the Constitution. The moment the proposed Constitution is altered it becomes, to the purpose of adoption, a new one, and must be ratified again in each State. Therefore, to establish it throughout the Union, it would require the concurrence of thirteen States.

If, on the contrary, all the States ratify the Constitution, nine States can make alterations at any time. Here, then, the chances are as thirteen to nine[33] in favor of a subsequent amendment over adoption of an entire governmental system.

[11] Issues, States Multiply Difficulty

This is not all. Every Constitution for the United States must have a great variety of specifics to accommodate the interests or opinions of thirteen independent States. In any group charged with writing it, we may expect to see different people agreeing on different points. People in the majority on one question may become the minority on a second, and an entirely different group may be the majority on a third.

The specifics of the document must be molded and arranged to satisfy all the parties to the compact. And, hence, the difficulties of obtaining every State's assent multiply. Clearly, the multiplication must be in a ratio to the number of issues and the number of parties.

[12] Amendment: One Issue Each

But every amendment to the Constitution, if once established, would be a single proposition and could be brought forward singly. Compromise, in relation to any other point—giving or taking—would not be necessary. The will of the required number would decide the issue. And consequently, whenever nine, or rather ten States, wanted an amendment, that amendment must infallibly take place.

Therefore, there is no comparison between the ease of adding an amendment and of establishing a complete Constitution.

[13] National Rulers Must Allow Amendments

Opponents argue that amending the Constitution after ratification may be impossible because the people administrating the national government will not want to give up any part of their authority once they have it.

For my part, I believe any amendments that are thought useful, after mature consideration, will apply to the organization of the government, not to the extent of its powers. On this account alone, this observation carries no weight.

And there is little weight in it on another account. The intrinsic difficulty of governing THIRTEEN STATES, independent of assuming an ordinary degree of public spirit and integrity, will, in my opinion, constantly *impose* on the national rulers a spirit of accommodation to the reasonable expectations of their constituents.

But another consideration proves, beyond a doubt, that the observation is wrong. It is this: the national rulers, whenever nine States concur, will have

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32 Entitled "An Address to the People of the State of New York."—PUBLIUS

33 It is actually TEN, for though two thirds may propose the measure, three fourths must ratify.—PUBLIUS

no option on the subject. By the fifth article of the Constitution, the Congress will be *obliged* "on the application of the legislatures of two thirds of the States (currently, nine), to call a convention for proposing amendments, which *shall be valid*, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof."

The words of this article are peremptory. The Congress "*shall* call a convention." Nothing is left to the discretion of Congress. Consequently, all the arguments about the disinclination to a change vanish.

And however difficult it may be to unite two thirds or three fourths of the States in amendments that affect local interests, such a difficulty cannot be feared on points relative to the general liberty or security of the people. We may rely on the State legislatures to erect barriers against the encroachments of the national authority.

[14] Ratification Before Amending

If the forgoing argument is a fallacy, then I am deceived by it. It is, in my opinion, one of those rare cases where a political truth can be mathematically tested. Those who see it as I do, however zealous they may be for amendments, must agree it must be ratified first, as the most direct road to their own objective.

[15] Delicate Balance of Creating Constitution

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to agree to the truth of the following observations of a writer equally solid and ingenious.[34]

"To balance a large state or society (says he), whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; EXPERIENCE must guide their labor; TIME must bring it to perfection, and the FEELING of inconveniences must correct the mistakes which they *inevitably* fall into in their first trials and experiments."

These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union. And they should be on guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, while they pursue what they are not likely to obtain but from TIME and EXPERIENCE. I may lack political fortitude, but I acknowledge that I cannot be as tranquil as people who treat the dangers of continuing in our present situation as imaginary.

A NATION without a NATIONAL GOVERNMENT is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is an EXTRAORDINARY ACCOMPLISHMENT. I look forward to its completion with trembling anxiety. I can think of no reason to let go of the hold we now have on this arduous an enterprise, seven out of the thirteen States having ratified the Constitution, and after having done so much work, start over again. I dread the consequences of new attempts because I know that POWERFUL INDIVIDUALS, in this and in other States, are enemies to a national government in every possible shape.

Publius

Article 4, sec 4	republican government in each State
Article 1, sec 9 & section 10	no nobility titles
Article 7	ratification of Constitution
Article 5	amending the Constitution

34 Hume's *Essays*, vol. I, page 128: "The Rise of Arts and Sciences."—PUBLIUS

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Articles of Confederation

Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Article One

The style of this Confederacy shall be “The United States of America.”

Article Two

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

Article Three

The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article Four

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State, on the property of the United States, or either of them.

In any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

Article Five

For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years, nor shall any person, being a delegate, be capable of holding any office under the United States for which he or another for his benefit receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons form arrests and imprisonments, during the time of their going to or from, and attendance on, Congress, except for treason, felony, or breach of the peace.

Article Six

No State, without the consent of the United States, in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, price, or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State or its trade;

nor shall any body of forces be kept up by any State, in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States of Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article Seven

When land forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

Article Eight

All charges of war and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, and such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article Nine

The United States in Congress assembled shall have the sole and exclusive right and power of determining on piece and war, except in the cases mentioned in the sixth article--of sending and receiving ambassadors--entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever--of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated--of granting letters of marque and reprisal in times of peace--appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:--Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or

sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall he tried, *"well and truly to hear ad determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward,"* provided also that no State shall be deprived territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade and *man*aging all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated-establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers-appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; to appoint such other committees and civil of officers as 'nay be necessary for managing the general affairs of the United States under their direction; and to appoint one of their number to preside. provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted-to build and equip a navy-to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared: and the officers and men, so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor. appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy, and the yeas and nays of the delegates of each State on any question shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted to lay before the legislatures of the several States.

Article Ten

The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient

to vest them with: provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article Eleven

CANADA, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article Twelve

All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Article Thirteen

Every State shall abide by the determinations of the United States in Congress assembled on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

AND WHEREAS it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress to approve of and to authorize to ratify the mid Articles of Confederation and perpetual Union, Know Ye, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further. solemnly plight and engage the faith of our respective constituents that they dial! abide by the determinations of the United States in Congress assembled, on all questions which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and the Union shall be perpetual.

George Washington

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Number 1

Call to Study New Constitution

You are asked to study and consider adopting a new Constitution for the United States of America to replace the current, inefficient federal government. This is a very important decision. Our country's existence depends on it. So does the safety and welfare of its people, communities, and States. We will decide the fate of a nation that is, in many respects, the most interesting in the world.

The people of this country will decide important questions: Can societies establish a good government by careful thought and choice? Or are people destined to be governed only by accident and force? The answers depend on our response to the current crisis. And the wrong decision will be unfortunate for all of mankind.

[2] Special Interests and Prejudices will Influence Debate

Conscientious patriots understand the importance of deciding whether to adopt the new Constitution. And they know their decision will affect all human societies.

It would be wonderful if we based our decision only on the best interests of our society, unbiased by less noble interests not connected with the public good. Although we may sincerely wish this, it can't be expected. The Constitution affects many special interests and changes many local institutions. Subjects other than its merits will be discussed. The debate will include passions and prejudices unrelated to discovering the truth and meaning of the Constitution.

[3] Politicians May Fear Loss of Power

Many politicians will oppose the new Constitution. Some politicians are afraid that the Constitution will decrease the power and benefits of their current State offices. Others think that they can have more power if the country is in turmoil or is broken up into several small countries.

[4] Moderation Urged, Good Men Argue on Both Sides of an Issue

However, I don't plan to talk about political motives. I don't know if a person's opposition is due to self-interest or ambition even if their views seem suspicious. Even politicians may be motivated by upright intentions. And much of the opposition will spring from blameless, if not valid, motivations. Jealousies and fears will lead arguments astray into honest errors in thinking.

Powerful reasons can create a false bias. Wise and good men often argue on both the wrong and right side of society's most important questions. This fact should teach moderation to anyone who thinks they are always in the right in any argument.

There's a further reason for caution. People who support the right side of a question can also have ulterior motives like ambition, avarice, personal animosity, and party opposition.

Moderation is important. The mean spirit that characterizes political parties is awful. In politics, as in religion, it's absurd to try to persuade people with fire and sword. Bad ideas can rarely be defeated by persecution.

[5] Constitution Will Be Called Thief of Liberty

Angry and malignant passions will be let loose about this subject, as in all former cases of great national debate. To get supporters, the opponents of the new Constitution will loudly and bitterly condemn it.

People supporting the energetic government proposed by the Constitution will be demonized as liking dictators and hating liberty. When supporters declare that the rights of the people must be very carefully protected, it will be called insincere and an obvious attempt to become popular while hurting the general public.

Dangers to the rights of people usually spring from the head rather than the heart. Enthusiasm for liberty is often infected with narrow-minded bigotry and distrust.

A healthy government is essential to secure liberty. A strong government and liberty can never be separated. Dangerous ambition is more often masked by a zeal for the rights of the people than the zeal for a firm and efficient government. History teaches us that most men who have overturned the liberties of republics began their career by proclaiming their devotion to the people. They gain position by arousing people's prejudices and end as tyrants.

PUBLIUS

[6] I Support the New Constitution

My fellow citizens, guard against all attempts, from whatever side, to influence you. Your decision on the new Constitution, which is very important to your welfare, should be based on truth.

I'm sure you have noticed that I like the new Constitution. Yes, my countrymen, I admit that after giving it careful thought, I believe it is in your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. The new Constitution has my full and unambiguous support.

I don't pretend that I am undecided about ratifying the Constitution. I have decided. And I will tell you why I think it is a good idea. I will try to make my arguments truthful. Everyone who reads them can judge for themselves whether I've succeeded.

[7] Discussion of Constitutional Issues

I propose to discuss the following subjects in a series of papers:

Why a successful federal government is important to the UNION.

Why the current Confederation can't preserve the UNION.

Why we need an energetic federal government.

How the proposed Constitution conforms to the principles of republican government.

A comparison of the Constitution to the New York constitution.

How the Constitution will preserve liberty, property and the republican form of government.

As this discussion progresses, I will try to answer objections that arise.

[8] Opponents: Thirteen States Too Many

It may seem like everyone agrees that remaining united is important. But some opponents of the new Constitution say thirteen States are too many. They argue that we must break into several separate confederacies.*

The alternative to adoption of the new Constitution is dismemberment of the Union. Therefore, I will examine the advantages of staying united, the probable dangers, and certain evils of dissolution. This will be the subject of my next editorial.

---

* The same idea, tracing the arguments to their consequences, is held out in several recent publications against the new Constitution. --PUBLIUS

Number 2

United America

Government is necessary. The people must cede some of their natural rights to the government to give it some powers. Will the people of America be best served under one federal government, or should they divide themselves into separate confederacies, giving each the powers of a national government?

[3] Dividing America Into Several Nations

Until recently, everyone agreed that America's prosperity depends on staying united. Now some politicians say that looking for safety and happiness in one country is wrong. They say we should divide the States into separate confederacies or nations.

Before adopting this new idea, citizens should be sure that it is based in truth and sound policy.

[4] America is Geographically United

America is one connected, fertile, wide-spreading country. God blessed it with a variety of soils, watered with countless streams to delight and fulfill the needs of it inhabitants. As if to tie it together, navigable water forms a chain around its borders. The most noble rivers in the world form convenient highways for easy communication and transportation of commodities.

[5] American's Culturally United

God gave this one connected country to one united people—people descended from the same language, professing the same religion, attached to the same principles of government, very similar in manners and customs. They fought side by side through a long and bloody war, establishing liberty and independence.

[6] One Country, One People

This country and this people seem made for each other. It appears that God designed it for a band of brethren united by the strongest ties. They should never split into a number of unsocial, jealous, and alien countries.

[7] States Have Acted as One Nation

Until recently, everyone agreed that we should remain united. We have acted as one people. Each individual citizen enjoys the same national rights, privileges, and protection. As a nation we made peace and war. As a nation we formed alliances and made treaties.

[8] Current Government Hastily Formed

Very early, while their homes were in flames and citizens were bleeding, the people created a federal government. However, there wasn't time for the calm and mature reflections that must precede the formation of a wise and well-balanced government for free people. Therefore, it's not strange that the government has a lot of problems and is unable to serve its purpose.

[9] Importance of Sound Union to Liberty

Being intelligent, the people saw the government's defects. They were both attached to the union and loved liberty. They saw that the union was in immediate danger, a danger that would eventually jeopardize liberty. The people knew that a more wisely framed national government could secure the union and personal liberty. They convened the recent convention in Philadelphia to consider the important subject.

[10] Constitutional Convention

The people respect the men at the convention. Many were distinguished by their patriotism, virtue, and wisdom during a time that tried the minds and hearts of men.

The convention undertook the difficult task. During a time of peace, they spent many months in cool, uninterrupted, daily consultation. They were neither awed by power nor influenced by any passion except love for their country. They unanimously recommended to the people their plan—the proposed Constitution.

[11] 1774 Congress Made Wise Recommendations

This plan is only *recommended*, not imposed. It is neither recommended for *blind* approval nor *blind* rejection. This important subject demands calm and candid consideration. However, a thoughtful examination is more to be wished than expected. Experience teaches us not to be too optimistic.

Let's remember what happened in 1774. Americans felt that they were in imminent

danger. They formed the Congress of 1774, which made some wise recommendations. However, the press wrote against them. Some people said the advice of that patriotic Congress should be rejected. Many politicians opposed them, putting self-interest before the good of the country. Others were unduly influenced by political allies or saw it as a threat to personal ambitions.

However, the majority of Americans saw through the deceit and decided judiciously. Reflecting back, they are happy they did so.

[12-13] Respected Men Framed Constitution

Americans concluded that the 1774 Congress was composed of wise and experienced men. Each delegate was committed to public liberty and prosperity. It was their desire and duty to recommend only prudent measures. And Americans relied on the judgment and integrity of that Congress.

The people now have a greater reason to respect the judgment and advice of the recent convention. Members of the 1774 Congress have since proved their patriotism and abilities. They have grown old acquiring political information. Some of the most distinguished men from the 1774 Congress carried to this year's Constitutional Convention their accumulated knowledge and experience.

[14] Remaining One Union Important

The prosperity of America depends on its Union. The Constitutional Convention wrote the proposed Constitution to preserve and perpetuate the Union. What are the real motives behind current attempts to depreciate the importance of the Union? Why is it suggested that three or four confederacies would be better than one?

I believe Americans have always thought right on this subject. Their attachment to the Union is based on great and important reasons, which I will try to explain in some ensuing papers.

Those who promote the idea of substituting a number of separate confederacies for the Constitution know that rejecting the Constitution would put the continuance of the Union in utmost jeopardy. I sincerely wish that every good citizen realizes that, if the Union is dissolved, America will have reason to exclaim, in the words of the poet: "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS."

PUBLIUS

Number 3

National Union Provides Safety Against Foreign Danger

People of any country (if, like Americans, they are intelligent and well informed) seldom hold erroneous beliefs about their best interests for many years. This is why Americans feel that remaining united under one federal government with sufficient powers is important.

The more I study the reasons for this opinion, the more I'm convinced they are valid.

[3-4] Safety: Government's First Objective

Wise and free people have several goals. *Safety* is first. The desire to be *safe* can mean many things. I will discuss two: safety against dangers from *foreign arms and influence* and dangers arising from domestic causes.

[5] Danger From Foreign Nations

The first danger is from foreign nations. We'll examine whether a Union, under an efficient national government, gives the best security against *hostilities* from abroad.

The number of wars in the world is always proportionate to the number and severity of causes—*real* or *imagined*—that *provoke* or *invite* them. Will a *united America* find as many *just* causes for war as a *disunited* America? If a united America will find fewer reasons, it follows that the Union tends to preserve a state of peace with other nations.

[6-7]

Current Relationships With Other Nations

Just causes for war include treaty violations and direct violence, attack or invasion. America already has treaties with at least six foreign nations. All, except Prussia, have navies that could injure us. We have extensive commerce with Portugal, Spain, and Britain. Spain and Britain also have neighboring territory.

To stay at peace, America must observe the laws of foreign nations. One national government can do this more easily than either thirteen separate States, or three or four confederacies.

[8] Highly Qualified Men Will Serve in National Government

When an efficient national government is established, usually the best men in the country will be appointed to manage it. A town or county can place men in State assemblies, senates, courts, or executive departments. However, to recommend men to national offices, a wider reputation for talents and qualifications are necessary. The public will choose from the widest field, never lacking qualified persons.

The administration, political counsels, and judicial decisions of the national government will be more wise and judicious than those of individual States. Consequently, a Union will be *safer* with respect to other nations, as well as *safer* with respect to us.

[9-10] Standard Treaties, Policies

Under one national government, treaties and laws of nations will always be interpreted and executed in the same manner. However, thirteen States, or three or four confederacies, adjudicating the same points and questions, will sometimes come to different conclusions. Different local laws and interests would influence each independent government. Therefore, it is wise to have one judicial system appointed by and responsible to one national government decide such questions.

The people governing one or two States may be tempted to swerve from trustworthiness and justice. But local temptations would have little or no influence on the national government, preserving good faith and justice. The peace treaty with Britain is a good example.

[11] Fewer Temptations for National Officials

Individual States have specific circumstances that cause temptations. The governing party may not be able or willing to prevent the planned injustice or punish the aggressors.

Unaffected by local circumstances, national officials will not be induced to commit wrong themselves. And they will try to prevent it and punish its commission by others.

[12]

Treaty Violations Create Just Causes for War

Both intentional and accidental violations of treaties and laws of nations provide *just* cause for war. They are less likely to happen under one general government than several lesser

ones. Therefore, one national government most favors the *safety* of the people.

[13-14] States Provoke Wars

Direct, unlawful violence also starts wars. Passions and interests of one or two States rather than the whole Union usually cause it. One good national government provides the greatest security against this.

For example, not a single Indian war started because of aggressions of the present federal government. But the improper conduct of individual States provoked several Indian wars. Those States were either unable or unwilling to restrain or punish offenses leading to the slaughter of many innocent inhabitants.

Some States border Spanish and British territories. Only bordering States, because of an irritation or sense of injury, would be likely to use violence to start a war with these nations. A wise and prudent national government will not be swayed by regional passions and will block that danger.

[16] Cool Heads in Federal Government Will Settle Disputes

A national government will have more power to settle hostilities. It will be more temperate and cool than the offending State. Pride makes both men and States justify their actions and oppose acknowledging, correcting or repairing their errors and offenses. Not affected by this pride, the national government will proceed with moderation and candor to extricate them from threatening difficulties.

[17-18] Apologies from Strong Nations Accepted

Explanations and compensations from a strong nation are often accepted as satisfactory, when they would be rejected as unsatisfactory if offered by a State or confederacy of little power. In 1685, the state of Genoa offended Louis XIV. He demanded they send their chief magistrate to *France* to ask his pardon and receive his terms. To make peace, they had to obey. Would he have demanded or received the same humiliation from Spain, Britain or any other *powerful* nation?

PUBLIUS

Number 4

Strong Union Provides Strong Defense

With only one national government, other nations would have fewer *just* causes for wars. And when problems developed, it would settle them more easily than either the State governments or the proposed small confederacies.

[2] Just and Pretended Reasons for War

To remain safe, America must not give other nations *just* causes for war *and* it must not get into situations that *invite* hostility. Nations start wars both for legitimate and illegitimate (pretended) reasons.

[3] Kings Start Wars For No Logical Reason

It is a sad fact that nations, in general, will start a war whenever they think they can get something from it. In fact, dictators often start wars when their nations gain nothing. Motives include: a desire for military glory, revenge for personal insults, ambition, and private agreements to promote families or friends. Personal motives lead dictators and kings to start wars that are neither just nor good for the people they govern.

But there are other reasons that both nations and kings use to start wars. And some of them grow out of situations like ours.

[4-6] International Trade

France, England and America catch and sell fish. But America can sell fish in France and England at a cheaper price than their own fishermen. To try to stop us, their governments pay rewards to their fishermen and tax the American fish.

Our boats also compete with European nations in cargo transport. They don't want to see our transportation business increase because it decreases theirs. It's in their interest to limit our trade, not promote it.

Our trade with China and India has reduced the profits of several nations. We now directly import items that we used to purchase through a monopoly.

[7-9] Regional Trade

Any nation with territories on or near this continent can't be happy about our commercial growth. Our products are cheap and excellent. Our convenient location gives our hard-working merchants and ships advantages in those territories, to the displeasure of Europe.

Spain doesn't allow our boats on the Mississippi river. Britain doesn't allow our ships on the Saint Lawrence River. And neither permits commercial ships on the other waterways between them and us.

From these and some other problems, other nations may become jealous and afraid of us. They will worry about our advancement in union and power, land and sea.

[10-12] One Government Safer Than Several

Americans know these circumstances may lead to war. As will other reasons, not currently obvious. When there is an opportunity, nations find an excuse to start a war. Therefore, union and a good national government are necessary to defensively discourage war instead of *inviting* it. The best defense depends on the government, the arms, and the resources of the country.

The safety of the whole is the interest of the whole. To be safe, we must have a government, either one or many. In this context, will one good government provide more safety than any other number?

One government can use the talents and experience of the very best men. It can have a uniform policy. It can look ahead, create standard policies for the whole nation, and protect the parts.

In drafting treaties, one government will think of both the whole nation and its parts. And when a part is attacked, it can use the resources and power of the whole to defend that part. The army will have one chain of command up to the President. One army is more efficient than thirteen, or three or four independent forces.

[13-14] Example: Great Britain

Consider the British army. What if the English army obeyed the government of England, the Scot army obeyed the government of Scotland, and the Welsh army obeyed the government of Wales? If invaded, would those three governments (if they agreed at all) be able to operate against the enemy as effectively as the single government of Great Britain would?

The fleets of Britain have been praised. If we are wise, in time the fleets of America may

also be praised. But if Britain's one national government hadn't regulated navigation, making it a place for seamen to learn—if one national government hadn't used national resources and materials to form fleets—their prowess and ability would not be praised.

Let England have its navigation and fleet—let Scotland have its navigation and fleet—let Wales have its navigation and fleet—let Ireland have its navigation and fleet—let the four parts of the British empire be under four independent governments and they would each dwindle into insignificance.

[15] Divided America Would be More Vulnerable

Apply these facts to our case. Divide America into thirteen or three or four independent confederacies. What armies could they raise and pay? What fleets could they hope to have? If one was attacked, would the others fly to its aid, spend blood and money in its defense?

Or would foreign powers talk the other confederacies into remaining neutral by making false promises of peace? The confederacies would fear threatening their peace and safety for the sake of their neighbors—neighbors they may already envy.

Although such conduct is not smart, it is natural. The history of Greece and other countries has many examples. And under similar circumstance it probably would happen again.

[16] Union Would Make Better Defense Decisions

Let's say neighboring States are willing to help another State or confederacy that has been attacked. How, when, and what shall determine the amount of men and money? Who will command the allied armies? Who will settle terms of peace? Who will settle disputes and make the nations obey the decisions? There would be many difficulties.

But one government, watching over the interests and directing the powers and resources of the whole, would be free from these tricky questions.

[17] Strong National Structure Creates Strong Defense

Whatever our situation—one national government or several confederacies—foreign nations will know and will act towards us accordingly. If they see that our national government is efficient and well administered with regulated trade, a disciplined army, well-managed resources, good credit, and a free and united people, they will want to be our friends rather than our enemies.

However, if they find our government ineffectual (each State doing right or wrong, as its ruler finds convenient) or split into three or four independent republics or confederacies that probably don't get along—one inclining to Britain, another to France, a third to Spain, and perhaps played off each other by the three—what a poor, pitiful figure America will be in their eyes! She'd become a target for their contempt and their outrage.

When a people or family divides, it never fails to be against themselves.

PUBLIUS

Number 5

Greatest Threat to American Confederacies: Each Other

Queen Anne wrote to the Scot Parliament on July 1, 1706. She talked about the importance of the *Union* then forming between England and Scotland. She said, "An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be *enabled to resist all its enemies*. . ."

"We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only *effectual* way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will . . . *use their utmost endeavors to prevent or delay this union*."

When a nation is weak and has many internal disagreements, it invites danger from other nations. Union, strength, and good government protect us. There is a lot to say about this subject.

[3] Disputes Before Britain United

We may learn from the history of Great Britain without paying the price it cost them.

It seems obvious that the island should be only one nation. But for many, many years it was divided into three. They were almost always at war. Policies and jealousies kept them angry, despite their common interest in dealing with continental Europe. They hurt each other more than they helped each other.

[4] As Bordering Nations, Disputes Would Arise

If America divides into three or four nations, the same thing would happen. Instead of being "joined in affection," envy and jealousy would kill all affection. Each confederacy would pursue their own policies, not the general interests of all America. Like most *bordering* nations, they would always be either involved in disputes and war, or live with the constant fear of them.

[5-6] Confederacies Won't Remain Equal

If created, the three or four American confederacies would not be equal in strength. No human plan can guarantee equality. Geography and local resources will increase power in one confederacy and hurt progress in another. Better policy and good management would raise one government above the rest. This would destroy the relatively equal strength. Good policy, prudence, and foresight would not be uniform among the confederacies.

One confederacy would become more politically important than her neighbors, who would envy and fear her. They would do anything to decrease her importance, not help her prosper. She would notice the unfriendly feelings, lose confidence in her neighbors, and feel equally unfavorable to them. Distrust creates distrust. Nothing changes goodwill more quickly than jealousies and insinuations, whether expressed or implied.

[7] North Would Become Strongest

The North is generally the region of strength. In time, the most Northern confederacy would be the strongest. Then the southern parts of America would have the same feelings about the northern States as the southern parts of Europe felt towards the *Northern Hive*. And the northerners might be tempted to invade and exploit their luxurious and more delicate southern neighbors.

[8-9] American Confederacies Would Become Enemies

History shows that American confederacies would not become neighbors. They would neither love nor trust one another. Instead, they would suffer from discord, jealousy, and mutual injuries. We would be in the exact situation some nations wish to see us, which is *threatening only to each other*.

The confederacies would not become allies. They would not unite arms and resources in defense against foreign enemies.

[10] Different Commercial Goals

Britain and Spain are independent states. When did they ever unite their forces against a foreign enemy?

The proposed American confederacies would be *distinct nations*. Each would have commerce with foreign nations, regulated by treaties. And since their products and commodities are different and targeted for different markets, the treaties would be different.

Different commercial concerns create different interests and different political alliances with different foreign nations. The *Southern* confederacy might be at war with a nation with whom the *Northern* confederacy wants to preserve peace and friendship. Therefore, an alliance between the confederacies would not be easy to form. Or, if formed, it wouldn't be easy to fulfill.

[11] Foreign Alliances Against American Neighbors

In America, as in Europe, neighboring nations, with opposite interests and unfriendly passions, would frequently take different sides.

Because of our distance from Europe, the confederacies would fear danger from one another more than from distant nations. They would use foreign alliances to guard against each other, rather than guard against foreign dangers with alliances between themselves.

Don't forget, it is easier to receive foreign fleets into our ports and foreign armies into our country than it is to persuade or force them to depart. How many conquests did the Romans and others make under the guise of allies? What changes did they make in the governments they pretended to protect?

[12] Separation Wouldn't Guard Against Foreign Influence

Let candid men judge whether dividing America into several independent sovereignties would secure us against the hostilities and improper interference of foreign nations.

PUBLIUS

Number 6

Hostilities Between Separated States, Several Confederacies

Disunion would expose us to worse dangers than those from foreign nations—the dangers from each other

Only a dreamer would believe that if the States break apart they wouldn't frequently fight each other. Men are ambitious, vindictive, and greedy. If you expect harmony between neighboring countries, you have ignored both history and psychology.

[3] Causes of Hostility Between Nations

Many things cause nations to dislike each other. Some reasons are always present in large groups of people, including the love of power, the desire to control other people, jealousy, and the desire for equality and safety. Other reasons for hostilities between nations are more indirect. These include competition between commercial nations.

Still others come from the private passions of leaders: friendships, hatreds, interests, hopes, and fears. Rulers often abuse their public office by using the excuse of doing something good for their citizens to start a war for personal gain or other selfish motives.

[4-6] Rulers' Personal Reasons Start Wars

For example, Pericles, the ruler of Athens in ancient Greece, attacked and destroyed the city of the *Samnians* because he was angry with a prostitute; it was expensive and many of his countrymen died. He also started the *Peloponnesian* war—which ruined the Athenian commonwealth—for one or more reasons: because he was annoyed with the *Megarensians* (another nation of Greece), to avoid prosecution as a coconspirator in the theft of a statue of Phidias, to get rid of accusations of using state funds to purchase popularity.

In Britain, the ambitious Cardinal Wolsey, prime minister to Henry VIII, wanted to become pope. He hoped Emperor Charles V would help him. To gain his favor, Wolsey pushed England into war with France, putting the safety and independence of both England and Europe in danger. Wolsey was both an instrument and a dupe in Emperor Charles V's intrigues as the emperor tried to become universal monarch.

Current European policy and hostilities have been greatly influenced by Madame de Maintenon's bigotry, the Duchess of Marlborough's petty complaints and the secret plotting of Madame de Pompadour.

[7] American Example: Shay's Rebellion

History has many examples of personal motives that influence national events. People who know a little psychology need no examples. However, a recent event illustrates the general principle. If Shays had not been a *desperate debtor*, Massachusetts probably would not have been plunged into a civil war.

[8] Some People Say Republics are Peaceful

Despite history, some dreamers—or men who want to increase their personal power—make the false claim that the disunited States will always be peaceful. They say republics are naturally peaceful. They claim that commerce softens men, extinguishing the hot emotions that so often start wars. They say commercial republics will not waste themselves in ruinous wars with each other, but will promote peaceful relationships.

[9] Same Emotions Affect Republics

But isn't it in the interest of all nations to be peaceful? If this is in their best interest, have they pursued it?

No. Passions and self-interest have more control over human conduct than policy, usefulness, or justice. Republics are as addicted to war as monarchies. Men administer both. Bigotry, rivalships, and desires to conquer land and people affect nations as well as kings. Legislatures feel the impulses of rage, resentment, jealousy, avarice, and other violent emotions.

A republic is influenced by the passions of the people governing it. Commerce only changes the objects of war. The love of wealth is as strong a passion as power and glory. Commercial motives have started as many wars as the desire for territory.

[10-17] Historical Examples

Athens and Carthage were commercial republics, yet they often fought wars. Sparta, another republic, was little more than an army camp. And the Roman republic never got tired of war and conquest.

More recently, Venice was in several wars of ambition. Finally, Pope Julius II founded the League of Cambray that defeated Venice.

Holland, until overwhelmed by debt and taxes, led and participated in European wars. They fought England for control of the sea. And they were opponents of Louis XIV.

Britain has been commercial for a long time and one branch of the national legislature is composed of representatives of the people. Nevertheless, few nations have been in more wars, frequently started by the people.

On various occasions, Britain's representatives have dragged their monarchs into war or went against the monarch's desires and the best interests for their country and continued a war. The long struggle between *Austria* and *Bourbon* is an example. The English dislike of the French and the ambition and greed of the Duke of Marlborough lengthened the war well beyond sound policy and the opposition of the royal court.

The wars of England and France have been greatly influenced by the desire to protect or increase trade.

A recent war between Britain and Spain started because British merchants were trading illegally with the Spanish Main. The Spaniards cruelly retaliated against British citizens. After a while, both the innocent and guilty were punished. English merchants complained, spreading the desire for violence through the nation, the House of Commons, and the ministry. Letters of reprisal were granted and war started. Consequently, the alliances formed only 20 years before, with hopes of long-term peace, were overthrown.

[18-20] We Are a Long Way From Perfection

Why should we expect peace if the States separate? Imperfections, weaknesses, and evils are part of every society. Isn't it time to awake from the deceitful dream of a golden age? We, as well as all people in the world, are a long way from the happy empire of perfect wisdom and perfect virtue.

Let the extreme depression over our national dignity, the inconveniences felt everywhere from a lax and ill government, the revolt within North Carolina, the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare—!

Generally, mankind behaves quite differently than predicted by those trying to lull asleep our fears of discord and hostility if the States disunite. History shows that nearness makes nations natural enemies.

Abbe de Mably says: NEIGHBORING NATIONS are naturally enemies of each other, unless their common weakness forces them to combine in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that closeness causes, extinguishing that secret jealousy that makes all states want to aggrandize themselves at the expense of their neighbors.

This passage both points out the EVIL and suggests the REMEDY.

PUBLIUS

Number 7

Potential Reasons for Wars Between Disunited States

Some people condescendingly ask: if the States disunite, what reasons would they have to make war on each other? A full answer is: the same reasons that have started the wars in other nations.

Unfortunately for us, however, the question has a more specific answer. Even under the restraints of a federal constitution, we have felt the effect of the differences between us. We can figure out what would happen if those restraints were removed.

[2] Disputes Over Territory

Arguments over land cause the greatest number of wars between nations. The disunited States would fight over land.

A large amount of land within the United States remains unsettled. If the Union were dissolved, all the States would make claims on the land.

Some land was not granted at the time of the Revolution and remains the subject of serious disagreements. The States that controlled their colonial governments claim them as property; other States say that land rights granted by Britain no longer existed after the founding of the Union.

Great Britain gave up the Western territory in the peace treaty. To settle the disputes over it, Congress had the States give it to the United States. If the Confederacy broke up, States that had given up the property would probably want it back. The other States would insist on a part, arguing that the territory was acquired by joint efforts of the Confederacy.

Even if all the States agreed to share in this common territory, the question of how to divide it would remain. Agreement between the States would be difficult.

[3] Recent Territorial Disputes

We should fear that sometimes war would decide the differences over western territory.

The dispute over Wyoming land reminds us not to expect easy answers. Under the Articles of Confederation, Connecticut and Pennsylvania asked a federal court to decide. The court decided in favor of Pennsylvania. But Connecticut was unhappy. After negotiation, some other land was given to Connecticut. I'm not saying that Connecticut did anything wrong. She thought she deserved the land. States, like people, don't like decisions where they lose something.

[4] States Ally Against Each Other

When New York and Vermont disagreed, other States got involved. They were afraid that New York would become too powerful. If New York had tried to assert its rights by force, a war between the States might have started.

Some States seemed to want to divide New York into smaller States. New Jersey and Rhode Island supported Vermont's independence; Maryland agreed until it looked like Canada and Vermont were allies. If the States disunited, there could be more disagreements like these.

[5] Commerce Can Create Controversies

Commerce is another source of controversy. Each State or separate confederacy would have a unique commercial policy with different taxes and product incentives. Commerce in this country has always been based on equal privileges. The change would make some States unhappy.

Injuries are caused by legitimate and justifiable acts of independent sovereignties with different interests.

America's enterprising businesses use every opportunity to improve. If trade regulations are made that only benefit one State, the other States probably won't obey them, which would lead to arguments, new regulations aimed at hurting the other States, then wars.

[6] Import Duties Create Negative Feelings About New York

Some States would make commercial laws that make other States involuntarily subservient. The situation of New York, Connecticut, and New Jersey is an example.

New York put a tax on imports from Connecticut and New Jersey. Consumers in the two exporting States pay a large part of these taxes. New York will not voluntarily give up this advantage. How long would Connecticut and New Jersey pay taxes that only benefit New York? Would New York survive with the weight of Connecticut on one side and New Jersey on the other?

[7] Conflict over Discharge of National Debt

The Union's public debt would also cause conflict between the separate States or confederacies. Both the decision about how much each State should pay and paying the debt would produce anger. Some States either don't know the importance of national credit or they don't want to pay the nation's debt. In other States, the nation owes the citizens more than their State's proportion of the national debt.

States that owe money would procrastinate; citizens that are owed money in other States would become resentful. Arguments and excuses would delay making the decision about how much each State should pay. Foreign nations would demand the money owed to them. And the peace of the States would be in double jeopardy from external invasion and internal quarrels.

[8] Hostilities over Paying National Debt

Suppose a decision about each State's debt payment was made. It would be difficult for some States to pay and they would want their share lowered. The other States would refuse to have their part of the debt increased. Their refusal would give the complaining States an excuse to withhold their contributions, creating bitter arguments.

Even if the division of the debt payment was equal in principle, some States would not pay for several reasons: lack of resources, financial mismanagement, governmental mismanagement, and the reluctance of men to postpone purchases by using money to pay debts.

Delinquencies, from whatever causes, produce complaints, recriminations, and quarrels. Mutual financial obligations that don't yield an equal benefit disturb the tranquility of nations. It is as true as it is trite: men differ over nothing so quickly as the payment of money.

[9] Conflicts Between State Laws

Laws that violate private contracts and injure citizens of a State are another source of hostility. State codes have often been disgraced. If legislatures are unrestrained by a national government, they will not behave more fairly.

For example, Connecticut wanted to retaliate against Rhode Island because of offenses by the Rhode Island legislature. Under other circumstances, a war, not of *paper* but of the sword, would punish awful breaches of moral obligation and social justice.

[10] Dangers of State Alliances with European Nations

Preceding papers explained why States or confederacies would probably ally with different foreign nations and how such alliances would hurt the peace of the whole. If America is not connected at all or only by the feeble tie of a league, foreign alliances will gradually entangle it in all the harmful labyrinths of European politics and wars. And the arguments between the American States would be used by nations who are equally the enemies of them all. *Divide et impera* (Divide and command) must be the motto of every nation that either hates or fears us.

PUBLIUS

Number 8

Disunited States Threat to Each Other

Let us assume the Sates disunite and alliances are formed from the wreck of the Union. All neighboring nations face peace and war, friendship and enmity. We would face the same thing.

[2] Armies and Forts Block Invasions

At first, war between the American States would cause more distress than in countries with long military establishments. Although they damage liberty and the economy, the presence of disciplined armies in Europe make sudden conquests difficult.

Fortifications also delay conquests. The nations of Europe are encircled by fortified places. Campaigns against armed forts waste invasion resources. Obstacles occur at every step. Their strength is exhausted. The invader's progress is delayed. Formerly, an invading army got to the heart of a country almost as quickly as news of its approach reached its rulers. Now, a small force of disciplined defensive troops block larger invasions.

In Europe, whole nations are no longer conquered. Instead, towns are taken and returned, battles decide nothing. There is much effort and little acquisition.

[3] Disunited States Would Lead to Conquests, Ruin

In this country, the opposite would happen. The separated States would postpone military spending. There are no forts, leaving State frontiers unguarded. Populous States would easily overrun less populous neighbors. However, conquests would be difficult to keep. Random wars would be followed by PLUNDER and devastation. Our military actions would create disasters for our citizens

[4] Military Establishments Destroy Freedom

This is not an exaggeration. But the situation would soon change.

Safety from external danger is the most powerful motivator of national conduct. After a time, even the deep love of liberty will diminish. War destroys life and property, and creates continuous state of danger. For security, even nations that love liberty must build institutions that tend to destroy their civil and political rights. To be safer, they will risk being less free.

[5-7] Arms Race Between Confederacies

If the Union dissolves, standing armies will be used. Frequent wars and constant fear require a trained military.

The weaker States or confederacies—those with a smaller population and less money—would build a stronger defense, including disciplined standing armies and military fortifications. Their executive branch of government would be strengthened, evolving towards a dictatorship. During war, executive power increases at the expense of legislative authority.

Small nations with less natural strength but vigorous governments and disciplined armies, often triumph over larger nations or nations with greater natural strength.

The other States or confederacies would quickly use military means to get back what they lost. In a little time, the same type of tyrannies that hurt Europe will be established in this country.

This is the way people and nations naturally act.

[8] Greece Nations of Soldiers; America Commercial Nation

The ancient republics of Greece frequently fought. Why didn't standing armies spring up? This question has several answers.

Greece was primarily a nation of soldiers. Today, people pursue profits and spend their time and money improving agriculture and commerce. Capitalism is incompatible with a nation of soldiers. The growth of revenue and industry has completely changed how a nation defends itself. Professional, disciplined armies, rather than citizen-armies (militias), are used when there are frequent wars.

[9-10] No Fear of Invasion, Little Interior Defense

When a country is seldom exposed to military invasions, the rulers don't have any excuse to keep armies as large as in a nation that is easily invaded. And armies are rarely used for interior defense, so the people are in no danger of living under military rule. Citizens'

rights and freedoms remain strong because there are few military emergencies. The civil state remains strong, not corrupted by the activities of a military state. The community is stronger than the small army.

Since the citizens don't need to be protected by the military and they don't live under oppressive military rule, they neither love nor fear soldiers. The citizens view soldiers as a necessary evil and are ready to resist any attempt to limit their civil rights.

The executive branch of government may use the army to suppress a small faction or an occasional rebellion. But it won't be able to stop a rebellion staged by the united efforts of all the citizens.

[11] Large Military Decreases Civil Rights

In a country always afraid of war, the opposite happens. The government must always be prepared, needing armies large enough for instant defense. The constant need for their protection makes soldiers more important and reduces the citizens' freedoms. The military state becomes elevated above the civil.

Territories are often the theater of war. The inhabitants are subjected to frequent limitations on their rights, weakening their sense of those rights. Gradually, the people begin to consider soldiers not only as their protectors but also as their superiors. The transition to seeing them as masters is not difficult. Once it has happened, however, it's difficult to get the people to effectually resist usurpations.

[12] Britain Doesn't Need Large Army

Great Britain is seldom exposed to internal invasions. Since it is an island and has a powerful navy it doesn't need a large army within the kingdom. It only needs a force large enough to hold invaders at bay until the militia can be raised. Neither national policy nor public opinion has tolerated a lot of domestic troops. And it has been a long time since an internal war has produced a military state.

Britain being an island has helped preserve its liberty, in spite of corruption. If Britain was on the continent, she would need internal military establishments as big as other European powers. She, like them, would probably be a victim of a dictator.

The island might be enslaved from other causes, but not from the small army that is usually kept within Britain.

[13-14] United, States Insulted from Danger

If we're wise enough to preserve the Union, we may enjoy the advantage of an insulated situation for a long time. Europe is a great distance from us. Her neighboring colonies will probably continue having so little strength that they won't be dangerous. Therefore, our security will not require extensive military establishments.

But if we disunite, our liberties would be at risk. We would need armies to defend against the ambition and jealousy of each other.

This concern is solid and weighty. It deserves serious and mature consideration by all men. If they think about it and look at all its consequences, they will give up trivial objections to a Constitution because if the Constitution is rejected, the Union will probably end. The ghost that flit before the sick imaginations of some opponents of the Constitution would quickly be replaced by more substantial forms of dangers: real, certain, and formidable.

PUBLIUS

Number 9

Constitution Refines "Confederate Republic" Form

A strong Union will reduce domestic violence and revolts, preserving the peace and liberty of the States.

The petty republics of Greece and Italy were filled with horror. Revolutions produced the extremes of tyranny and anarchy. Short-lived calms were followed by bloody rebellions. People who seem to want a dictator use this historical example as an argument against both the republican form of government and the principles of civil liberty. They say a free government can't be ordered. And they maliciously attack its supporters.

Fortunately, a few glorious governments were founded on liberty. They disprove the ugly lies. I hope America will be the solid foundation of other governments, no less magnificent.

[3] Republican Government Improved

Like most sciences, the science of politics has improved. We now understand the importance of principles that were either not known or not understood to the ancients: dividing government's power into several separate parts or branches, legislative balances and checks, courts with judges who have life-time appointments and can only be removed for bad behavior, and the people electing legislative representation. These principles save the good parts of republican government and reduce its flaws.

Another improvement is enlarging the size, both of a single State or the number of States in a confederacy. We will immediately study the latter. The size of a single State will be examined in another place.

[4-6] Republic Doesn't Need to be Small

A confederacy guards the peace of states by suppressing internal faction and increasing external security.

Opponents of the Constitution often talk about Montesquieu saying that a republican government requires a small territory. They have taken his comments out of context. When Montesquieu recommends a small area for republics, he's referring to dimensions much smaller than almost every one of our States. Therefore, if we accepted this idea, we would have to either become a monarchy or split ourselves into an infinity of little, jealous, clashing nations, and the miserable objects of universal pity or contempt.

Some opponents of the Constitution seem to know about this problem and have even said that the large States can be divided. Doing this would create enough political offices for men not qualified to hold positions beyond the narrow scope of personal intrigue, but it could never promote the greatness or happiness of the American people.

Montesquieu's theory only dictates a reduction of the SIZE of the largest MEMBERS of the Union. It does not argue against them being joined under one confederate government.

[7-13] Montesquieu Describes Confederate Republic

Montesquieu doesn't oppose a Union of the States. He explicitly regards a CONFEDERATE REPUBLIC as suitable. It combines the advantages of a monarchy with republicanism.

In the *Sprit of Laws*, book 9, he says mankind very probably would have always lived under the government of a single person if a constitution had not been developed with the internal advantages of a republic and the external force of a monarchy, that is, a CONFEDERATE REPUBLIC.

In a confederate republic, he continues, several *States* agree to become members of a large *one.* It can add new States until it is powerful enough to provide security for the united body. This kind of republic can withstand external force and internal corruption.

He explains that if one man attempted usurping supreme authority, he wouldn't have equal influence in all the States. If he had too much influence in one, it would alarm the rest. If he subdued a part, the rest would oppose and overpower him.

A popular rebellion in one State would be quelled by the others. If abuses creep into one part, he argues, the other parts can reform it. The State may be destroyed on one side and not on the other. The confederacy can be dissolved and the States remain sovereign. Since the government is composed of small republics, it has internal happiness. And it has the advantage of a large monarchy in external situations.

[14] Union Represses Domestic Faction

This should explain Montesquieu's writing on the size of republics. He also writes about the tendency of the Union to repress domestic faction and rebellion.

[15-17] Constitution Refines Confederate Republic Form

Some people say that a confederacy restricts its authority to the member States in their collective capacities [legislation for States], without reaching the individual citizens. They think the national government should not be involved with any part of internal administration, and that the States have equal suffrage.

This is an arbitrary definition. Neither principle nor precedents support it. Historically, many confederate governments had these characteristics, but there have been many exceptions. There is no absolute rule on the subject. On the other hand, legislation for States causes incurable disorder and a useless government.

A *confederate republic* is defined as "an assemblage of societies" or an association of two or more States into one nation. The extent, modifications, and objects of federal authority are discretionary. If the member States remain separate, constitutionally existing for local purposes, and even if they are subordinate to the authority of the union, it will be a confederacy.

The proposed Constitution doesn't abolish the State governments. It makes them part of the national government with direct representation in the Senate. They will have certain exclusive and important sovereign powers. This corresponds with the idea of a federal government.

The Lycian confederacy had 23 CITIES or republics. The largest had *three* votes in the COMMON COUNCIL, the middle had *two*, and the smallest *one*. The COMMON COUNCIL appointed judges and executives of the CITIES. This was invasive control of the CITIES. If local jurisdictions have any exclusive authority, it should be the appointment of their own officers. Yet Montesquieu says, "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia."

Therefore, we realize that Montesquieu had not thought of the important corrections that are part of the proposed Constitution.

Publius

Number 10

Large Republic: Best Control of Effects of Faction

A well-constructed Union is the best way to control the violence of faction. Faction is a dangerous vice that occurs in popular governments. We welcome a plan that provides a cure for faction without violating the principles of liberty.

Unstable and unjust government agencies and departments kill popular governments. Opponents of the Constitution use this excuse in their most specious arguments.

The American State constitutions improve the popular governing models, both ancient and modern. They were expected to remove the danger, but they don't.

Our most virtuous citizens, men devoted to personal liberty, complain that our governments are too unstable. They say rival parties disregard the public good. Decisions are often made by an overbearing majority rather than by justice and the rights of the minority party.

Many of our worst misfortunes can be blamed on government—specifically, the increasing worry about the nation's debt and fear of losing personal rights. This happens when we distrust the unjust, factious spirit that is part of our government administration.

[2] Faction Defined: Group Acts Against Community Interests

A faction is a group of citizens, either a majority or minority, whose actions are motivated by a passion or interest that hurts the rights of other citizens or goes against the best interests of the community.

[3-6] Faction Cure: Remove Causes or Control Effect

Faction can be cured two ways: remove its causes or control its effects.

To remove its causes either liberty must be destroyed or every citizen must have the same opinions, passions, and interests.

The first remedy is far worse than the disease. Liberty is to faction what air is to fire. Without the nourishment of liberty, faction instantly dies. But abolishing liberty because it nourishes faction is as silly as the wish to annihilate air because it gives fire its destructive energy.

The second cure is as impractical as the first is unwise. As long as man's reasoning is fallible and he's free to use it, different opinions will be formed. As long as a connection between reasoning and self-love exists, opinions and passions will influence each other. And passions will sway opinions.

Property rights originate from the people. But men's abilities are diverse, creating an insurmountable obstacle to equality of acquisitions. Protection of these abilities is government's primary function. Because government protects different and unequal abilities to acquire property, the people end up owning properties of varying value and kind. This diversity of property ownership divides society into groups with different interests and concerns.

[7] Faction: Inherent in Human Nature

Therefore, faction is part of the very nature of man. Differing opinions on religion and government, the ambitions of leaders, and human passions have divided mankind into parties and inflamed animosity. People tend to oppress each other, not cooperate for their common good. Frivolous differences become excuses to kindle unfriendly passions and excite violent conflicts.

The most common source of factions is the unequal distribution of property. Property owners and people without property have different interests. Likewise, creditors and debtors.

Civilized nations have property owners, manufacturers, merchants, bankers and many less defined occupations creating different groups of people with different views and interests. Regulating these conflicting interests is the principal task of modern legislation. Therefore, factions are a part of the ordinary operations of government.

[8-9] Legislators: Both Advocates, Parties to Causes

No man is allowed to be a judge in his own cause. His interest would bias his judgment and probably corrupt his integrity.

For even greater reasons, a group of men are unfit to be both judges and litigants at the

same time. Yet legislative acts are basically judicial determinations, not about the rights of individuals, but about the rights of groups of citizens. Yet legislators are both advocates and parties to the causes they determine.

If a proposed law concerns private debts, creditors and debtors are the parties. Justice should balance between them. Yet legislators, who are both creditors and debtors, are the judges. The most numerous group or, in other words, the most powerful faction will prevail.

Should foreign manufacturers be restricted to support domestic manufacturers? Landowners would say no; manufacturers would say yes. Neither would probably use justice and the public good as their only guide.

Determining the amount of taxes on different types of property requires impartiality. Yet no legislative act has a greater opportunity and temptation for the majority party to trample on the rules of justice. With every dollar they overburden the minority party, they save a dollar in their own pockets.

It is naïve to say that enlightened statesmen will adjust the different interests, making them all subservient to the public good. First, enlightened statesmen will not always be at the helm. Second, indirect and future effects must be considered. These less obvious consequences will rarely prevail over the immediate interest one party may have in disregarding the rights of another or the good of the whole.

[10] *Effect* of Faction Must Be Controlled

Obviously, the ***causes*** of faction cannot be removed. Its ***effects*** must be controlled.

[11] Majority Faction: Downside of Popular Government

If a faction isn't a majority, the majority can defeat its sinister views. The minority faction may clog the government and agitate society, but under the Constitution it can't carry out its plans and hide its violence. When a faction is a majority, it can sacrifice public good and the rights of other citizens to their passions and interests.

We want to secure the public good and private rights against the danger of a faction while preserving a popular government. And we want to rescue popular government from the disgrace of shameful conduct and recommend it be evaluated and adopted by mankind.

[12] Prevent Majority Faction's *Passions* Or *Actions*

To control the effects of faction, either the negative passions and interests in a majority faction must be prevented or the faction must be unable to carry out plans of oppression.

If the desire and opportunity coincide, neither moral nor religious values can be relied on to provide enough control. Morality doesn't control the injustice and violence of individuals. And its ability to control bad behavior decreases as the number of people involved increases. In other words, as the need for morality increases, its effectiveness decreases.

[13] Pure Democracy: Magnifies Violent Effects of Faction

In a pure democracy, citizens assemble and administer the government in person. Democracy doesn't cure the harm caused by faction. Usually, the majority will feel a common passion. There is nothing to stop the desire to sacrifice the weaker party or obnoxious individual.

Therefore, pure democracies are always turbulent. They don't secure personal or property rights. They have short lives and violent deaths. Some political theorists think that after people become politically equal, their possessions, their opinions, and their passions will also be equal. This doesn't happen.

[14-16] Republic vs. Pure Democracy

A republic—a government administered by representatives of the people—promises the cure we are seeking. We will examine the differences between a republic and a pure democracy. This will show both the cure and why the Union makes it more effective.

A republic and a democracy differ in two ways: First, in a republic, the citizens elect a small number of governmental delegates. Second, a republic can have more citizens living across a larger country.

Representation refines public views by passing them through the delegates. The representatives' wisdom may see their country's true interests. Their patriotism and love of justice will make them less likely to sacrifice their country. Representatives of the people may do a better job of looking out for the public good than if all the people gathered and spoke for themselves.

On the other hand, the opposite effect may happen. Men with local prejudices or sinister plans may use intrigue or corruption to be

elected, and then betray the interests of the people.

Will small or large republics elect better guardians of the public good? For two reasons, large republics do.

[17-19] Representative/Constituent Ratio

First, in a small republic there still must be enough representatives to guard against the plots of a few. In a large republic, the number must be limited to guard against the confusion of a multitude. The proportion of representatives to their constituents is larger in the small republic. If the proportion of qualified people is the same in a large as a small republic, the large republic will have more options and a greater probability of a good choice.

In a large republic, each representative is chosen by a greater number of citizens. It will be more difficult for unworthy candidates to successfully win through election fraud. And with wide voter freedom, elections will more likely center on men who possess the most merit and highest character.

When a representative has too many constituents, it will be difficult for him to know all the local issues. When a representative has too few constituents, his worry about local issues will make him unfit to understand and pursue national issues. The federal Constitution forms a good combination. The national issues are referred to the national government; local issues are referred to State legislatures.

[20] Large Area: Conspiracy Harder

Second, a republic can have more citizens and a larger territory than a democracy. This makes raising a damaging amount of support for a faction more difficult.

A small society has fewer people, parties and interests. In a small community, it is easy for a faction to become a majority and execute oppressive plans.

A large society has a variety of people, parties and interests. It is less likely that a majority will invade the rights of other citizens. Even if a common motive exists, it will be more difficult for those holding it to discover their combined strength and act in unison with each other. When unjust or dishonorable purposes exist, communication is limited by distrust in proportion to the number whose concurrence is necessary.

[21] Union as Control of Effects of Faction

Hence, a republic controls the effects of faction better than a democracy. And a large republic controls it better than a small republic. It may have more enlightened, virtuous representatives who are above local prejudices and schemes of injustice. There will be a greater variety of parties, so one party can't outnumber and oppress the rest. An increased variety of parties increases the Union's security. A large republic has more obstacles to the secret wishes of an unjust majority.

[22] Factious Passions: Effect on Union

Factious leaders may kindle a flame within their States, while not able to spread a conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy. But the variety of sects dispersed over the entire country secures the national councils against this danger. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less able to pervade the whole Union, just like a malady is more likely to taint a specific county or district than an entire State.

[23] Positive Effects of Size, Structure of Government

In the size and proper structure, therefore, we see that a republic cures the most common diseases of republican government. And according to the degree of pride we feel in being a republic, we will cherish and support the character of Federalists.

PUBLIUS

Number 11

Benefits of Strong Union to American Commerce

The Union is important to American commerce, both trade with foreign countries and each other. Most men who understand the subject agree.

[2] European Policies Restrain Our Trade

America's adventurous commercial spirit already worries several European maritime powers. They worry about our cutting into their shipping trade, which supports their naval strength.

Nations with colonies in America worry about our abilities. A Union with the resources to create a powerful navy is a threat to their American territories.

Europe will encourage the States to disagree, which could deprive us of an ACTIVE COMMERCE in our own ships. This would prevent our interference in European navigation, allow Europe to monopolize the profits of our trade, and clip the wings by which we might soar to dangerous greatness. The European policy of limiting our commerce could probably be traced back to the governments of Europe.

[3-4] Uniform Commercial Regulations

If we remain united, we can counteract policies that hurt our prosperity. Nation-wide regulations may force foreign countries to bid against each other for our markets. Our market of three million people—with a rapidly growing population dedicated to agriculture—is important to any manufacturing nation. Our trade and navigation will be dramatically different if we use our own ships rather than be forced to use the ships of another country to indirectly bring its products to and from America.

For example: We currently have no commerce treaty with Great Britain. Suppose the American government could exclude Great Britain from all our ports. How would this affect her politics? Could we negotiate valuable commercial privileges from her?

Some people say that prohibitions would not change our trade with Britain because she could use the Dutch to continue trading with us. Holland would buy and transport British goods to our markets. But British navigation would be seriously hurt. And the Dutch would get the primary profits. Paying for freight would reduce Britain's profit. The British circuitous supply line would encourage competition among other nations, increasing the price of British commodities in our markets.

This situation would be disadvantageous to Britain. After adding to this argument the British habit of trading with America and the importance of the West India Islands to her, Britain would relax her present system.

[5-7] Navy Will Help Commerce

A federal navy would influence European commerce. If the Union continues, it will create a navy. It might not be a great navy but it could change the outcome of a struggle if it allied with either side of a conflict, especially in the West Indies. A few ships, reinforcing either side, could decide the fate of a campaign that had halted trade. We could bargain for commercial privileges and sell supplies. We could become the arbiter of Europe in America.

But if we disunite, the rivalries between us will produce a stalemate, frustrating our great natural advantages. Our commerce will fall prey to the meddling of warring nations. They'll plunder our property. Neutrality is respected only when defended by adequate power; a weak nation forfeits even the privilege of being neutral.

A vigorous national government will deflect European alliances that attempt to restrain our growth because their success would be impractical. We would create an active commerce, extensive navigation, and a flourishing navy.

[8-9] If States Disunited, Europe Will Dominate Our Commerce

But if we were disunited, European coalitions might be successful. Powerful maritime nations could dictate the conditions of our political existence.

They'd want to be our carriers and prevent us from becoming theirs. They'd probably ally, destroy our navigation, and confine us to PASSIVE COMMERCE. We would have to accept the first price for our commodities. Our profits would be snatched from us to enrich our enemies and persecutors. American merchants and navigators have an unequaled spirit of enterprise and an inexhaustible mine of national wealth. It would be stifled and lost. Poverty and

disgrace would spread across a country that could have been the envy of the world.

The American Union has some very important trade rights—the fisheries and the navigation of Western lakes and the Mississippi. If the Union dissolved, the future of these rights would come into question.

Spain's attitude towards the Mississippi needs no comment.

France and Britain view our fisheries as important to their navigation. Since we can undersell those nations in their own markets, they would ban our dangerous competition.

[10-11] Commerce Improves Navigation

As the United States improves its navigation, it will become a universal resource, which will help when we build a navy.

A NAVY. Union will contribute to this great national objective. Every institution grows and flourishes in proportion to the quantity and extent of the resources concentrated towards its formation and support.

A United States navy is more attainable than a navy of any single State or partial confederacy. Different areas of the country have the resources. The southern States furnish an abundance of certain naval stores—tar, pitch, and turpentine. Their wood is more solid and lasting. Some Southern and Middle States have high quality iron. The Northern States will supply most of the seamen.

Naval protection of our commerce is important; maritime commerce will help our navy.

[12] Union Promotes Commerce

Unrestrained commerce between the States will advance the trade of each. The free circulation of commodities will replenish the veins of commerce. The States will have a diversity of products. When the staple of one State fails from a bad harvest, it can get the staple of another.

Both the variety and value of export products contribute to an active foreign commerce. Trade competitions and market fluctuations mean foreign commerce can be conducted on better terms with a large number of materials of a given value than a small number of the same value. Specific articles may be in great demand at certain periods and unsalable at others. But if there were a variety of articles, rarely would they all be unsalable.

Speculative traders understand the validity of these observations. The aggregate of United States commerce would be more favorable than that of the thirteen States without union or with partial unions.

[13] Disunity Creates Commercial Barriers

Some may argue that whether the States are united or disunited, interstate commerce would achieve the same ends. But disunity would hurt commerce. A unity of commercial and political interests can only be achieved through a unity of government.

[14] Union Eliminates European Domination

We should aim for a position of dominance in American affairs.

The world is politically and geographically divided into four parts, each with a distinct set of interests. Unhappily for the other three, Europe, using arms and negotiations, by force and fraud, has, to varying degrees, extended her dominion over them all. Africa, Asia and America have successively felt her domination. Europe's superiority has tempted her to crown herself Mistress of the World, considering the rest of mankind as created for her benefit.

Some philosophers have said European's have physical superiority. And they have gravely asserted that all animals, including humans, degenerate in America. They say that even dogs cease to bark after having breathed our atmosphere for a while.

For too long, facts have supported these European pretensions. We must vindicate the honor of the human race and teach that assuming brother moderation. As a Union, we can do it. Disunion will add another victim to Europe's triumphants.

Let Americans refuse to be the instruments of European greatness! Let the thirteen States, as a Union, erect one great American system with the superiority to control all transatlantic force or influence, and dictate the terms of the connection between the old and the new world.

PUBLIUS

Number 12

Union Promotes Revenue

Staying united will promote revenue interests.

[2] Commerce Benefits Agriculture

Commerce produces the most national wealth. Therefore, it's an important political concern.

Money, the object of human avarice and enterprise energizes industry. The hard-working merchant, farmer, mechanic, and manufacturer look forward to this reward for their work.

Farmers and merchants used to be rivals but now their interests are interwoven. Commerce increases land values, improves the movement of agricultural products, stimulates the cultivation of land and increases the quantity of money in a State. Therefore, commerce helps agriculture, which creates many commercial products. It's astonishing that so simple a truth ever had an adversary. Jealousy can lead men astray from the plainest truths.

[3-6] Commerce Increases Ability to Pay Taxes

A country's ability to pay taxes is related to the quantity and turnover of money in circulation. Commerce contributes to these objectives, making payment of taxes easier.

Germany is fertile, cultivated and populous. And it has the best gold and silver mines in Europe. But the monarch's revenues are limited because commerce hasn't been supported. Several times he's been compelled to borrow money from other nations. And he is unable, using his own resources, to sustain a long war.

In America, direct taxation is impractical. Despite new tax laws and new collection methods, the States' treasuries remain empty. When trade decreases, money becomes scarce. Extensive tax collections have been impossible and the State legislatures have learned the folly of attempting them.

Similar situations happen in other countries. In Britain, a rich nation, direct taxes are easier to collect. And the vigorous British government makes it more practical than in America. Yet most of Britain's national revenue comes from indirect taxes, imposts and excises like import duties.

Clearly, America must depend on revenue from import duties for a long time. The people find excise taxes intrusive and dictatorial; farmers will pay only very limited taxes on their houses and lands and personal property is a nearly invisible asset. But taxes on consumption are nearly imperceptible.

[7] Union Improves Tax System

We must adopt a government that will improve and extend our valuable resources. Without a doubt, a general Union is the best system. As this helps commerce, State revenues will increase. A Union simplifies regulations and makes collecting duties easier. All States would charge the same amount of duties. And the government would increase the rate without prejudice to trade.

[8-9] Illicit Trade Between States Easy

The closeness of the States, the intersecting rivers, the bays, the ease of communication in every direction, the same language and manners, and similar commercial habits make illicit trade easy. The commercial regulations of each State are frequently evaded.

If the States separated, duties would have to be low to avoid the temptations of illicit trade. European nations guard the land and water avenues into their countries. France uses more than twenty thousand army troops to enforce their commercial regulations against contraband. Yet people still find ways to smuggle goods

Preventing illicit trade over an inland border is immensely difficult. If the States disunited, it would be very difficult to collect duties. And the increased and flexible powers that the patrols would need are intolerable in a free country.

[10] Easy to Guard Atlantic Coast

However, since most of our foreign commercial transactions are only on ONE SIDE—the ATLANTIC COAST—if all the States were under one government, there would be only one side to guard. Vessels filled with valuable cargoes from foreign countries would rarely choose the danger of unloading prior to coming into port. They would dread dangers of both the coast and discovery, before and after arriving at their final destination. Normal vigilance would prevent substantial tax evasion. At a small expense, a few armed vessels could be judiciously stationed at our ports. And since the national government is interested in providing against violations everywhere, each

State would tend to cooperate and make them effectual.

In this respect, too, the Union would have a natural advantage over separated States. The United States are a great distance from Europe and all other places with extensive foreign trade. If the States separated, international shipping time would be reduced to a few hours or overnight, as between France and Britain, eliminating our natural security against direct contraband with foreign countries. Contraband that travels to one State through another would be both easy and safe. The difference between direct importation and indirect, through a neighboring State in small parcels, must be obvious.

[11-12] National Duties Could be Increased

One national government could have higher duties on imports than separate States or partial confederacies. Until now, I believe duties have averaged about 3%. In France, they are estimated to be 15% and in Britain the proportion is still greater.

This country could triple the present amount. Alcohol alone, under federal regulation, might be heavily taxed, increasing the government's revenue. The United States imports about four million gallons. A shilling per gallon would produce 200,000 pounds. Alcohol would easily bear this rate. However, if the tax decreased alcohol consumption, it would be equally favorable, favorable to agriculture, the economy, the morals, and the health of society. There is, perhaps, no national extravagance like alcohol.

What will happen if we can't fully use import duties? A nation cannot long exist without revenues. Without taxes, it must resign its independence and sink into the degraded condition of a province. Therefore, revenue is necessary. In this country, if commerce isn't taxed, land must be. The people are largely opposed to internal taxation. With agriculture almost the only employment in the States, there are few objects for excise taxes and collections would be limited. Personal property is difficult to trace, so large tax contributions can only be achieved through consumption taxes. In populous cities, people would probably be oppressed into paying personal taxes, with little benefit going to the State. Outside these cities, most assets escape the eye and hand of the tax collector.

Nevertheless, funds must be gathered to pay the government's expenses. When they can't be obtained from any other source, landowners must carry the majority of the burden.

On the other hand, unless all tax sources are available when needed for government finances, the community won't have the money to remain respectable and secure. So we won't even have the consolation of a full treasury to make up for the oppression of farmers. Public and private distress will be equal. And everyone will deplore the foolishness that led to disunion.

PUBLIUS

Number 13

One National Government Cheaper Than Several Confederacies

While discussing tax revenue, economy of scale is important. If the States remain united, money saved in one area can be applied to another, requiring less tax revenue. And we will support only one national government. If the States divide into several confederacies, there will be that many national bureaucracies, each as extensive as one national bureaucracy.

Separating the States into thirteen unconnected sovereignties is too expensive and too filled with danger to have many advocates. The men who suggest dismemberment generally suggest three confederacies: the four Northern States, four Middle States, and five Southern States. A greater number of confederacies is improbable.

Each would need a government as large as the one proposed by the Constitutional Convention. When the dimensions of a nation reach a certain size, it requires the same size governmental administration as much larger territories. This can't be proven, but consider this: each proposed confederacy is approximately the size of the British island, which has a population of eight million. And the British government is probably large enough for a much larger population. Properly organized, civil power can greatly diffuse its force. Using subordinate institutions, it can reproduce itself in every part of a great empire.

Each confederation of States would require a government no smaller than the one proposed. If the States disunite, they will probably league themselves under two governments.

The four Eastern States (New Hampshire, Massachusetts, Connecticut, Rhode Island) would certainly be expected to unite. New York and New Jersey would probably join them. Even Pennsylvania would want to join the Northern league because her foreign commerce is similar. For various reasons, the Southern States may not be interested in encouraging navigation, allowing all nations to be both carriers and purchasers of their commodities. Pennsylvania may not want to join the Southern States because of their commercial policies.

No matter what happens, Pennsylvania will be a frontier. She may decide it is safest to have her exposed side turned towards the weaker power of the Southern Confederacy, rather than towards the stronger Northern power. This would give her the best chance to avoid being the Flanders of America.

Whatever Pennsylvania decides, if the Northern Confederacy includes New Jersey there is no likelihood of more than one confederacy to the south of that State.

Thirteen States will be able to support a national government better than one half, or one third, or any number less than the whole. Yet people object to the Constitution based on its expense. This objection appears to stand on mistaken ground.

There are expenses in addition to having several civil bureaucracies. People must be employed to guard the inland confederacies against illicit trade. Conflicts between the divided States would make military forts necessary. Separation would injure the economy, tranquility, commerce, revenue, and liberty of every part.

Publius

Number 14

Republic: Best for American People

We have seen that we need a Union:
to protect us from foreign danger [Numbers 3, 4, 5],
to keep the peace among ourselves [Numbers 5. 6. 7. 8],
to guard our commerce [Number 11] and other common interests,
as the only substitute for those military establishments that have subverted the liberties of the Old World [Number 8].

The diseases of faction have been fatal to other popular governments. Alarming symptoms of them have already appeared in ours. A Union is the proper antidote. [Number 10].

The only objection left to discuss is based on the large geographic area the Union embraces. There is a fear that a republic isn't practical. Adversaries of the new Constitution are using this prejudice to invent problems because they can't find solid objections.

[2] *Democracy* Must be Small

A republic does not have to be limited to a small area as discussed in paper Number 9. A republic has been confused with a democracy. Opponents have applied democracy theories to a republic. In a democracy, the people meet and administer the government in person. In a republic, representatives and agents assemble and administer it. Consequently, a democracy must be small. But a republic may be large.

[3-4] Monarchy vs. Democracy or Republic

This is an unintentional error. Some famous authors influence modern public opinions. Their writings are biased because they lived in monarchies. They stress the advantages or rationalize the evils of monarchies by comparing them to the vice and defects of a republic. To prove their points, they cite the turbulent democracies of ancient Greece and modern Italy.

The two names are confused. Observations made about a "democracy" are erroneously transferred to a "republic." One is that a republic must have a small number of people, living within a small territory.

Most ancient popular governments were democracies. Although modern Europe developed the great principle of representation, it has no example of a completely popular and republican government.

America developed representation as the basis of large republics. It is sad that some people want to block America from adopting the Constitution and showing how well the system works.

[5-6] Democracy Limits Area, Population

A democracy must be small with a limited population. All citizens must be able to assemble and administer the government.

The natural limit of a republic is the distance from the capital that allows representatives to meet when necessary to administer public affairs. Does the United States exceed this distance? During the last thirteen years, representatives of the States have been almost continually assembled. The attendance records of members from distant States have been no worse than those from the States in the neighborhood of Congress.

Let's look at the actual dimensions of the Union. According to the peace treaty, the eastern boundary is the Atlantic, the southern is the latitude of 31 degrees, the western is the Mississippi, and the northern is an irregular line running between 42 degrees and 45 degrees. The average north-south distance is 868¾ miles. The average distance between the Atlantic and the Mississippi probably doesn't exceed 750 miles.

Comparing this to the size of European countries, the republican system seems practical. Our territory is not much larger than

Germany, where representatives of the whole empire continually assemble, or than Poland, where before the recent dismemberment another national assembly was the center of supreme power. Although Great Britain is smaller, representatives from the northern extremity of the island travel as far to their national council as required of those from the most remote parts of our Union.

[7] Other Advantages of Republic

More observations will place the subject in a still better light.

[8] Federal Government: Defined, Limited Jurisdiction

First, the federal government will not have the whole power of making and administering laws. Its jurisdiction is limited to specific objectives. The State and local governments will keep their authority to care for all other concerns. If the convention proposed abolishing the State governments, there would be a reason to object. In fact, if they were abolished, self-preservation would force the national government to reinstate them.

[9] Constitution: Union, Adding States

Second, the federal Constitution's immediate objectives are securing the union of the thirteen original States and adding other States. The arrangements for territory on our northwestern frontier must be left to people whose experience will render them equal to the task.

[10] Commerce, Communication Will Improve

Third, national infrastructure improvements will make commerce easier throughout the Union. Roads will be shortened and better maintained. Places for travelers to eat and sleep will increase and improve. River navigation will extend through most of the thirteen States. Communication will become easier. Nature gave our country many rivers; engineers find them easy to connect with canals.

[11] Distant States Benefit from Union's Defense

A fourth and still more important consideration is safety. Almost every State will be a frontier. For general protection, some sacrifices will be required. States furthest from the heart of the Union may receive fewer ordinary benefits from the Union but they are immediately contiguous to foreign nations. On some occasions, they will have the greatest need for the Union's strength and resources. It may be inconvenient for them to send representatives to the capital. However, it would be harder for them to struggle alone against an invading enemy or carry the full expense of defensive precautions. So, if they get fewer benefits in some respects than less distant States, they will get greater benefits in other respects. Thus, the proper balance will be maintained throughout.

[12] American Spirit Unique in History

I know you will objectively evaluate these observations. You will never automatically allow predictions of catastrophe drive you into despair, even if they appear formidable.

America is knit together by affection. Don't listen to people who say we can no longer live together as members of the same family, guardians of our mutual happiness. Or that we can no longer be fellow-citizens of one great, respectable, and flourishing empire. Do not listen to the voice that says the government framed by the Constitution is so unusual that it has no place in even the wildest political theories and that it is impossible to establish.

No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against its poison. Kindred blood flows in the veins of Americans. They shed blood to defend their sacred rights and consecrate their Union. We should be horrified at the idea of their becoming aliens, rivals, enemies.

If we are to shun new concepts, the most rash is the idea of breaking us apart to preserve our liberties and promote our happiness.

Why should the idea of a large republic be rejected merely because it is a new concept? Americans study and respect opinions of former times and other nations. But, to their glory, they do not suffer from blind devotion for antiquity or custom. They overrule suggestions that go against their good sense, the knowledge of their situation, and the lessons of their experience.

Posterity will be indebted to the American spirit for its many innovations in favor of private rights and public happiness. The Revolutionary leaders took unprecedented

steps, establishing a unique model of government. If they hadn't, the people of the United States might currently be laboring under the weight of some form of government that has crushed the liberties of the rest of mankind.

Happily for America. Happily, we trust, for the whole human race, they pursued a new and more noble course. Their revolution has no parallel in the annals of human society. They designed a great Confederacy. Their successors must improve and perpetuate it. If their works have imperfections, we wonder at how few.

If they erred most in the structure of the Union [Articles of Confederation], this was their most difficult work. Your Constitutional Convention has made a new model. And it is that act on which you are now to deliberate and decide.

PUBLIUS

Number 15

Confederation Near Total Collapse

I have tried to show that remaining united is important to your political safety and happiness. A sacred knot binds the American people. I've showed the dangers of allowing the knot to be severed by ambition or avarice, by jealousy or misrepresentation.

I next discuss truths that have not been mentioned. This may seem tedious, but this is the most important subject to free people. There's a lot of information, and sophistry has increased the difficulties. I want to simplify the issues without sacrificing thoroughness.

[2] Current Confederacy Can't Preserve Union

I will next discuss the inability of the present Confederation to preserve of the Union.

Both opponents and supporters of the new Constitution agree this is true. Significant imperfections exist in our national system. We need to be rescued from impending anarchy.

This opinion is supported by facts, not speculation. Even the people whose bed policies have made our dangerous situation even worse reluctantly agree that there are defects in the organization of our federal government. Intelligent friends of the Union point out and regret these defects.

[3] Nation Faces Total Humiliation

We are near total national humiliation. We experience nearly everything that can wound the pride or degrade the character of an independent nation:

We violate our commitments. During the war, we borrowed money from foreigners and our own citizens, but we don't have a plan to repay them.

.We are entitled by nature and treaty to navigate the Mississippi, but Spain excludes us. It should have been surrendered a long time ago. But the Union has no troops, nor treasury, nor government to repel an aggressor. We can't even protest with dignity

Public credit is absolutely necessary in time of danger, but we seem to have decided it's impossible.

Commerce is important to our national wealth; ours has totally deteriorated.

Our government is so weak that foreign governments don't need to negotiate with us. Our ambassadors only imitate representatives of a sovereign nation.

A dramatic decrease in land value is a symptom of national distress. The price of improved land is much lower than can be accounted for by the quantity of wasteland on the market. Lack of private and public confidence has depreciated property.

Private credit supports industry. But consumer credit is at its lowest because of insecurity, not a scarcity of money.

Is there any type of national disorder, poverty, and insignificance that does not form a part of the dark list of our public misfortunes? Yet we are blessed with many natural advantages.

[4] People Responsible for Problems Oppose Constitution

The people who now oppose the proposed Constitution brought us to this sad situation. After leading us to the brink of a precipice, they seem resolved to plunge us into the abyss.

Let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us break the fatal charm that has seduced us from the paths of felicity and prosperity.

[5] Amendments Can't Correct Flaws

Our national system is defective. A remedy based on the only principles with a chance of success has been proposed. But adversaries of the federal system are very opposed to it. They admit the United States government has no energy, then fight against giving it the powers necessary to supply that energy.

They have repugnant and mutually exclusive goals. They want increased federal authority without reducing State authority. They want a sovereign Union with completely independent members.

The defects and basic flaws of the Confederation must be listed. It cannot be amended but must be completely rebuilt.

[6] Problem: Legislation For States

The basic defect of the Confederation is the principle of LEGISLATION for STATES in their COLLECTIVE CAPACITIES rather than for the INDIVIDUALS living in the States.

This principle doesn't apply to all the federal government's powers, but it is such an important part of our current system that it leaves the Union virtually powerless. For example, the United States can requisition men and money, but it has no authority to directly raise either from individual citizens. In theory, federal resolutions are constitutionally binding on the States; but in practice they are merely recommendations that the States observe or disregard.

[7] Legislation for States Ruined Confederation

This shows how fickle are. Some men still object to the new Constitution because it deviates from the principle [legislation for States] that ruined the old, a principle that substitutes the violence of the sword to the mild influence of courts and judges.

[8] Treaties: Very Limited Effectiveness

A league or alliance between nations is bound by a treaty. Treaties depend on the good faith of the parties, subject to the changes brought on by peace and war, observance and nonobservance, as the interests or passions of the signature nations dictate.

Earlier this century, treaties were very popular in Europe. Politicians hoped for benefits that never materialized. Alliances were formed then quickly broken, showing how little dependence should be placed on treaties.

[9] States as Nations: Both Allies, Enemies

If the States become separate nations then form alliances, it would be ruinous. We'd make offensive and defensive alliances, which would change as jealousies and rivalries changed. Foreign nations would promote hostile relationships between the States. And the States would be alternately friends then enemies.

[10] Federal Authority Must Extend to Citizens

But if we are unwilling to be in this dangerous situation and keep a national government, our plan must establish a government, not a league. Union authority must extend to the citizens—the only proper objects of government.

[11] Laws Enforced By Courts or Armies

A government has the power to make laws. A law needs a sanction—a punishment or penalty for disobedience. If no penalty is tied to disobedience, resolutions that pretend to be laws are nothing more than advice or recommendations.

A penalty can be only inflicted in two ways: by the courts or by military force—by COERCION of the judiciary or by COERCION of arms. The first can apply only to individual people; the last must be employed against politic groups, communities, or states.

Of course, courts have no way to directly enforce laws. Sentences may be pronounced against violators. But sentences can only be executed by the sword. If the authority is based on an alliance, every breach of the law must involve a state of war—punishment by the military. Such a situation doesn't deserve to be called a government. And no prudent man would depend on it for his happiness.

[12] Government: Control over Passions

We were once told that States wouldn't violate federal regulations, that a feeling of common interest would produce full compliance. Today, this sounds ludicrous. It betrayed an ignorance of psychology and contradicted the original reason for establishing civil power. Current pronouncements will sound just as wild after we receive more lessons from that best oracle of wisdom, experience.

Why has government been instituted? Because the passions of men won't conform to the dictates of reason and justice without constraint. Do groups of men act with more virtue than individuals? Observers of human behavior know that the opposite happens. An individual worries more about his reputation than that of his group, because blame for the detestable action of a group is divided among a number of people. A group of people is often poisoned by faction, pushing it into improper and excessive behavior that would embarrass the individuals.

[13] Sovereignties Hate Outside Control

By its very nature, sovereign power hates control and all external attempts to restrain it or direct its operations. Because of this, when lesser sovereignties are united in political associations, the smaller units tend to fly off from the common center. The origin of this tendency is the love of power. Power controlled or restrained is almost always the enemy of that power doing the controlling. Administrators of individual states in an alliance will not be always ready to execute the decrees of the general

authority. So predicts the psychology of human nature.

[14] Allies Can't Be Forced to Comply

Therefore, if the resolutions of an alliance cannot go into effect without enforcement by each member state, they probably won't be implemented at all. The rulers of the member states, whether they have a constitutional right to do it or not, will try to judge each resolution. They will consider whether the resolution is important to their immediate interests. They will then decide if enforcing the resolution will be inconvenient. These judgments will be made without knowing the national situation or the reasons for the resolution, both essential information. And local plans and objectives will also influence the decision. Every member of the alliance will repeat this process. Some states will comply and others won't, depending on the information, lack of information and prejudiced opinions of each state. The distant legislatures of the states that make up the alliance will discuss the resolution at different times. Each will have different views on the subject and they can't be forced to cooperate.

[15] States Not Supporting Confederation

Under the current Confederation, the thirteen sovereign States must agree to enforce every important resolution and law proposed by the Union. What happened was expected. The measures have not been executed. State delinquencies have grown until they have clogged and stopped the wheels of the national government. Congress is barely able to keep some kind of administration until the States can agree on a functioning replacement for the present shadow of a federal government.

Our current awful situation didn't happen overnight. At first, a few States didn't fulfill the Union's requisitions. When they didn't pay, the least delinquent States were tempted not to pay, feeling that they shouldn't pay proportionately more than other States in the Union. Why should they pay more than their share of the common burden? Each State has successively withdrawn its support. Now the frail and tottering national confederation seems ready to fall on our heads and crush us beneath its ruins.

PUBLIUS

Number 16

Legislation for States: Civil War Inevitable

Replace with Laws for Individuals

Legislation for States or communities hurts all confederate governments. Our experience shows this. Historically, the negative effects of legislation for States increase as it is used in more areas of the government.

[2-3] State Noncompliance Leads to Civil War

Legislation for states is the parent of anarchy. It is very easy for States to not fulfill their requisitions or compel their citizens to obey a federal law. Some States would become delinquent. When States are delinquent, the only constitutional remedy is force. The national government must send troops to the State to force the citizens to obey the federal law or the State to fulfill its requisitions. The consequence of using force is a civil war.

Our government might not even be able to enforce the legislation. If the national government doesn't have a standing army, it couldn't use force. And if it could use force, violations by the States would start wars between different parts of the Confederacy. The strongest force would prevail, whether it supported or defied the national authority.

A delinquency would rarely be confined to a single State. If more than one neglected their duty, they probably would unite for common defense.

If a large, influential State is delinquent, some non-delinquent States would support its cause. The delinquent State would create excuses for their delinquencies. They would use specious arguments, warning of the danger to liberty. Excuses for deficiencies would be invented to increase fears, inflame passions, and win over the good will of some non-delinquent States. For example, the ambitious rulers of a large State might not want to federal government to control them. They would become delinquent to advance their plans for personal aggrandizement. They probably would encourage the leaders of adjacent States to join them. If other States didn't become allies, they would ask a foreign nation for aid. Foreign powers would promote disagreements within the Confederacy because if it is firmly united, they will have much to fear.

Once the sword is drawn, men's passions rule over their objectivity. If the Union used force against delinquent States, resentment and wounded pride would push those States to avenge the insult or avoid the disgrace of submission. The first war of this kind would probably dissolve the Union.

[4] Complying States no Help Against Non-Complying States

The Confederacy would die violently. Currently we are close to a more natural death. The federal system must be quickly and substantially renovated.

Our history suggests that complying States would rarely support the Union's authority by going to war against non-complying States. Instead, they would identify with the delinquent members and imitate their example. Their common guilt would become their common security. Our experience has shown this.

In fact, it would be difficult to decide when to use force. A State might not send funds because they didn't want to pay. Or it might not be able to pay, an excuse they could always use. And the deception must be obvious to justify forced compulsion. Every delinquency would produce factious views, partiality, and oppression by the majority in the national congress.

[5-6] Enforcing Constitution, Legislation By Military Coercion Never Works

The States shouldn't want a national Constitution that needs a standing army to enforce ordinary laws. Yet this must happen if the Constitution doesn't extend to individuals. If practical at all, it would instantly degenerate into a military tyranny.

But it is, in every way, impractical. Union resources won't be large enough to maintain an army capable of forcing the larger States to do their duty. The Union won't have the money to even form such an army.

Even in confederacies with members smaller than our States, the principle of

legislation for sovereign states, enforced by the military, has never been worked. It has only been enforced against the weaker states. And it usually produced bloody wars, with half of the confederacy fighting the other half.

[7] National Legislation Acts on Citizens; Judiciary Enforces Legislation

If a federal government is supposed to regulate common concerns and preserve tranquility, it must have authority over the citizens. It must not need approval from the State legislatures. The judiciary must have the authority to enforce its resolutions. The federal government, like each State, must be able to focus on the hopes and fears of individuals and attract support from the strong passions of the human heart. In short, it must have the ability and the right to execute its powers as the State governments do.

[8] States Could Still Block Union's Laws

An objection to this reasoning could be raised. If any State becomes disloyal to the Union's authority, it could still use force to obstruct the execution of the Union's laws.

[9] Non-Compliance vs. Active Resistance

However, there is an important difference between NON-COMPLIANCE, and DIRECT and ACTIVE RESISTANCE. If every federal law must then be approved by each State legislature, if a State doesn't ACT (NON-COMPLIANCE) they defeat the law. It would be easy for a State to make up an excuse for neglecting its duty. State leaders might even create a temporary convenience, exemption, or advantage. It would be easy to convince the people that they were not defying the federal Constitution or ignoring a federal law.

[10] Blocking Laws Applicable to Citizens Requires Conspiracy

How could a State block a national law that applies directly to citizens? The State government would have to use violent, unconstitutional power to block them. Ignoring the law would not be enough. They would be forced to act. Everyone could see their encroachment on national rights. With a constitution able to defend itself, this action would always be hazardous. Enlightened citizens would know the difference between legal authority and illegal usurpation of authority.

Blocking a national law would require a factious majority in the State legislature, and the courts and the citizens. If judges didn't conspire with the legislature, they would rule that the State law was contrary to the supreme law of the land, unconstitutional, and void. The people are the natural guardians of the Constitution. If they didn't agree, they would support the national government. Because of the danger to them, State leaders would not lightly or rashly attempt this, except when the federal government uses its authority tyrannically.

[11] National, Local Laws Enforced Same Way

If rebellious individuals oppose the national government, the judiciary would guard the national laws from illegal or immoral behavior. The federal government could suppress a faction within a single State.

Deadly feuds sometimes spread violence through a whole nation or a large part of it. Discontent with the government would spread the violent feuds. We can't estimate how far the violent feuds would spread. When they happen, they usually become revolutions that dismember an empire. No form of government can always either avoid or control them. It is impossible to guard against events that are impossible to predict. It is stupid to object to a government because it could not perform impossibilities.

Publius

Number 17

Authority Over Individual Citizens:

Would National Government Usurp State Authority?

Some people have argued that if the federal government's laws are binding on individual citizens, the national government will become too powerful. And the Union might assume some of the State's authority. But even the greatest love of power won't tempt national administrators to take over State authorities. Ambitious people will not find the regulation of State police very attractive. People who want power are more interested in commerce, finance, negotiation, and war. And all these powers should be vested in the national government.

Local laws concern agriculture, the administration of justice between citizens of the same State, and similar concerns. These issues are not attractive to a national government. Therefore, federal politicians probably would not usurp these powers. The attempt would be difficult and the increase in power would be tiny. They contribute nothing to the dignity and importance of the national government.

[2-3] State Encroaches National Authorities

But let's say, for argument's sake, that maliciousness and lust for power would be enough for some people to want control over State issues. But the national House of Representatives, representing the people of all the States, would control such an extravagant appetite.

It is always easier for State governments to gradually take over the national powers, than for the national government to take over State powers. If the State governments are honest and wise, they will usually have more influence over the people. Therefore, all federal constitutions are always weak. They must be carefully structured to give them all the power that is compatible with the principles of liberty.

Local governments have more influence over citizens because the national government deals with issues that are rarely a part of their daily lives. State administrations deal with more common issues.

[4-5] Nearness Promotes Affection

The depth of loyalty that people feel depends on distance and how much the people or organization effects their lives. Man is more attached to his family than his neighborhood, to his neighborhood than the community at large. People of a State feel more loyal to their local governments than towards the Union, unless their loyalty is destroyed by a much better administration of the latter.

[6] Local Governments: Small, Vital Issues

Local governments will supervise a large variety of important issues that are part of the people's every day life. A list of the issues that State, county and city governments will regulate would be tedious and we would learn very little.

[7] Justice Systems Give States Power

The States administrator criminal and civil justice. This is the most powerful source of local obedience and attachment. It guards life and property, and everyone can see its benefits and its terrors. Its decisions were important to personal interests and everyday life. More than anything else, this influences the people's affection, esteem, and reverence towards the government. The State judicial systems, alone, will make the States very powerful; they could even become dangerous rivals to the power of the Union.

[8] National Focus: More Esoteric Issues

Most of the citizens won't see the national government's functions. The benefits derived from it will chiefly be watched and perceived by speculative men. Since they relate to more general interests, they will be less in touch with the feelings of people at home and less likely to inspire obligation and loyalty.

[9-10] Historical Proof

All historical federal systems have examples of this.

Although the ancient feudal systems were not confederacies, they were similar. The sovereign's authority extended over the whole nation. A number of barons or lords supervised

large areas of land. And numerous *inferior* vassals occupied and cultivated that land. Each supervising baron was like a sovereign or governor within his territory. The barons constantly opposed the national sovereign's authority and fought each other. The nation was usually too weak to preserve the public peace or protect the people against the oppressions of their immediate lords. Historians call this European era a time of feudal anarchy.

[11] Barons More Powerful than Sovereign

Sometimes the sovereign was vigorous and could successfully rule. But in general, the barons triumphed over the prince. And in many instances, the sovereign's rule was entirely thrown off and the barons created independent principalities or states.

When the king prevailed, it was usually because the barons abused their citizens. The barons were both enemies of the sovereign and oppressors of the common people. They were dreaded and hated by both. Eventually, the king and the common people united to defeat the aristocracy. If the nobles had been loyal to the common people and treated them with clemency and justice, they would have won their contests with the monarch and the royal authority would have been weakened.

[12] Scot Clans More Power than Monarch

This assertion isn't based in speculation. Scotland will furnish an example. Early on, clanship was introduced into that kingdom. The nobles and their dependents were united by ties like those within an extended family. This made the aristocracy more powerful than the monarch, until the incorporation with England subdued its fierce and ungovernable spirit with the civility already established in England.

[13] State Government like Feudal Baron

The State government in a confederacy is like the feudal barons. With this advantage, they will usually have the confidence and goodwill of the people. With this support, they will effectively oppose encroachments by the national government. It's good that they will not be able to counteract the national government's legitimate and necessary authority.

[14] Study of Historical Confederacies

We will review other confederate governments. This will further illustrate this important doctrine. Inattention to history has been the source of our political mistakes and allowed jealousy to point us in the wrong direction.

PUBLIUS

Number 18

Weaknesses That Doomed Ancient Greek Confederacies

The most important ancient confederacy was the association of Greek republics under the Amphityonic federal council. It has instructive analogies to our Confederation of the American States.

[2] Federal Powers, Responsibilities of Greek Council Members

The Greek city-states were independent, sovereign states with representatives (Amphictyons) and equal votes in the federal council. The council could propose and resolve whatever was necessary for the common welfare of Greece. It declared and waged war, acted as the last court of appeals in controversies between states, used force against disobedient members, and admitted new members. The federal council guarded the religion and immense riches of the temple of Delphos. It had jurisdiction in controversies between inhabitants and people who came to consult the oracle. Council members took an oath to defend and protect the united cities, punish violators of this oath, and inflict vengeance on sacrilegious despoilers of the temple.

[3] In Theory, Council's Power Sufficient

In theory, these powers seem sufficient. In several ways, they exceed the powers in the Articles of Confederation. For example, they could use coercion against disobedient cities. And they pledged to use this authority when necessary.

[4] In Reality, Not Enough Power

The reality was very different than the theory. Deputies appointed by the city-states administered the powers. The confederacy was weak. Disorders were followed by the destruction of the confederacy. The more powerful cities tyrannized the rest. Athens ruled Greece for 73 years. Sparta next governed it for 29 years. After the battle of Leuctra, Thebes ruled.

[5] Stronger States Tyrannized Weaker

The representatives of the strongest cities often threatened and corrupted those of the weaker, and judgment favored the most powerful party.

[6-7] Wars Didn't Even Unite City-States

Even during dangerous wars with Persia and Macedon, the city-states never acted as a unit. They were, more or less, the dupes of their common enemy. The time between foreign wars was filed with domestic convulsions and carnage.

After the war with Persia, Sparta demanded some cities be expelled from the confederacy for being unfaithful. However, the Athenians decided they would lose more partisans than Sparta, giving the latter a majority. So, Athens opposed and defeated the attempt.

This shows the inefficiency of the confederacy. Ambition and jealousy motivated its most powerful members. The rest were degraded, becoming dependent. In theory, the smaller members were entitled to equal pride and majesty; in fact, they became satellites of the larger members.

[8] Weak Federal Government; Most Danger from Other States

Abbe' Milot says that if the Greeks had been as wise as they were courageous, experience would have taught them the necessity of a closer union. And they would have used the peace following their success against Persia for reforms. Instead, Athens and Sparta, inflated by victories and glory, became rivals and then enemies. They inflicted more mischief against each other than they had suffered from Persia. Their mutual jealousies, fears, and hatreds ended in the famous Peloponnesian war, which ended in the ruin and slavery of Athens, who had started it.

[9-10] Enter as Ally; Stay as Conqueror

When a weak government is not at war, internal dissensions bring fresh calamities from abroad. After the Phocians plowed up consecrated ground at the temple of Apollo, the Amphictyonic council fined the sacrilegious offenders. The Phocians, aided by Athens and Sparta, refused to submit to the decree. On the other side, the Thebans, with some other cities, supported the Amphictyons' authority to avenge the violated god.

Philip of Macedon was invited to help the Thebans. However, he'd secretly started the

feud. He gladly seized the opportunity to execute his plans against the liberties of Greece. By his intrigues and bribes, he won over the popular leaders of several cities. Their influence and votes gained his admission into the Amphictyonic council. And by his intrigues and his arms, Philip made himself master of the confederacy.

If Greece had been united by a stricter confederation and fought to stay unified, she never would have worn the chains of Macedon. And she might have been a barrier to Rome.

[11-12] Achaean League

The Achaean league, another society of Grecian republics, supplies valuable instruction.

This union was far more intimate and organized more wisely than the preceding one. Although not exempt from a similar catastrophe, it did not equally deserve it.

[13-15] Division of Governmental Authorities

The cities in the league had municipal jurisdiction, appointed their own officers, and were perfectly equal. They were represented in the senate. The senate had the exclusive rights to make peace and war, send and receive ambassadors, enter into treaties and alliances, and appoint a chief magistrate or praetor.

The praetor commanded their armies and, with the advice and consent of ten senators, administered the government during the senate recess and shared in its deliberations when assembled. Their constitution called for two administrative praetors but in practice one was preferred.

The cities had the same laws and customs, the same weights and measures, and the same money. But it's uncertain whether this was a federal decree. The only mandate was that cities have the same laws and usages.

As a member of the Amphictyonic confederacy, Sparta fully exercised her government and her legislation. However, when Sparta became part of the Achaean league, her ancient laws and institutions were abolished and those of the Achaeans adopted. This shows the major difference between the two systems. It's too bad that a better historical record of these interesting political systems doesn't exist. If their internal structure could be studied, we would probably learn a lot about the science of a federal government.

[16] Achaean Government More Just

Historians agree that after Aratus renovated the Achaean league and before its dissolution by Macedon, its government was more moderate and just than any of the sovereign cities. Abbe' Mably says that the popular government, so tempestuous elsewhere, caused no disorders in the members of the Achaean republic, *because it was tempered by the laws of the confederacy.*

[17-18] Faction Caused Problems

However, we shouldn't hastily conclude that faction did not agitate the cities, or that subordination and harmony reigned. The contrary is shown in the vicissitudes and fate of the republic.

When the Achaean cities fell to Macedon, Philip II and his son, Alexander the Great, saved Greece. Their successors followed a different policy. Each city had separate interests and the union was dissolved. Some fell under the tyranny of Macedonian garrisons; others fell to usurpers within Greece.

Before long, shame and oppression awakened their love of liberty. Cities reunited when opportunities to cut off their tyrants were found. Soon the league embraced almost the whole Peloponnesus [southern peninsula of Greece]. Macedon saw its progress but internal dissensions hindered her from stopping it.

All Greece seemed ready to unite in one confederacy until jealousy and envy in Sparta and Athens, over the rising glory of the Achaeans, threw a fatal wrench into the enterprise. The dread of Macedonian power induced the league to court an alliance with the kings of Egypt and Syria who, as successors of Alexander, were rivals of the Macedonian king.

Ambition led Cleomenes, king of Sparta, to make an unprovoked attack on the Achaeans. As an enemy of Macedon, Cleomenes got the Egyptian and Syrian princes to breach their treaty with the league. The Achaeans were reduced to the dilemma of submitting to Cleomenes or requesting the aid of Macedon, its former oppressor.

The Achaeans chose the aid of Macedon. A Macedonian army quickly appeared and took possession of Sparta. Cleomenes was vanquished to Egypt. But the Achaeans soon learned that a victorious and powerful ally is often just another name for a master.

The tyrannies of Philip, on the throne of Macedon, provoked new alliances among the Greeks. The Achaeans were weakened by internal dissensions and by the revolt of one of

its members, Messene, but they joined the Aetolians and Athenians in opposition. However, they weren't strong enough and once more had to resort to the dangerous expedient of help from foreign arms. The Romans were invited and eagerly accepted. Philip was conquered. Macedon was subdued.

The league faced a new crisis. Rome promoted hostilities between its members. Popular leaders manipulated their countrymen. To nourish discord and disorder, Rome suggested members leave the league; Rome appealed to their pride, saying the league violated their sovereignty. This union, the last hope of Greece and the last hope of ancient liberty, was torn into pieces. Such imbecility and distraction reigned that the Roman army easily completed the ruin that their intrigues began. The Achaeans were cut to pieces and Achaia loaded with chains under which it groans at this hour.

[19] Shows Federal Government Tends Towards Anarchy, Not Tyranny

This history lesson is not superfluous. It teaches several lessons. And it emphatically illustrates the tendency of federal bodies more towards anarchy among the members than to tyranny in the head.

Publius

Number 19

Current Confederacies—German, Polish, Swiss

Some existing institutions merit study. The first is Germany.

[2] History of Germany

In the early days of Christianity, seven nations occupied Germany. After conquering the Gauls, the Franks established a kingdom. In the ninth century, Germany became part of Charlemagne's vast empire.

Charlemagne and his descendants had imperial power. Charlemagne didn't abolish the national assembly, which gradually moved towards independence. The emperor couldn't preserve the unity and tranquility of the empire. Private wars raged between different princes and states. The imperial authority declined. Anarchy reigned between the death of the last emperor of the German province of Swabia and the first emperor of Austria.

In the eleventh century the emperors held full sovereignty; in the fifteenth, they were only symbols of power.

[3] Structure German Federal Authority: Legislative, Executive, Judiciary

The feudal system had many features of a confederacy. Germany's federal system grew from it.

A legislature, the diet, represents the states in the confederacy. The emperor has veto power over the legislature. The two judiciary courts—the imperial chamber and the aulic council—have supreme jurisdiction in controversies concerning the empire or among its states.

[4] Legislative Authorities

The legislature (the diet) has the power to make war and peace, make alliances, assess quotas for troops and money, construct forts, regulate coins, admit new member states, and punish disobedient states. States of the confederacy can't make treaties that could hurt the empire, impose duties on interstate commerce without the consent of the emperor and legislature, alter the value of money, or assist internal rebellions. Violators may be punished.

[5-6] Emperor: Duties, Rights

The emperor has the exclusive right to propose legislation, veto legislation, name ambassadors, confer titles, fill vacant electorates, found universities, grant privileges not injurious to the states, receive and apply public revenues, and watch over the public safety. The emperor has no special land, housing, or income. But his personal income and lands make him one of the most powerful princes in Europe.

These constitutional powers suggest that the German government's character is different than similar systems. Nothing could be further from the reality. It rests on the fundamental principle that the empire is a community of sovereigns, that the legislature represents sovereign states, and that the laws are addressed to sovereign states. This renders the empire powerless. It can't regulate its members or build a defense against external dangers. The German states are constantly fighting each other.

[7-8] Internal Battles, Invasions, Misery

The history of Germany is a history of wars. Wars between the emperor and the states. Illegal and immoral activities of the strong and oppression of the weak. Foreign invasions and conspiracies. Requisitions of money and men are ignored; enforcement attempts are either abandoned or accompanied by slaughter of the innocent with the guilty. It's a history of general imbecility, confusion, and misery.

In the sixteenth century, the emperor, supported by part of the empire, fought the other states. The emperor had to flee from one conflict after nearly being made prisoner. The late king of Prussia fought his imperial sovereign more than once, usually defeating him.

Before the peace of Westphalia (1648), thirty years of war desolated Germany. The emperor and one half the empire opposed Sweden and the other half. Foreign powers finally negotiated and dictated the peace. The peace treaty became a fundamental part of the German constitution.

[9] Emergencies Don't Pacify Internal Conflict

Even if the nation tries to unit for self-defense during an emergency, its situation is still awful. Jealousies, differing views, and clashing pride of sovereign bodies inflame their legislative discussions, stalling any military preparations. An enemy can invade the country before the legislature decides on a military defense. And the enemy is settling into winter quarters before federal troops are prepared to fight.

[10-12] Army Inadequate, Underpaid

Germany's small, peacetime army was poorly maintained, badly paid, and infected with local prejudices.

Maintaining order and dispensing justice was impossible. The empire was divided into nine or ten circles (states). The military enforced laws against delinquent and disobedient states.

This demonstrates the flaws of their constitution. Each state has the deformities of this political monster. They either fail to do their duties or are forced with all the devastation of civil war. Sometimes whole states default, increasing the problems they were established to remedy.

The people of Donawerth, a free city within the Swabian circle (state), committed outrages on Abbe de St. Croix. In consequence, the city was put under the ban of the empire. The Duke of Bavaria was appointed to enforce it. He arrived in the city with 10,000 troops, then claimed the city had been stolen from his ancestors' territory. He took possession of it, disarmed and punished the inhabitants, and reannexed the city to his domain.

[13] Weakness, Foreign Danger Promotes Status Quo

This disjointed country doesn't completely fall apart because most states are weak and unwilling to expose themselves to foreign powers. The emperor has great influence from the land and wealth he inherited. And he wants to save a country that is part of his family pride and makes him the first prince of Europe.

It is a feeble and precarious Union. By their nature, sovereign states don't want to consolidate. But even if the districts decided to consolidate, neighboring nations wouldn't allow it; the empire would be too strong and powerful. Foreign nations want Germany to remain in turmoil.

[14] Poland: Government Over Sovereigns

Poland is a government over local sovereigns. It is incapable of self-government and self-defense. Poland is at the mercy of its powerful neighbors who recently took one-third of its people and territories.

[15-17] Swiss States Not Confederacy

Sometimes people use the Swiss states as an example of a stable confederacy. But the connection between the Swiss states can't be called a confederacy. They have no common treasury, no common armies even in war, no common coin, no common judicatory, nor any other common mark of a sovereignty.

The Swiss states are kept together for several reasons: their geographic location, their individual weakness and insignificance, the fear of powerful neighbors (one formerly ruled them), their joint interest in Swiss territories, mutual aid for suppressing insurrections and rebellions, and a system that is supposed to solve disputes among the states. To settle disputes, each party involved chooses four judges from neutral states. This tribunal pronounces a sentence that all the states are bound to enforce. However, this regulation hasn't been effective.

[18-19] Controversies Easily Severed League

Comparing their case to the United States confirms our opinion. However effective the union may be in ordinary cases, it failed as soon as severe differences appeared. In three instances, religious controversies have severed the league. And that separation has produced opposing alliances with foreign powers.

PUBLIUS

Number 20

United Netherlands: Failure of Legislation for States

The United Netherlands is a confederacy of aristocracies. It confirms the lessons we have seen.

[2-4] Equal States; Equal, Independent Cities

The United Netherlands has seven equal, sovereign provinces. Each province is composed of equal, independent cities. Both the provinces and the cities must be unanimous in important issues.

The States-General represents the union. The provinces appoint the deputies, who serve different terms, decided by the provinces.

The States-General can enter into treaties and alliances, establish duties, make war and peace, raise armies and equip fleets, determine revenue quotas, and demand contributions. However, all the provinces and cities must agree.

They have authority to appoint and receive ambassadors, execute treaties, collect taxes, regulate the mint, and govern the dependent territories.

[5-10] Stadholder: National Executive and Provincial Ruler

The stadholder, the chief executive of the union, is a hereditary prince. Most of his principal influence comes from his independent title, his family connections within Europe, and, most of all, his being stadholder (governor) in several provinces in addition to being the chief executive of the union.

As a governor, he appoints town magistrates, executes local laws, presides in local courts, and has the power of pardon.

As chief executive of the union, he has many exclusive duties: He settles disputes between provinces, assists at the deliberations of the States-General, meets with foreign ambassadors, and appoints ambassadors. He commands the federal troops, provides for posts and garrisons, confers military ranks, and he is admiral-general.

His revenue, exclusive of his private income, is 300,000 florins. He commands a standing army of about 40,000 men.

[11-13] Theoretical Organization Only; In Reality, Chaos

This is how the confederacy is organized on paper. How has it functioned in reality? Imbecility in the government. Discord among provinces. Foreign influence and indignities. Precarious existence in peace and calamities during war.

Grotius has said that the only thing that has saved his country from being ruined by the vices of their constitution is their hatred of Austria. Another respected writer says the States-General has the authority to secure harmony, but jealousy in each province makes reality very different from theory.

[14-16] Inland Provinces Can't Pay Taxes

Each province is supposed to pay contributions, but inland provinces have little commerce and cannot pay an equal quota. The provinces that are able to pay must pay, and then use any method to get money from the other provinces. More than once, money was collected at bayonet point. This is an awful solution when one member of a confederacy is much stronger than the rest. And this solution won't work in a confederacy composed of several members of equal strength, resources, and defenses.

[17] Foreign Ministers Overstep Authority

Former foreign minister Sir William Temple says foreign ministers avoid matters taken *ad referendum* by tampering with the provinces and cities.

[18] Weak Constitution Leads to Tyranny

In emergencies, the States-General oversteps its constitutional bounds. It has agreed to several treaties without the consent of all the provinces.

A weak constitution ends up being ignored. Then it dissolves either from a lack of power or government officials usurp the powers necessary for the public safety. The usurpation may stop at a healthy point or go forward to a dangerous extreme. Tyranny more frequently grows out of the assumptions of power needed in an emergency by a defective constitution, than out of the full exercise of the largest constitutional authorities.

[19] Stadholder Holds Confederacy Together

Without the stadholder, the confederacy would have dissolved long ago. Abbe Mably says the Union could not have survived without a motivator from within the provinces. This motivator is the stadholder.

[20] Surrounding Nations Influence Both Unity and Corruption

Other factors also control the tendency to anarchy and dissolution. The surrounding foreign powers make union absolutely necessary. At the same time, foreign intrigues nourish the constitutional vices. To some degree, the republic is always at their mercy.

[21] Can't Agree How to Fix Problems

Patriots have convened four *conventions* to find a remedy to these potentially fatal vices. But they haven't been able to convince a majority of the people that the existing constitution needs to be corrected before it completely fails.

Let us pause for one moment, my fellow citizens, over this sad history lesson. Let's shed a tear for the calamities that result from mankind's adverse opinions and selfish passions. Then let our praise of gratitude for the amity distinguishing our political counsels rise to Heaven.

[22] Federal Tax Plan Failed

A tax system administered by the federal government was conceived. It also failed.

[23] Maybe Crises Will Form Stronger Union

This unhappy people currently suffer from popular revolts, conflicts between states, and foreign invasion. These emergencies will determine their destiny. All nations are watching the awful spectacle.

Hopefully, their severe problems will create a revolution that will establish their union, making it the parent of tranquillity, freedom, and happiness. If not, we hope that as they see how quickly our country secures these blessings they will be encouraged to do the same thing.

[24] Fatal Flaw: Government Governing Government

The study of these federal precedents is important. Experience is the oracle of truth. When its lessons are unambiguous, they should be regarded as conclusive.

A sovereignty over sovereigns, a government over governments, legislation for communities—rather than a government over individuals—is illogical in theory. In practice it takes away order and ends civility by substituting *violence* in place of *law*. In it, laws must be enforced by the destructive *coercion* of the *sword* instead of the mild and solitary *coercion* of the *magistracy*.

PUBLIUS

Number 21

Defects of United States Articles of Confederation

I will now list the most important defects in our system. To decide a safe and satisfactory remedy, we must know the extent and harmfulness of the disease.

[2] No Power to Enforce Federal Laws

The existing Confederation has no SANCTION—no way to enforce—its laws. Currently, the federal government doesn't have the power to demand obedience or the authority to use force against delinquent members. We might say that the nature of the social compact between the States includes the right to enforce federal laws. But this assumption is contrary to the *States' rights* clause, Article Two, Articles of Confederation: "that each State shall retain every power, jurisdiction, and right, not *expressly* delegated to the United States in Congress assembled." This leaves us two options: either accept the preposterous idea that the federal government has no power to enforce federal laws or violate the States' rights clause in Article Two.

The new Constitution has no States' rights clause. It has been severely criticized for this. However, if we don't weaken the States' rights provision, the United States will become the weird spectacle—a government without any constitutional power to enforce its own laws.

[3] No Federal, State Mutual Guaranty

The Articles say nothing about a mutual guaranty of the State governments. A guaranty would be useful and we might suggest that it exists, but it would flagrantly violate the States' rights clause. Although not having a guaranty may endanger the Union, it isn't as dangerous as the federal government not having the constitutional power to enforce federal laws.

[4] U. S. Can't Defend State Constitutions

Without a guaranty, the Union cannot help fight domestic threats to State constitutions. Usurpations could trample State liberties and the national government could legally do nothing but watch in anger and sorrow. A successful faction could erect a tyranny within a State and the Union could not constitutionally help supporters of the State's constitutional government.

Massachusetts barely survived the recent turmoil. What might have happened if a Caesar or a Cromwell had led the malcontents? If despotism had been established in Massachusetts, how would it have effected the liberties of New Hampshire, Rhode Island, Connecticut, or New York?

[5] Mutual Guaranty: Advantage of Unity

Some people object to a federal government guaranty. They say that the federal government should not interfere in internal State issues. But they misunderstand the provision. And they want to deprive us of advantages expected from union. A majority of the people could still legally and peacefully reform a State's constitution. The guaranty could only operate when violence was used to force changes.

People Hold Governmental Authority

The people hold the whole power of the government. When disagreements appear, the people will have fewer excuses to use violence. In a representative government, the natural cure for poor administration is changing men. A national guaranty would be used against both tyrannical rulers and community factions.

[6] Taxation by State Quotas

Currently, State contributions to the national treasury are regulated by QUOTAS, which haven't been met. There is no one standard to measure the degrees of national wealth. Land values and population numbers have been suggested as ways to determine each State's quota. But neither truly represents the State's wealth.

For example, lets compare the wealth of the United Netherlands to Russia, Germany, or France. There is no relationship between their wealth and their land value and population. The United Netherlands has the higher wealth; the three other nations have immense land and much larger populations.

We can compare American States in the same way and get a similar result. Compare Virginia with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey. Their comparative wealth has little relationship to their lands and populations. Counties within

New York State illustrate the same thing. If either land value or population is the criterion, the active wealth of King's County is much greater than that of Montgomery County

[7] No Measurement of Wealth Accurate

An infinite variety of causes create a nation's wealth. They include location, soil, climate, products, the type of government, the genius of its citizens, knowledge, commerce, arts, and industry. And there are many more causes that are too complex to quantify. These combine to create differences in the relative wealth of different countries. There is no common measure of national wealth. And there is no way to measure a State's ability to pay taxes. Therefore, trying to calculate each State's quota by using a rule based on land or population would be glaringly unequal and extremely oppressive.

[8] Quotas and Requisitions, States Unequal

Even if federal requisitions could be enforced, the inequality between States' wealth alone would eventually destroy the American Union. Public burdens would be unequally distributed. Some States would be impoverished and oppressed while citizens of others would scarcely notice their small tax burden. Suffering States would secede. The principle of quotas and requisitions creates this evil.

[9] National Government Must Raise Revenue—"Consumption" Taxes

To avoid this problem, the national government must be authorized to raise its own revenue.

Like fluid, taxes on articles of consumption will, in time, find their level with the means of paying them. To a degree, each citizen's contribution will be his own option, determined by his resources. The rich may be extravagant. The poor can be frugal. And private oppression may be avoided by judiciously selecting the objects to be taxed. If inequalities arise in some States from duties on specific objects, these probably will be counterbalanced by proportional inequalities in other States from duties on other objects. In time, an equilibrium, as far as it is attainable in so complicated a subject, will be established everywhere. Or, if inequalities continue to exist, they will not be as odious as those that come from using quotas.

[10] Limited Tax Revenue Limits Federal Authority

Consumption taxes tend to block excess taxation. They prescribe their own limit. If they are too high, they defeat their purpose—increasing government's revenue.

Excessive Taxes Decrease Revenue

When applied to taxation policy, it is true that "in political arithmetic, 2 and 2 do not always make 4." If duties are too high, people make fewer purchases, less tax is collected, and the government's revenue is less than if taxes were confined within proper and moderate bounds. This forms a complete barrier against any significant oppression of citizens by taxes of this kind. And it naturally limits the power of the imposing authority.

[11] Indirect vs. Direct Federal Taxes

For a long time, most of the government's revenue must be raised by indirect taxes.

Direct taxes principally relate to land and buildings, and they may be appropriate for the rule of apportionment. Either the land value or the number of people may serve as a standard. Agriculture and population density are co-related. For taxation, numbers are usually preferred because of their simplicity and certainty.

Land valuation is a herculean task. In a country only partly settled and constantly being improved, the difficulties make it nearly impossible. And the expense of an accurate valuation is a major objection.

There are no natural limits to direct taxes. Therefore the establishment of a fixed rule, compatible with its purpose, might be a better idea than leaving the discretion unbound.

PUBLIUS

Number 22

Defects in Articles of Confederation

The existing federal system is unfit to administer the Union and it has several more defects.

[2] No Federal Regulation of Commerce

Currently, the federal government has no power to regulate commerce. But we must have federal regulation of commerce. We haven't been able to have good commercial treaties with other nations. Since the States have been arguing about commerce, no nation will sign a commercial treaty with to the United States. They know that individual States could violate the treaty at any time. Besides, they already have every advantage in our markets without giving us any in return except when it is convenient.

In England, Mr. Jenkinson introduced a bill in the British House of Commons to temporarily regulate commerce between our two countries. He declared that earlier bills with similar provisions answered Great Britain's commercial needs. He said that they shouldn't change their policies until the American government became more consistent.

[3] Uniform Foreign Commerce Authority

Some States have tried to change Great Britain's commercial policies by limiting or prohibiting some British products. But different States have different restrictions. We won't be able to influence Great Britain's commercial conduct until we have one federal authority and one commercial policy.

[4] Uniform Interstate Commerce Laws

Contrary to the true spirit of the Union, some State regulations hurt the commerce in other States. Without national control, there will be more of these policies and anger between the States will grow, further damaging commerce.

The Encyclopaedia[35] ("Empire") describes Germany's commercial situation. Each German prince taxes the merchandise that travels through his state. The wide variety of taxes within Germany has put commerce in constant turmoil. And shippers have to stop and pay taxes so many times along the commercial routes that they don't even bother using Germany's navigable rivers.

This description may never completely apply to us. But as each State makes different commercial regulations, citizens of one State will treat citizens of other States no better than foreigners and aliens.

[5] Quotas, Requisitions to Raise Armies

Under the Articles of Confederation, when the federal government needs to raise troops it must requisition quotas from the States. During the recent war, the requisition system made a vigorous and economical defense very difficult. To fill their quotas, States competed against each other, offering enormous rewards. Men who wanted to serve put off enlisting, hoping to get a larger bonus.

The result? During emergencies, enlistments were few, slow, short-term and very expensive. The constantly changing troops ruined discipline and the soldiers who had mustered out threatened public safety. The occasional forced enlistment only worked because of enthusiasm for liberty.

[6] Unfair, States Not Compensated

Using State quotas to raise troops doesn't work. The enlistment bonuses hurt the economy. And only some of the States filled their quotas. The States near the heart of the war, influenced by self-preservation, furnished the required number of men. Usually, the States that were not in immediate danger didn't fulfill their quotas. Of course, if a State falls behind paying their money quota, it can be made up. It's impossible to supply delinquent deficiencies of men. However, States probably won't pay for their monetary failures. Whether it is used to raise men or money, the quota system is unequal and unjust.

[7] Problems from States' Equal Suffrage

Currently, each State has an equal vote in the national congress. This is another problem. Every rule of fair representation condemns the principle that gives Rhode Island equal power with Massachusetts or Connecticut or New York. This goes against the basic principle of

[35] The article title is "Empire."

republican government: the will of the majority should prevail.

Some people may say that each State in the Union is a sovereign and sovereigns are equal. Therefore a majority of the votes of States will be a majority of confederate America. But this logical sleight-of-hand doesn't remove the dictates of justice and common sense. A majority of States can be a small minority of American citizens.[36]

Two thirds of the people will not allow one third to manage their interests. After a while, the larger States will revolt. Giving up majority rights is contrary to the love of power and it sacrifices equality. It is not rational to expect the first or just to require the last. Since the smaller States depend on union for their safety and welfare, they should readily renounce a pretension that, if not relinquished, would be fatal to that union.

[8] *2/3* of States Doesn't Assure Majority

It may be proposed that two-thirds of the States (9) must consent to pass important resolutions. But an equal vote between States of unequal dimensions and populations is improper. Besides, nine States can have less than a majority of the people.[37] A bare majority might still decide significant issues. Additionally, the number of States will probably increase and there is no provision for increasing the ratio of votes.

[9] 2/3 Majority = Minority Control

But this is not all. A two-thirds majority may look like a solution. In reality it makes the problem worse. When more than a majority is needed to make a decision, the minority gets a negative over the majority. It subordinates the feelings of the majority to the minority. Because a few States have been absent from our current Congress, a single VOTE—one-sixtieth part of the union—has frequently stopped all business.

A two-thirds majority is supposed to provide security. In practice, it does the opposite. It becomes nearly impossible to administer the government. And it substitutes the desires or schemes of a tiny or corrupt group of politicians for the decisions of a majority.

During national emergencies, the government needs to be strong and it must often take an action. Public business must, one way or another, go forward. If a stubborn minority is in control, to accomplish anything, the majority must accept the decisions of the minority. Delays, negotiations, and intrigue would hurt the public good. Sometimes compromises won't be possible and the legislature will be unable to act. This would create a government that is weak and sometimes bordering on anarchy.

[10] Foreign, Domestic Corruption Easier

If a two-third majority is required, both foreign corruption and domestic faction will be easier. If a large number is needed to pass a national act, nothing improper is likely *to be done*. However, good legislation may be prevented and bad things might happen because the Congress is unable to act.

[11] Simple Majority More Difficult to Corrupt

For instance, suppose a foreign ally wants a war with a third nation but we want a peace treaty. It would be easier for our ally to use bribes or threats to tie the hands of our government from making peace if a vote of two-thirds were required rather than a simple majority. In the first case, a smaller number (34%) would need to be corrupted; in the latter, a greater number (51%). By the same principle, a foreign power at war with us could stop our congress from functioning and embarrass us.

We may also suffer commercial inconveniences. We might have a commerce treaty with a nation, who could easily block a treaty with her trade competitor, even though it would be beneficial to us.

[12] Republics and Foreign Corruption

These evils are not imaginary. A weak side to republics is that foreign corruption is easy. A king or dictator often sacrifices his subjects to his ambition but it is difficult for a foreign power to make a bribe large enough for him to sacrifice his state.

[13] History: Foreign Corruption of Republics

In a republic, people are elected to important offices and have great power. They may be offered bribes that only the most virtuous can refuse. Other officials may be more motivated by ambition or personal interests than their obligations to duty.

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

[37] Add New York and Connecticut to the foregoing seven and they will be less than a majority. –PUBLIUS

History has many horrible examples of foreign corruption in republican governments: It helped ruin the ancient republics. Neighboring nations have bought the officials of the United Provinces. And France and England alternately bought officials in Sweden.

[14] Lack of Federal Supreme Court

The Confederation's worst defect is the lack of a judiciary power. Laws are pointless without courts to interpret and define their true meaning and operation.

Treaties must be considered as part of the law of the land. Their effect on individuals must, like all laws, be defined by judicial decisions. To have uniform decisions, as a last resort they should be submitted to one SUPREME TRIBUNAL that is created under the same authority that signs the treaties.

If each State has a court of final jurisdiction, there may be as many different final decisions on an issue as there are courts. Men hold a limitless variety of opinions. We often see not only different courts, but also judges of the same court, differing from each other. Contradictory decisions create confusion. To avoid this, all nations have established one court of last resort, authorized to settle a uniform rule of civil justice.

[15] State Courts Will Not Always Agree

This is more necessary when the laws of the whole country are in danger of being contradicted by the laws of the States or regions. If State or regional courts have the ultimate different opinions and a bias based on local views and local regulations would produce contradictions. People might prefer a local law over a federal law. Men in office naturally yield to the authority to which they owe their job.

Currently, thirteen different legislatures and thirteen different supreme courts can interpret or misinterpret every treaty signed by the United States. Therefore, the reputation and peace of the whole country are at the mercy of the prejudices, passions, and interests of each State. Can foreign nations either respect or trust such a government? How long will Americans entrust their honor, happiness, and safety to this unstable foundation?

[16] Articles: Amendments Won't Cure Flaws

I have mentioned the Confederation's most significant defects, passing over the imperfections that make its power largely impotent. All unbiased men must realize that the system is radically vicious and unsound. It cannot be cured by amendments. It requires an entire change in its important features and character.

[17] One Congress: Inadequate or Dangerous

Currently, Congress does not have the powers that the federal government needs. The federal government has limited authority. Therefore, a single congress may be proper. But even rational adversaries of the proposed Constitution say that the federal government needs more power. And a single assembly cannot be trusted with the additional powers.

If the new Constitution is not adopted, the country will either fall apart or Congress will be given tyrannical powers. A weak federal government and the schemes of ambitious men who expect to increase their personal power will push the Union towards dissolution. If the country doesn't fall apart, a single "congress" will accumulate all the sovereign powers, creating the tyranny that adversaries of the new Constitution say they don't want.

[18] People Didn't Ratify Articles

The PEOPLE never ratified the Articles of Confederation. Instead, the State legislatures approved it. Now some people are questioning whether it is valid, which has led to the outrageous doctrine of legislative repeal—since it was ratified by the State, the State can repeal it. This is the same as saying that a *party* to a *contract* has a right to revoke that *contract*. As silly as it sounds, some respectable people support the doctrine.

The foundation of our national government must be laid deeper than just the approval of the people's representatives. The American empire should rest on THE CONSENT OF THE PEOPLE. The streams of national power should flow from that pure, original fountain of all legitimate authority.

Publius

Number 23

Federal Responsibilities, Powers, Organization

An energetic Constitution is necessary to preserve the Union.
Our inquiry covers four topics:
1. The reasons for having a federal government.
2. The amount of power the federal government needs to fulfill its purposes.
3. The people who should control that power.
4. The organization of the federal government.

The most important reasons for a union and federal government are:
1. Defense.
2. To keep the peace against both internal turmoil and external attacks
3. To regulate of commerce with other nations and between the States.
4. To supervise of our political and commercial interests with foreign countries.

[4-5] Powers Essential for Defense

To defend the country, the federal government needs the power to raise armies, build and equip fleets, direct army and navy operations and provide support for both. These powers should not be limited *because it is impossible to predict future national emergencies or the size and type of force that may be necessary to solve them.*

An infinite number of things can endanger the nation's safety. Therefore, constitutional limits on the power to protect the nation are unwise. Defensive power should equal the strength of all possible emergencies.

This truth carries its own evidence. It rests on universal axioms. The *means* should be proportionate to the *end*; the persons charged with attaining the *end* should possess the *means* for attaining it.

[6] Form, Direct, Support National Army

Should a federal government be entrusted with the common defense? If the answer is yes, the government needs the power to execute that trust. Authority to provide for defense cannot be limited. Any matter essential to the *formation, direction,* or *support* of the NATIONAL FORCES should not be limited.

[7] Defense: States Requisitioned

The people who wrote the Articles of Confederation apparently understood this principle. But they didn't provide a way to do it. Congress can requisition (demand that each State send a specific amount) men and money and control the army and navy. Congressional requisitions are constitutionally binding on the States; the States have a legal duty to furnish the required supplies. The Articles of Confederation authorized the federal government to command all resources that are necessary for the "common defense and general welfare." The authors of the Articles assumed that the States would be aware of their best interests and duty to the Union and they would fill the federal requisitions.

[8] Union: Direct Authority Over Citizens

However, this was a dumb assumption. If we really want to give the Union energy and a long life, we must abandon making laws that States are supposed to obey. Federal laws must extend to individual citizens. Quotas and requisitions are impractical and unjust. They must be discarded.

The Union should have the power and money to draft troops, support an army, and build and equip a navy in the same way as other governments.

[9-10] Federal Government Needs Power to Fulfill Responsibilities

We need a compound or confederate government instead of a simple, single government. The RESPONSIBILITIES of each branch of power must be determined. And each branch must have enough authority to fulfill its responsibilities.

Should the Union guard the common safety? Are fleets, armies and money necessary? The Union must have the power to pass all laws and regulations that relate to

them. The same is true for commerce and every other area under its jurisdiction.

Is the administration of justice between citizens of the same State a responsibility of local government? The local governments must have the authority to fulfill their responsibilities.

It is unwise to not give each part of government the amount of power that it needs to fulfill its duties. And it would put the future national needs in disabled hands.

The federal government is charged with public safety and defense. It will have the most information needed to understand the extent and urgency of threats. Representing the WHOLE, it will want to protect every part. With authority throughout the States, it can establish uniform plans to secure the common safety.

Isn't it illogical to make the federal government responsible for national defense, but leave the *effective* power of providing for defense with the State governments?

The States won't always cooperate. There will be weakness and disorder. Some States will face more of the horrors of war and the intolerable increase of expense that accompanies it. We saw these effects during the revolution.

[11] Proposed Powers = Federal Goals

We should not entrust our NATIONAL INTERESTS to a government that doesn't have all the powers a free people *should give to any government*. The government that is supposed to take care of these interests must have the power to do it.

Adversaries of the Constitution would seem more sincere if they limited their arguments to showing that the people can't trust the internal structure of the proposed government. They shouldn't have wandered into pointless discussions about how much power the national government will have.

The POWERS are not too extensive for the OBJECTIVES of a federal government; or, in other words, for the management of our NATIONAL INTERESTS. And there are no good arguments that show it has excess powers. If the federal government has too much power, then the difficulty stems from the nature of government. If it is unsafe to give the country all of the powers it needs, then we should downsize our ideas and simply form smaller, separate confederacies.

It is absurd to entrust the national interests to a government that doesn't have the authority to properly manage them.

[12] Energetic Government to Preserve Union

I don't believe that anyone can prove that one general system is impractical. This is a large country; only an energetic government can preserve the Union. The people who oppose the proposed Constitution predict that a national system spread across the entire area of the present Confederacy is impractical.

Publius

Number 24

Standing Armies During Times of Peace

There has been only one specific objection to the federal government creating and directing the national military: the Constitution does not ban standing armies during times of peace.

No logical argument supports this objection. And this is not how most Americans feel. Nor is it the practice of other free nations. Some people want to limit the LEGISLATURE'S authority to establish national military bases.

[3] Armies Not Mandatory

Current newspaper articles give the impression that either the Constitution says that standing armies should be kept up in time of peace or it gives the PRESIDENT the whole power of raising troops without any legislative control.

[4] Only Legislature Can Raise Army

However, neither provision is in the Constitution. The *legislature*, not the *president*, has the power to raise armies. And the legislature's power is limited. Money to support an army can only be appropriated for two years. This precaution becomes security against keeping troops when they are unnecessary.

[5-6] Most States Allow Peacetime Armies

Do all the State constitutions prohibit standing armies in peacetime? Only *two* State constitutions prohibit them. The other eleven either say nothing on the subject or allow the legislature to authorize their existence.[38]

[7-8] Articles of Confederation Don't Ban Peacetime Armies

Are the opponents of the Constitution deliberately lying? Is there a logical reason for the outcry? Do the Articles of Confederation explicitly prohibit a peacetime military?

After a careful study of the Articles of Confederation, his astonishment would increase. It doesn't prohibit a peacetime military. The Articles restrict the authority of States on this subject but there is no restraint on the United States.

A rational man would start believing that a sinister opposition is lying. Why else would they harshly criticize a part of the Constitution that reflects the feelings of America as seen in the Articles of Confederation and State constitutions? The proposed Constitution even has a new, powerful guard not that is not in any of the State constitutions.

He would sigh at the weakness of human nature. The opposition seems to want to mislead the people by alarming their passions rather than convince them with arguments addressed to their reason.

[9] If Ban Existed, Probably not Observed

Putting a clause in the Constitution that prohibits the legislature from establishing a peacetime military would be improper. And even if society demands it, it probably would not be observed.

[10] Europe, Indians Potential Dangers

Although an ocean separates the United States from Europe, we should not be over-confident of our security. British and Spanish settlements surround us. These two powers own the West India Islands, which creates a common interest. The savage tribes on our Western frontier are our enemies, and England and Spain's allies because they have the most to fear from us and the most to hope from them.

Improved navigation has improved communication. Many distant nations seem

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[38] This is taken from the printed collection of State constitutions. Pennsylvania and North Carolina constitutions say: "As standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This is a CAUTION not a PROHIBITION. New Hampshire, Massachusetts, Delaware, and Maryland have, in each of their bills of rights, a clause to this effect: "Standing armies are dangerous to liberty, and ought not to be raised or kept up WITHOUT THE CONSENT OF THE LEGISLATURE," which admits that the legislature has the authority. New York has no bills of rights, and her constitution says not a word about the matter. The other States have no bills of rights and their constitutions are equally silent. I am told, however, that one or two States have bills of rights that do not appear in this collection and those recognize the legislative authority in this respect. –PUBLIUS

like neighbors. Britain and Spain are maritime powers in Europe. A future agreement between them seems probable. The family compacts between France and Spain are becoming weaker every day. We must not be over confident, thinking we are entirely out of the reach of danger.

[11] Protection Needed on Borders

Since before the Revolution, small military forts on our Western frontier have been necessary. They are indispensable, if only for protection against the plundering of the Indians. Occasionally, the forts must get more military personnel either militia or federal army soldiers.

Using militia members is impractical and dangerous. Citizens would eventually refuse to leave their jobs and families to perform the most disagreeable duty in times of peace. Even if they could be forced, frequently calling up the militia would be expensive. And losing the commercial and farm labor force would injure both the public and private citizens.

A permanent army paid by the government amounts to a standing army in peacetime–a small one, indeed, but no less real for being small. A constitutional prohibition to a standing army is improper. The legislature should decide when an army is needed.

[12] Border Needs Will Increase

As our strength increases, Britain and Spain will increase their military strength around us. If we don't want to be defenseless, we will need to increase our frontier garrisons as our Western settlements increases. Some military posts will serve large districts of territory. Some posts will also be important to trade with the Indian nations. Leaving them vulnerable to seizure by such powerful neighbors would be illogical.

[13] Navy will Replace Some Garrisons

We must form a navy. It is necessary for our commerce and safety along our Atlantic coast. We will need forts and soldiers to defend our dockyards and arsenals. A powerful navy can protect its dockyards without additional soldiers. Until our navy is fully established, moderate garrisons will be an indispensable security against destructive attacks on arsenals and dockyards, and sometimes the fleet itself.

Publius

Number 25

Defense: Federal, Not State, Responsibility

Some people say that the States should provide armies, under the direction of the federal government. However, creating a federal government responsible for the common defense is the primary purpose of our grouping together in a confederacy. If States held the military power, it would oppress some States, be dangerous to all, and harmful to the Confederacy.

[2] Danger of Making Defense State Duty

The territories of Britain, Spain, and the Indian nations do not border specific States but encircle the Union from Maine to Georgia. To differing degrees, all of the States are in danger. Therefore, the national government and the national treasury should be responsible for defense.

Some States are more directly exposed to danger, including New York. If the States had to provide for their own defense, New York would carry the whole burden of her immediate safety and, ultimately, the protection of her neighbors. This would not be fair to New York or safe for other States.

The States who need military posts won't be willing or able to support a military for a long time. Therefore, national security would depend on the stinginess, lack of foresight, or inability of one State.

On the other hand, if a State got the men and money, its military spending would increase proportionately. If two or three of the most powerful States held the whole military force of the Union, the other States would be alarmed. They would take counter measures. Military establishments, nourished by mutual jealousy, would swell. The State armies would destroy the national authority.

[3] State Military a Danger to Liberty

State and federal governments are rivals because all governments love power. In a dispute between the federal government and one of its States, people will probably support their local government. If the State had military forces, it would be tempted to challenge and subvert the constitutional authority of the Union.

The liberty of the people would be less safe. An army is a dangerous weapon of power; it is better if the targets of envy control it. History proves that people are in the most danger when a group or individual they least suspect have the ability to injure their rights.

[4] State Military Would Be Dangerous

States with separate military forces are a danger to the Union. Under the Articles of Confederation, States must have Congressional consent to have ships or troops. The existence of both federal and State sponsored armies are incompatible.

[5] Peacetime Military Ban Unenforceable

When the national legislature is improperly restrained problems arise. Some people object to standing armies during peacetime. But how far should the prohibition extend? Will it ban raising armies as well as to *keeping them up* in time of tranquility?

A prohibition that only limits keeping armies isn't specific and will not fulfill the purpose intended. Once armies are raised, what does the constitution mean by "keeping them up"? How much time would be a violation? A week, a month, a year? Or may they continue as long as the danger continues? This means they can be kept up *in time of peace*, against threats or impending danger, which is different than the literal meaning of the prohibition. Who will judge that the danger continues? The national government can first raise troops, then keep them as long as the peace or safety of the community is in jeopardy. It would be easy to ignore the provision.

[6] Excuses to Fortify Military

Some people want a constitutional ban of peacetime armies. They believe it would stop the executive and legislature from conspiring to use the military to take over the government. However, even if the constitution banned peacetime armies, the conspirators could claim there is an approaching danger! Indian hostilities would always be an available excuse. Or they could provoke a foreign power into looking like a threat, and then appease it with timely concessions. If such a conspiracy happened, the army could be raised—using any pretext—and used in the usurpation scheme.

[7] Peacetime Army Ban, Union Defenseless

If the constitution prohibits the *raising* of armies in time of peace, the United States would be in the strangest situation ever seen—a nation that cannot prepare for its defense before it was actually invaded. The government couldn't begin drafting men until an enemy was physically within our borders. The nation couldn't prepare for a danger. Our property and liberty would be exposed to foreign invaders. They could capture us because we were afraid that rulers—elected by us and ruling according to our will—might endanger our liberty by abusing the power necessary to defend us.

[8] Militia Insufficient National Defense

Depending on the country's militia—armed citizens—to defend the nation nearly lost us our independence. And it cost the United States millions that could have been saved. We can't rely solely on the militia for defense. We must have a regular, disciplined army to defend against other disciplined armies.

The American militia's valor during the recent war erected eternal monuments to their fame. But the bravest of them know that they could not have established the liberty of their country alone. Like most things, war is a science that is perfected by diligence, perseverance, time, and practice.

[9] Pennsylvania, Massachusetts Peacetime Military

Since they are contrary to the way people and states actually behave, all distorted policies defeat themselves. Pennsylvania is a current example. Its Bill of Rights says that standing armies are dangerous to liberty and should not be kept up in peacetime. Nevertheless, during this time of peace, Pennsylvania has used disorders in one or two counties as an excuse to raise troops. And the troops will probably remain as long as there is any appearance of danger to the public peace.

Massachusetts is another example, for different reasons. Under the Articles of Confederation, States are supposed to get Congressional approval before raising troops. Massachusetts didn't wait for that approval. It raised troops to put down a domestic rebellion. And it keeps a corps to prevent a revival of the revolt. The Massachusetts constitution doesn't ban a peacetime army. But it is instructive. Every government has similar problems and may have to use the military for internal security. Therefore, legislative discretion to raise and keep armies should not be controlled.

The Massachusetts example teaches us that even its own constituents do not respect the rights of a weak government. And it teaches us that when there is a struggle between written provisions and public necessity, public necessity easily wins.

[10] Ignoring Laws Weakens Government

It was a fundamental maxim of the ancient Lacedaemonian commonwealth that no one could serve as their navy's commander-in-chief twice. Lysander had successfully served, then stepped down. However, after an ally suffered a severe defeat at sea from the Athenians, they demanded that Lysander command the combined fleets. The Lacedaemonians wanted to fulfill their ally's wish and also obey their own law. They gave Lysander the power of the naval commander-in-chief but called him a sub-commander-in-chief.

I could give a multitude of examples to confirm this truth. Nations ignore rules and maxims that, in their very nature, run counter to the necessities of society.

Wise politicians don't want to give the government constitutional restrictions that might need to be ignored. Every time a constitution is disobeyed, even if it is necessary, decreases the sacred reverence that rulers should maintain towards it. And it creates a precedent for other breaches when a necessity does not exist or is less urgent.

PUBLIUS

Number 26

Legislative Military Authority

During a popular revolution men can't be expected to stop at the proper boundary between POWER and PRIVILEGE. That is, the balance between a strong government and secure private rights. We failed, which created our present problems. As we correct and improve our system, we must not repeat this error. Otherwise, we may go from one unrealistically utopian plan to another. We may try change after change. But we will probably never make any material change for the better.

[2] Balancing Liberty, Public Safety

The legislature will authorize national defense. Some people want to limit this authority. This idea comes from false beliefs about liberty rather than knowledge.

Pennsylvania and North Carolina have tried to limit the legislature's power to authorize armed forces. The other States refuse to consider it. The people delegate power to the government. Therefore, the people must place their confidence in that government. It is better to take the chance that their confidence will be abused than endanger the public safety with impractical limits on the legislature's authority. Unlike the opponents of the proposed Constitution, the majority of Americans agree that the legislature must have full authority to authorize military forces.

We can safely correct the imbalances in our governmental system. But opponents of the Constitution want more dangerous imbalances. If the principles they support became accepted, the people of this country would be utterly unfit for any type of government whatever. But Americans are too intelligent to be persuaded into anarchy. The public firmly believes that greater government energy is essential to the welfare and prosperity of the community.

[3-4] Origin of No Military During Peacetime

Where did the idea of excluding military establishments during peacetime start? Not England, the country of origin of most Americans.

For a long time after the Norman Conquest [1066], the English monarch's authority was almost unlimited. Gradually, liberty made inroads into the monarch's power, first by barons and later by the people, until the monarch lost most of his power and importance.

King Charles II [1661-1685] kept a body of 5,000 troops during peacetime. King James II [1685-1688] increased the number to 30,000. Finally, after the revolution in 1688, Prince William of Orange became king of Great Britain and English liberty triumphanted. The Bill of Rights limited his authority. It said "the raising or keeping a standing army within the Kingdom in time of peace, *unless with the consent of Parliament*, was against the law."

[5] Power Must Equal Possible Emergencies

Liberty was at its highest peak in Britain. But the only security against the danger of standing armies was the prohibition against the monarch raising and keeping them.

The revolutionary patriots were well informed. They didn't want to restrain the legislature's discretion. They knew that a certain number of troops are indispensable. National emergencies can't be limited. A power equal to every possible scenario must exist somewhere in the government. By giving the legislature this power, they found the balancing point between precaution and the safety of the community.

[6] States: Legislatures Raise Military

During the revolution, the people of America learned that standing armies in peacetime could endanger liberty. The public realized we must protect our rights. In some cases, our desire to protect our civil rights went further than is practical. Two States tried to restrict legislative authority over military establishments. A monarch's power must be feared. However, the over-reaction by these States extended this fear to the people's representatives. Some States didn't make this error but they have unnecessarily declared that standing armies are not to be kept up in peacetime WITHOUT THE CONSENT OF THE LEGISLATURE. There is a similar provision in the English Bill of Rights. But the States don't have the same reason for the provision. Under the State constitutions, only the legislatures have the power to raise armies. So, it was superfluous to declare that it should not be done without the consent of a body, which alone had

the power of doing it. The other State constitutions are silent on the subject.

[7-8] No State Prohibits Military in Peacetime

Two State constitutions seem to prohibit the military. However, they say an army *ought not* be kept up, not that armies *shall not be* kept up in time of peace. This ambiguity seems to result from the conflict between totally excluding them and the belief that an absolute exclusion would be unsafe.

When a situation arises, the legislature will interpret the clause as only an admonition and yield to the real or imagined needs of the State. Pennsylvania is an example. The provision is useless if the legislature can just ignore it whenever they want to.

[9] Military Ban vs. 2-Year Appropriations

Some people want to ban all military during times of peace. The proposed Constitution limits military appropriations to a two-year period. A peacetime military ban tries to do too much and will not be obeyed; a two-year appropriation provides for emergencies and will be a powerful remedy.

[10] Politicians, States Guard Against Abuse

At least once in every two years the United States legislature will be *forced* to decide whether to keep a military force and declare their position by a formal, public vote. They cannot give the president unlimited funds for an army.

A partisan spirit infects all political bodies. Funding a military force will always be a favorite topic to denounce. As often as the question arises, the opposition party will publicly argue about it. If the majority party wants to appropriate more money than seems proper to support the military for two years, the community will be warned and be able to take measures to guard against it.

People will debate the issue. State legislatures will jealously guard the citizens' rights against encroachments from the federal government. If national rulers act improperly, they will sound the alarm. State legislatures will be the VOICE and, if necessary, the ARM of the people's discontent.

[11] Subversion of Liberty Needs Executive, Legislative Collusion

Schemes to subvert liberty *require time* to develop before taking action. A large army would be needed to threaten our liberties. The legislature and executive would have to conspire for a long time.

Would this happen? Would every man elected to the national Senate or House of Representatives instantly become a traitor to his constituents and his country? Would not one man be able to see the atrocious conspiracy, or bold or honest enough to tell his constituents of their danger?

If we assume that this could happen, there should be no more delegated authority. The people should take back the powers already given the government and divide themselves into as many States as there are counties so they can manage their government in person.

[12] Military Expansion in Peace Noticed

Concealing such a conspiracy for long would be impractical. People would see a fast growing army during peacetime. Following the discovery, the people would quickly destroy the project and its sponsors.

[13] Reason Needed to Build Military Force

Some people say limiting military appropriations to the period of two years won't be safe. They say that once the president has a large enough military to force the people into submission, it would also be large enough to get supplies without help from the legislature.

But what pretense could the President use to build a big military force in peacetime? If it was created in response to a domestic insurrection or foreign war, it can't be called a peacetime military buildup. Military forces should be raised to quell a rebellion or resist an invasion. If defense of the community makes it necessary to have an army large enough to threaten its liberty, this is one of those calamities that can't be prevented or cured. No form of government can provide against this. It might even happen in a simple league, if the allies need to form an army for common defense.

[14] Military Expansion If States Not United

However, this evil is infinitely less likely to happen to us if we are united than if we are disunited. It is hard to imagine dangers formidable enough to attack the whole nation, demanding a force large enough to place our liberties in jeopardy, especially when we remember that the militia should always be counted on as a valuable and powerful addition to the military. But in a state of disunion, the contrary of this supposition would be almost unavoidable.

PUBLIUS

Number 27

Federal Constitutional Authority Over Individual Citizens

Military Not Needed to Enforce Federal Laws

Some people argue that a military force will be needed to enforce the proposed Constitution. However, like most of the opposition's arguments, no logical reason supports it. It assumes that people dislike the use of federal authority in any internal matter. Let's look at this assumption.

Unless we presume that the federal government will be administered worse than State governments, there is no reason to assume that the people will oppose it. As a rule, the people accept and obey a government in proportion to the goodness or badness of its administration. The exceptions to this rule depend entirely on accidental causes, not the intrinsic merits or demerits of a constitution. Constitutions can only be judged by general principles and maxims.

[2] Quality of Federal Administration

Under the proposed Constitution, the national government will probably be better administered than the State governments. The larger area will give voters more choices.

Usually the elected State legislators will carefully select national Senators. This method promises great knowledge and information in the national Senate. It is less likely that faction will taint the national Senate. And they will have fewer prejudices. In smaller societies, prejudices frequently contaminate public agencies and assemblies. They produce injustice and oppression. And prejudices often fuel plots that might fulfill a momentary desire, but end up causing general distress, dissatisfaction, and disgust.

A serious, objective study of the proposed government will strengthen this position. Federal laws will be accepted and enforced like State laws.

[3] State Factions More Successful Than Federal

While the dread of punishment discourages sedition, the hope of immunity encourages it. If it has enough power, sedition factions will fear *punishment* by the national government. And the national government will do a better job repressing *tendencies toward sedition* than a single State. A turbulent faction in a State may think it can make deals with friends in the State government. But it won't be foolish enough to think it can stand up against the entire Union. If this conclusion is reasonable, dangerous conspiracies are less possible in the federal government than in a single State.

[4] Federal Government Will Seem Normal

As the federal government becomes more involved in ordinary governmental operations, the local community's attachment and respect for it will grow. As it becomes a familiar part of their daily lives, citizens will grow accustomed to it.

Man is a creature of habit. If he only rarely notices something, it has only a little influence on his mind. The people have little interest in a remote government. But as the federal government effects internal matters, the citizens' affections will be strengthened, not weakened.

At the same time, as the citizens become familiar with the federal government's functions, the union will have fewer reasons to use force. The more it touches the citizens' every day lives, the less it will need the aid of violent and dangerous punishments.

[5] Legislation for States: Dangerous

In any event, one thing must be evident. The proposed government will have fewer reasons to use force than the type of government promoted by its opponents. Legislation for States operates on the States in their collective capacities; it encourages delinquencies by the States, which can only be collected, if at all, by war and violence.

[6] Constitution: Courts Enforce Laws

The new Constitution extends federal authority to the citizens of the States. It allows the government to use State courts to execute its laws. The federal government will use the same methods to secure obedience as the State governments. In addition, States can call on the whole Union for assistance and support, which will influence public opinion.

The Constitution lists the Union's jurisdiction. A *legitimate* Union law will become

the SUPREME LAW of the land. All State officers—legislative, executive, and judicial—will be bound by an oath. Thus the State legislatures, courts, and executives will be part of the national government *as far as its just and constitutional authority extends* and will help enforce its laws. If the Union is administered prudently, the Union laws will be peacefully obeyed.

If we arbitrarily suppose the contrary, we can deduce anything we want. Any authority that is used unwisely can provoke people into the wildest excesses. But even if the adversaries of the proposed Constitution presume that the national rulers will ignore the motives of public good or the obligations of duty, I still ask: How would it aid ambition or encroachment?

PUBLIUS

Number 28

National Force Will Sometimes Be Used Against Citizens

Sometimes the national government may need to use force. Emergencies happen. Sadly, revolts and rebellions are as much a part of the political body as diseases are part of the natural body.

Some political pundits say that republican governments can only use the force of law to govern. This daydream ignores the warnings of experience.

[2] Local Force Responds to Local Danger

Some emergencies require that the national government use force. The force must be proportionate to the size of the problem.

A small revolt in part of a State can be suppressed by the militia from other parts of the State. And the militia would be ready to serve. A revolt eventually endangers all government. To keep the peace, citizens would oppose the insurgents. And if the national government promotes the prosperity and happiness of the people, the people will support it.

[3] More than Militia Might Be Needed

If the revolt spreads throughout a whole State or a majority of it, a larger force might be needed. Massachusetts needed to raise troops to repress disorders. Pennsylvania did the same thing.

Suppose New York decided to reestablish control over Vermont. Could she have been successful using the militia alone? She would have needed a regular army.

The States need a force other than the militia during severe problems. The national government may need to use an army during some emergencies. Some men who say they like the Union use this issue to object to the Constitution. But under the plan they support, armies will be needed even more frequently. Who would not prefer the use of force to the rebellions and revolutions that harm petty republics?

[4] Confederacies Sometimes Need Force

Let's look at this in a different way. Suppose that two, three, or even four American confederacies were formed. Each confederacy would have the same problems. And each one would use the same methods to uphold their authority.

Continuing this assumption, would the militia support the confederate authority? Whether we have one government for all the States or several governments, sometimes a force other than the militia may be necessary to keep the peace and maintain the lawful authority against revolts and rebellions.

[5] People Control Government, Military

Remember, the whole power of the proposed government will be in the hands of the representatives of the people. In civil society, this is the only effective security for the rights and privileges of the people.

[6] Blocking Usurpation in One State Difficult

If the elected representatives betray their constituents, self-defense is the only option. Self-defense against national usurpations will be more successful than against rulers of a State.

If the rulers of a single State usurp power, county governments don't have the resources to defend the people. The citizens won't have a plan or resources except their courage and despair. Because the State usurpers are cloaked in legal authority, they can often crush the opposition while it is tiny. Organizing the opposition in a small State will be and their opposition will be easier to defeat. The State usurpers will see their preparation and rapidly deploy the military against the opposition. In this situation, only luck will make the popular resistance successful.

[7] Obstacles to Usurpation, Tyranny

If the citizens understand their rights and want to defend them, the ability to stop usurpation increases with the increased size of the state. The people in a large community have a natural strength. And that strength is greater than the artificial strength of the government and more able to stop an attempt to establish a tyranny.

In a confederacy, the people are the masters of their own fate. Since power is usually the rival of power, the national government will always stand ready to check

State usurpations. And the States will be in the same position towards the national government.

Whichever side [State or national government] the people support will be the stronger. If their rights are invaded by either, they can use the other as the instrument of redress. The people will cherish the Union, preserving to themselves an advantage that can never be too highly prized!

[8] States Protect Citizen's Liberty

It is an axiom in our political system that the State governments will, in all situations, provide complete security against invasions of liberty by the national authority.

Usurpation cannot be hidden by pretenses; the people and their representatives will see them. The legislatures can discover the danger in its infancy. They have civil power and the confidence of the people. They can immediately oppose them, using all the resources of the community. The States can unite their forces to protect their liberty.

[9] Large Size Helps Block National Usurpation

The large size of the country is further security. We have seen how it protects against attacks from a foreign power. It would have the same effect against the enterprises of ambitious rulers in the national councils.

If the federal army quelled the resistance of one State, distant States would raise fresh forces. The usurpers' advantage in one place would be abandoned to subdue the opposition in others. The moment the area reduced to submission was left to itself, it would renew its efforts, reviving its resistance.

[10] State Forces Better Than National

Military force can be only as strong as the resources of the country permit. For a long time to come, maintaining a large army will be impossible. As we are able to strengthen our military, the population and community strength will also increase. Therefore, when will the federal government be able to raise and maintain an army capable of erecting a tyranny over all the people of an immense empire? The people can, by using their State governments, defend themselves with the swiftness and organization of independent nations.

This worry is like a disease that can't be cured with logic and reasoning.

Publius

Number 29

Militia Not Threat to Liberty

During an internal revolt or an invasion by a foreign nation, the militia helps keep peace and defends the Confederacy.

[2] National Control Assures Uniformity

All members of the militia must have the same organization and discipline to get the best results. And uniformity requires national regulation of the militia. Therefore, the Constitution properly says that the Union will "provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.*"

[3] Militia: Less Need for Standing Army

Some opponents of the Constitution have attacked this provision. This attack was not expected. A disciplined militia is the natural defense of a free country. Since the federal government is responsible for guarding national security, it should regulate the militia.

Standing armies can be dangerous to liberty. The national government won't have any reason to keep a standing army if it controls of the militia. If the federal government can command the militia during emergencies, it won't use the army. However, if it can't use the militia, it will have to use the army. If we don't want a permanent army, making it unnecessary works better than a thousand prohibitions on paper.

[4] No Ban of Posse Comitatus

Opponents say the Constitution has no provision for calling out the POSSE COMITATUS to help the chief executive enforce the law, suggesting that military force will be the only alternative.

This shows how illogical the objections to the Constitution have been. Opponents first say the federal government's power will be despotic and unlimited and then say it doesn't even have the authority to call out the POSSE COMITATUS. Fortunately, neither statement is true.

The government can pass all laws *necessary and proper* to execute its powers. Therefore, it can require citizens to assist those officers who must enforce those laws. And even if the government is allowed to use the military when necessary, it is not the only way to enforce laws.

[5] Illogical Fear of Militia

We are being told to fear the militia, if the federal government regulates it. It is said that a young and eager corps may be formed and used by a tyrant. We don't know how the national government will regulate the militia. But I don't see it as dangerous. If the Constitution were ratified, my feelings about a militia would be as follows:

[6] Citizen-Soldiers: Productivity Lost

It would be impossible to train the entire militia of the United States. Becoming an expert in military movements requires time and practice. A day or a week isn't enough. Making citizens go through military exercises often enough to become a well-disciplined militia would be a hardship on the people and a serious public loss. Annually, the country would lose nearly as much productive labor as the whole expense of all the State governments.

Spending the time and money to train the entire militia would injure labor and industry. And if it was tried, it couldn't succeed because citizens would refuse to do it. Instead, we can only attempt to arm and equip the general population. And to do this, they will need to assemble once or twice every year.

[7-8] Militia Security against Standing Army

Disciplining the whole nation is impractical. However, we should adopt a well-formed plan to create a militia as soon as possible. The government should form a small army that is fit for service in case of need. With a clear plan, a trained militia will be ready whenever the defense of the States requires it. Fewer military establishments will be needed. And if circumstances ever force the government to form a large army, that army can never be a formidable threat to the liberties of the people. There will be a large body of citizens (members of the militia) who are little, if at all, inferior to the army in discipline and the use of arms and are

ready to defend their own rights and those of their fellow citizens. This is the only substitute for a standing army. And it is the best security against a standing army, if it exists.

However, I can't predict how the national legislature may reason on this subject.

[9] How Can Militia Endanger Liberty?

The idea that the militia will endanger liberty is far-fetched. Where are our fears to end if we can't trust our sons, our brothers, our neighbors, our fellow citizens? We all share the same feelings, sentiments, habits, and interests.

The States have the *sole and exclusive appointment of the officers*. Since the States appoint the militia's officers, the States will have the greatest influence over the militia. This should remove our fears about a militia under the federal government.

[10] Constitution Distorted into Monster

If a man who knows nothing about the proposed Constitution read the articles written against it, he might think he is reading a horror story. He might think that it will transform the government into a monster.

[11] Outrageous Uses of Militia Imagined

Exaggerations about the militia are examples: The articles make it sound like the New Hampshire militia will be marched to Georgia, the Georgia militia to New Hampshire, the New York militia to Kentucky, and the Kentucky militia to Lake Champlain. And that we plan to pay our debts to France and Holland with militiamen instead of money.

First they say a large army will ruin the liberties of the people. Then they say Virginia's militia will be dragged 500 or 600 miles to tame rebels in Massachusetts, and Massachusetts's militia will travel an equal distance to subdue aristocratic Virginians. Do the people who make these wild claims think that their eloquence can convince the people of America that any absurd statement is true?

[12] Tyrannical Use of Militia Illogical

If a tyrant were going to use the army to take over the country, why would he need a militia? If there was no army, he would try to use the militia, sending them a great distances to enslave follow countrymen. But the militia would become irritated, march to the seat of the tyrant, and crush him.

Rulers do not usually start their career with vicious acts of power that do not fulfill any goal and that draw universal hatred on themselves. Arguments that the army or militia will be used despotically are made by people who like to stir up trouble. Even if the national rulers were very ambitious, it is impossible to believe they would use such a preposterous way to accomplish their designs.

[13] Militia Used for Insurrections, Invasions

During an internal revolt or an invasion by a foreign nation, the militia can be marched into a neighboring State to defend against an invader or guard the republic against the violence of faction or sedition. This happened during the recent war. And this mutual security is an important goal of our political association. If direction of the militia was left to the States, one State could easily ignore an invasion or revolt in a neighboring State. The nation will be more secure if the Union directs the militia.

PUBLIUS

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Number 30

Taxation: Revenue Source to Support National Government

The federal government should have the ability to support the national army. This includes the expenses of recruiting troops, building and equipping fleets, and all other military expenses. The Union must raise revenue for other reasons as well. It must pay the national government's employees, current and future national debts, and other appropriate expenses. Therefore, the government must have the power of taxation.

[2-3] Inability to Tax Leads to Pillaging or Decay

Government needs money to fulfill its duties. Therefore, the power to raise money, as far as community resources will permit, is an essential part of every constitution.
Two evils result if a government doesn't have enough money. Either the people will be plundered, as a substitute for legitimate taxation, or the government will sink into a fatal atrophy and perish.

The emperor of Turkey [Ottoman Empire] has no right to impose a new tax. Consequently, the province governors [bashaws] pillage the people without mercy, squeezing from them the money the emperor needs to satisfy his needs and those of the state.

The American Union has gradually decayed for the same reason. In both countries, if they could legally tax, it would promote the people's happiness.

[4] State Requisitions => Bad Situation

Under the Articles of Confederation, the United States was supposed to have unlimited power to provide for the financial needs of the Union. But the system of requisitions hasn't worked. Congress asks the States the money [requisitions the States] to administer the United States. The States have no right to question whether the demand is appropriate. The States' only discretion is how to furnish the money demanded.

Different parts of these papers have explained the consequences of the requisition system. Because of this system, we have embarrassed ourselves and helped our enemies feel triumphant.

[5] Remedy: Directly Raise Revenues

The illogical system of quotas and requisitions must be changed. The national government must be able to raise revenues by taxation, as authorized in every well-ordered constitution. It will rescue us from the inconveniences and embarrassments resulting from limited money in the public treasury.

[6] Opponents: Tax Only Imports

Opponents of the new Constitution agree. But they say that *internal* taxation should be used exclusively by the State governments. They are willing to give the federal government *external* taxation—duties on imported articles.

Power Proportionate to Objective

Prohibiting the federal government from using internal taxation violates the maxim of good sense and sound policy. Every POWER ought to be in proportion to its OBJECTIVE. Commercial imports will never provide enough revenue for the Union's present and future needs. It is important to public justice and public credit that we pay the current foreign and domestic debt. And everyone agrees that some federal agencies are necessary. Import duties alone would never even meet the federal government's current needs. Its future needs cannot be calculated or limited; and it must have the unconfined power to provide for them.

I believe history proves that, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources.

[7] Banning Internal Tax Leads to a Union Weak

Some people say that State requisitions will make up the money the federal government will need. This shows why federal revenue can't be raised through import taxes alone. It acknowledges that deficiencies will occur. And whenever requisitions are used, it will make the Union weak, create of conflict between the federal government and the States, and between the States.

In the future, will the States fulfill their requisitions any better than they do now? If less is required from the States, they will be

proportionately less able to answer the demand. At some point, the States would say: this is the limit of where public happiness will be promoted by supplying the government money and everything beyond this point is unworthy of our care or anxiety.

How can a government, half supplied and always in need, provide for the security, advance the prosperity, or support the reputation of the nation? How can it possess energy or stability, dignity or credit, confidence at home or respectability abroad? How will it avoid sacrificing commitments to immediate necessity? How can it undertake large plans for pubic good?

[8] War Funding Nearly Impossible

Let's look at what will happen during our next war. Let's assume, for argument's sake, that import duties will be enough to pay our debt and fund the peacetime federal government. Then a war breaks out. We can't depend on State requisitions. The federal government would have to take appropriated funds from their proper objects to defend the States.

During a modern war, even the wealthiest nations need large loans. For a country as poor as ours, loans are necessities. But who would lend to a government that has no reliable method of raising repayment funds? The loans it could get would be the same that loan sharks commonly lend to bankrupt and fraudulent debtors—very small with an enormous interest rate.

[9] Internal Taxes: Emergencies Met

Because the country has few resources, some people might fear that allocated funds will be diverted during such a crisis, even if the national government has the unrestrained power of taxation. But two considerations will quiet these fears: (1) during a crisis the full resources of the community will be used for the benefit of the Union and (2) deficiencies can be supplied by loans.

[10] Internal Taxes Protect Union's Credit

If the national government had the authority to raise money through new taxes, it could borrow as much as it might require. Both Americans and foreigners could confidently lend to it.

But to depend on a government that must, itself, depend on thirteen other governments to fulfill its contracts would require a credulity rarely seen in the pecuniary transactions of mankind and unreconcilable with the usual sharp-sightedness of avarice.

[11] Taxation Issue Needs Attention

This discussion may seem unimportant to men who envision a poetic, utopian America. But to those who believe we will experience our share of the vicissitudes and calamities that have fallen to other nations, they are entitled to serious attention. Such men see the actual situation. They understand that ambition or revenge too easily inflicts evils upon a country.

PUBLIUS

Constitution of the United States of America

Annotated with Quotes from the Federalist Papers

Work-in-progress---DRAFT COPY No copies are to be made.

Mary E Webster, editor

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The Constitution of the United States of America

September 17, 1787

We, the people of the United States,
in Order to form a more perfect Union,

Why has government been instituted at all? Because the passions of men won't conform to the dictates of reason and justice without constraint. **15** [12][*]

Government is an indispensable necessity. It is equally undeniable that, whatever its form, the people must cede some of their natural rights to the government to vest it with requisite powers. **2** [2]

But if the Union, as has been shown, is essential to the security of the American people against foreign danger, if it is essential to their security against wars among the different States, if it is essential to guard them against violent and oppressive factions that threaten the blessings of liberty, and against those military establishments that gradually poison its very fountain, and if, in a word, the Union is essential to the happiness of the American people, is it not preposterous to argue against a government, without which the objectives of the Union cannot be attained, by saying it may detract from the importance of the governments of the individual States? Was the American Revolution fought, the American Confederacy formed, the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not so the people of America can enjoy peace, liberty, and safety, but so individual State governments can enjoy some power, with certain dignities and attributes of sovereignty? **45** [2]

establish Justice,

Justice is the final goal of government. It is the goal of civil society. It has always and always will be pursued until it is obtained or until liberty is lost in the pursuit. **51** [10]

insure domestic Tranquility,

. . . men have too often abused their positions of public trust by using the pretext of public good to sacrifice the national tranquility for personal advantage or gratification **6** [3]

Perhaps nothing disturbs the tranquility of nations more than their being bound to mutual financial obligations that don't yield an equal, coincident benefit. It is as true as it is trite that men differ over nothing so readily as the payment of money. **7** [8]

A firm Union will act as a barrier against domestic strife and insurrection, preserving the peace and liberty of the States**.** **9** [1]

If a federal government able to regulate common concerns and preserve tranquility could be constructed, . . . It must carry its authority to the persons of the citizens. . . National authority must manifest through the courts of justice. **16** [7]

Charlemagne and his immediate descendants possessed both power and the dignity of imperial power. But the principal vassals, whose lands became hereditary and who

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[*] Federalist Paper #15 [paragraph 12]

composed the national assembly, which Charlemagne had not abolished, gradually threw off the yoke and moved towards sovereign jurisdiction and independence. The imperial sovereignty was unable to restrain such powerful dependents or preserve the unity and tranquility of the empire. Furious private wars, accompanied by every type of calamity, raged between different princes and states. **19** [2]

provide for the common defence,

Safety from external danger is the most powerful motivator of national conduct. **8**[4]

. . . what security can we have that our tranquility will remain undisturbed from another cause or quarter? Let us remember that peace or war will not always be left to our option. However moderate or unambitious we may be, we can't count on the moderation or hope to extinguish the ambition of others. **34** [5]

promote the general Welfare,

A good government implies two things. First, it is faithful to government's objective—the happiness of the people. Second, it has knowledge of how this objective can be best attained. Some governments are deficient in both these qualities. Most governments are deficient in the first. I do not hesitate to say that in American governments too little attention has been paid to the last. The federal Constitution avoids this error. And what merits special notice, it provides for the last in a way that increases the security for the first. **62** [11]

Property rights originate from the people. But the diversity in men's abilities is an insurmountable obstacle to equality of acquisitions. Protection of these abilities is government's primary function. **10** [6]

. . . we must . . . incorporate into [the Constitution] ingredients that differentiate between a league and a government. We must extend the authority of the Union to the citizens—the only proper objects of government. **15** [10]

and secure the Blessings of Liberty to ourselves, and our Posterity,

. . . a vital government is essential to secure liberty**.** **1** [5]

. . . dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the zeal for a firm and efficient government. History teaches us that of the men who have overturned the liberties of republics, most began their career by proclaiming their devotion to the people. They gain position by arousing people's prejudices and end as tyrants. **1** [5]

. . . after having given it attentive consideration, I believe it is in your interest to adopt [the Constitution]. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. **1** [6]

I often note with equal pleasure that God gave this one connected country to one united people—a people descended from the same language, professing the same religion, attached to the same principles of government, very similar in manners and customs. They fought side by side through a long and bloody war, establishing liberty and independence. **2** [5]

. . . each delegate [to the Constitutional Convention] was committed to public liberty and prosperity**.** **2** [12]

Without the nourishment of liberty, faction instantly dies. But abolishing liberty, an essential of political life, because it nourishes faction is as silly as the wish to annihilate air, an essential of animal life, because it gives fire its destructive energy. **10** [5]

. . . an extinction of parties necessarily implies either a universal alarm for the public safety or an absolute extinction of liberty. **50** [10]

. . . the preservation of liberty requires that the three great departments of power should be separate and distinct. **47** [3]

. . . a separation of the different powers of government is essential to the preservation of liberty. **51** [2]

do ordain and establish this

Constitution for the United States of America

The important distinction between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, is well understood in America, but seems to be little understood and less observed in any other country. **53** [2]

. . . all federal constitutions are inherently and intrinsically weak. They must be carefully structured to give them all the force compatible with the principles of liberty. **17** [2]

What is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government that is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place, force it to control itself. **51** [4]

Article One

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

The holding of all powers—legislative, executive, and judiciary—in the same hands, whether by one person, a few, or many, and whether hereditary, self-appointed, or elective, is the very definition of tyranny. **47** [3]

What method should we use . . . to maintain the necessary partition of power between the different branches as laid down in the Constitution? [Since] all outside provisions are inadequate, the government must be structured, designed, so that the three constitutional branches and their relationships will have the ability to keep each other in their proper places. **51** [1]

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, state and federal. Then the portion allotted to

each is subdivided among distinct and separate branches. Hence the rights of the people are doubly protected. The different governments will control each other, at the same time that each will be controlled by itself. **51** [1]

The organization of Congress [under the Articles of Confederation] is utterly incapable of exercising the powers that need to be deposited in the Union. A single assembly may be the proper receptacle for the slender, or rather fettered, authorities currently delegated to the federal government. But it is inconsistent with all the principles of good government to entrust it with additional powers that . . . should reside in the United States. **22** [18]

In republican government, the legislative authority necessarily predominates. The remedy for this is to divide the legislature into different houses and make them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will allow. It may even be necessary to guard against dangerous encroachments with even further precautions. **51** [6]

Section 2. The House of Representatives shall be composed of Members chosen every second Year

Frequency of elections is the cornerstone of free governments. **53** [2]

[Are] biennial elections . . . safe? . . . [Are] they . . . necessary or useful? **52** [4]

Are biennial elections necessary and useful? **53** [3]

It is essential to liberty that the government has a common interest with the people. It is particularly essential that the House of Representatives has an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy that effectually secures this dependence and sympathy. **52** [5]

. . . the federal legislature will possess only part of the supreme legislative authority that is vested completely in the British Parliament . . . It is a well-founded maxim that, excluding all other circumstances, the greater the power, the shorter ought to be its duration. And conversely, the smaller the power, the more safely may its duration be protracted. . . the federal legislature will not only be restrained by its dependence on the people, but it will be, moreover, watched and controlled by several collateral legislatures, which other legislative bodies are not. Therefore, with less power to abuse, the federal representatives will be less tempted on one side and doubly watched on the other. **52** [9]

With the advantage of frequent elections, comes an inconvenience. If an election is won, no matter by what unlawful means, the irregular member, who takes his seat is sure of holding it a sufficient time to fulfill his goals. Hence, a very destructive encouragement is given to the use of unlawful means for obtaining irregular returns. If elections for the federal legislature were annual, this practice might be very seriously abused, particularly in the more distant States. **53** [10]

. . . biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberty of the people. **53** [11]

It is necessary to remember the observations made about biennial elections. The limited powers of the Congress and the control of the State legislatures justify less frequent elections than the public safety might otherwise require. **55** [4]

I cannot conceive that the people of America, in their present mood or under any circumstances within the near future, will elect—and every second year reelect—65 or 100 men who want to pursue a scheme of tyranny or treachery. **55** [7]

. . . the House of Representatives is designed to habitually remind members of their dependence on the people. Before their exercise of power causes them to completely forget how they became elevated to high office, they will be forced to think about the moment when their power will cease, when their exercise of it will be reviewed, and when they must descend to the level from which they were raised—to remain there forever unless they had faithfully discharged their trust, establishing that they truly deserve to be reelected. **57** [11]

by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State legislature.

The House of Representatives will derive its powers from the American people. **39** [12]

The voters are to be the same as the electors of the largest house of the State legislatures. The right of suffrage is justly defined as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. **52** [2]

Even though the people elect the House of Representatives, their decision will be influenced by men whose own influence over the people results in their election into the State legislatures. **45** [7]

Who will elect the federal representatives? Not the rich more than the poor. Not the learned more than the ignorant. Not the haughty heirs of distinguished names more than the humble sons of obscurity and unpropitious fortune. The voters are the people of the United States. They will be the same people who have the right to elect representatives to the State legislatures. **57** [5]

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant to that State in which he shall be chosen.

A Representative of the United States must be 25 years old, must have been a citizen of the United States for seven years, at the time of his election he must be an inhabitant of the State he is to represent . . . Under these reasonable limitations, the door into this part of the federal government is open to people of merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular religious faith. **52** [3]

No man can be a competent legislator if he doesn't have, in addition to upright intentions, a sound judgment and some knowledge of the subjects on which he is to legislate. Some knowledge can be acquired through information within the compass of men in private as well as public life. Another part can only be thoroughly attained by actual experience in the station that requires the use of it. Therefore, in all such cases, the length of service should be somewhat proportional to how much practical knowledge is required to adequately perform the service. **53** [4]

The men freely elected by their fellow citizens will face every security that can be devised or desired to assure their fidelity to their constituents.

First, since they will be honored by being the choice of their fellow citizens, we presume that they will have, to some degree, those qualities entitling them to be elected and which promise a sincere and scrupulous regard to the nature of their engagements.

Second, as they enter public service, they will have at least a temporary affection for their constituents. Every person responds positively when they are honored or favored, or given the esteem and confidence of their fellow citizens. Apart from all considerations of interest, this guarantees some grateful and benevolent returns. Ingratitude is a common topic of declamation against human nature. And it must be confessed that instances of it are too frequent and flagrant, both in public and private life. But the universal and extreme indignation it inspires proves the energy and prevalence of the contrary sentiment.

In the third place, the ties that bind the representative to his constituents are strengthened by selfish motives. His pride and vanity attach him to a form of government that favors his pretensions, giving him a share in its honors and distinctions. Whatever the hopes or plans entertained by a few aspiring characters, a large proportion of men derive their advancement from their influence with the people. They would have more to hope from a preservation of the voters' favor, than from governmental innovations subversive to the authority of the people. **57** [7-10]

Most members of the House of Representatives will be men with jobs in the private sector. They will have a short term in office with no reason to devote their time while in public service to the study of laws, affairs, and comprehensive interests of their country. **62** [10]

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other persons.] ***changed by Amendment 14, section 2:**

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

. . . For a long time, [direct taxes] must be the chief way of raising revenue in this country. Direct taxes principally relate to land and buildings and may be appropriate for the rule of apportionment. Either the land value or the number of people may serve as a standard. The states of agriculture and population density of a country are considered co-related. For the purpose intended, numbers are usually preferred because of their simplicity and certainty. In every country, land valuation is a herculean task. In a country imperfectly settled and constantly being improved, the difficulties make it more impractical. In all situations, the expense of an accurate valuation is a formidable objection. Direct taxes, by their nature, have no limits to the discretion of the government. Therefore the establishment

of a fixed rule, compatible with its purpose, may have fewer inconveniences than to leave that discretion unbound. #21[11] OR:

The right of equal suffrage among the States is another difficulty in the Confederation. Every rule of proportion and fair representation conspires to condemn the principle that gives Rhode Island equal power with Massachusetts or Connecticut or New York. That gives Delaware an equal voice in national deliberations as Pennsylvania or Virginia or North Carolina. This contradicts the fundamental maxim of republican government, which is, the will of the majority should prevail.

Sophistry may reply that sovereigns are equal and a majority of the votes of States will be a majority of confederate America. But this kind of logical sleight of hand will never counteract the plain dictates of justice and common sense. It may happen that a majority of States is a small minority of people of America.[39]

And two-thirds of the people of America could not long be persuaded, based on artificial distinctions and syllogistic subtleties, to allow their interests to be managed by the one third. After a while, the larger States would revolt against the idea of living under the law of the smaller. Giving up their political majority rights would be not only contrary to the love of power but even a sacrifice of equality. It is neither rational to expect the first, nor just to require the last.

The safety and welfare of the smaller States depends on union. They should readily renounce a pretension that, if not relinquished, would prove fatal to that union.

It may be proposed that not seven but nine States, two-thirds of the whole number, must consent to the most important resolutions. The inference is that nine States would always include a majority of the Union. But this doesn't change the impropriety of an equal vote between States of unequal dimensions and populations. Besides, it is possible to have nine States that together have less than a majority of the people. And it is constitutionally possible that these nine may win the vote.[40]

Further, a bare majority may decide significant issues. Other matters for which doubts exist could evolve into the first magnitude of importance if the vote of seven States were a sufficiency. Additionally, the number of States will probably increase and there is no provision for a proportional augmentation of the ratio of votes.

But this is not all. What may at first be seen as a remedy, is, in reality, a poison. Giving a minority a negative over the majority (the consequence of requiring more than a majority for a decision), tends to subordinate the feelings of the greater number to those of the lesser.

Because a few States have been absent, Congress has frequently been in the situation of the Polish assembly where a single VOTE has been sufficient to stop all business. A sixtieth part of the union, which is about the size of Delaware and Rhode Island, has several times barred the operation of Congress.

In practice, this refinement has the reverse effect of what is expected from the theory. The necessity of unanimity in public bodies, or something approaching it, was based on the supposition that it would contribute to security. But in reality, it embarrasses the administration, destroys the government's energy, substituting the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junta to the regular deliberations and decisions of a respectable majority.

In national emergencies, when the goodness or badness, the weakness or strength of government is of the greatest importance, action is commonly necessary. Public business must, one way or another, go forward. If a stubborn minority controls the opinion of a majority about the best way of conducting business, to get something done, the majority

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

[40] Add New York and Connecticut to the foregoing seven and they will be less than a majority. –PUBLIUS

must conform to the views of the minority; thus, the smaller number will overrule the greater and set a tone to the national proceedings. The reality will include tedious delays, continual negotiation and intrigue, and contemptible compromise of the public good.

In such a system, it is good when compromises are possible. But some occasions won't permit accommodation, leaving legislative solutions injuriously suspended or fatally defeated. The inability to obtain the necessary number of concurring votes often maintains a state of governmental inaction. The situation creates weakness, sometimes bordering on anarchy.

It's easy to see that this principle provides greater opportunity for both foreign corruption and domestic faction than having a majority decide, even though the opposite has been assumed. This mistake arises from not carefully considering the consequences from obstruction of governmental progress on certain critical issues.

While it's true that when the constitution requires the concurrence of a large number to pass any national act, we may be satisfied that nothing improper will be likely *to be done*. But we forget how much good may be prevented and ill produced because doing what may be necessary is hindered, keeping affairs in the same unfavorable positions.

For instance, suppose we were allies with one foreign nation against another. Suppose our situation demanded peace but the interest or ambition of our ally promoted war, possibly justifying our making separate terms. In this situation, it would be easier for our ally to use bribes and intrigues to tie the hands of our government from making peace if a vote of two-thirds were required rather than a simple majority. In the first case, a smaller number (34%) would need to be corrupted; in the latter, a greater number (51%).

By the same principle, a foreign power at war with us could perplex our councils and embarrass our exertions.

Commercially we may suffer similar inconveniences. We might have a commerce treaty with a nation, who could easily prevent our forming a connection with her trade competitor, even though such a connection would be beneficial to us.

These kinds of evils are not imaginary. A weak side to republics, among their many advantages, is that they allow easy access to foreign corruption. Although a monarch often sacrifices his subjects to his ambition, his personal interest in both the government and the external glory of his nation make it difficult for a foreign power to make a bribe large enough to sacrifice his state. So the world has seen few examples of this type of royal prostitution, even though there have been abundant examples of every other kind.

In a republic, people are elected from and by their fellow-citizens to stations of great pre-eminence and power. They may be offered adequate compensations to betray their trust that only the most virtuous can resist. Others may find that their personal interest over-rides their obligations to duty.

Hence, history furnishes us with many mortifying examples of foreign corruption in republican governments. The amount this contributed to the ruin of ancient commonwealths already has been delineated.

It is well known that the emissaries of neighboring kingdoms have, at various times, purchased the deputies of the United Provinces. If my memory serves me right, the Earl of Chesterfield wrote his court, suggesting that his success in an important negotiation depended on his getting a major's pay for one of those deputies.

In Sweden, the parties were alternately bought by France and England in such an open, notorious manner that it excited universal disgust in the nation. It was a principal cause for the most limited monarch in Europe to become one of the most uncontrolled within a single day without tumult, violence, or opposition. **22** [7-13]

An objector from a small State is equally loud against the dangerous **inequality** in the **House of Representatives.** **38** [7]

Clearly, trial by jury can have no influence on the legislature in regard to the *amount* of taxes to be laid, to the *objects* on which they are to be imposed, or to the *rule* by which they are to be apportioned. It's only influence, therefore, must be on the mode of collection and the conduct of the officers entrusted with the execution of the revenue laws. 83[14]

The general category of internal taxes may be subdivided into *direct* and *indirect* taxes. Though the objection is made to both, the reasoning of it seems confined to direct taxes. . .

The objection appears to have, at first sight, more foundation when applied to real property, houses, or land. But even in this view, it will not bear close examination. Land taxes are commonly laid in one of two modes, either by *actual* valuations, permanent or periodical, or by *occasional* assessments, according to the best judgment and discretion of officers whose duty it is to make them. In either case, knowledge of local details is only needed in the EXECUTION of the duty, which will be carried out by commissioners or assessors, elected by the people or appointed by the government for the purpose. All the law can do is prescribe the manner the persons will be elected or appointed, fix their numbers and qualifications, and draw the general outline of their powers and duties. What, in all this, cannot be as well performed by the national legislature as by a State legislature? Either can only regulate the general principles. As already observed, local details must be referred to those who execute the plan. #36[6-7]

Number 54

Number of Representatives, Direct Taxes: Calculated by Same Rule

The next topic on the House of Representatives relates to the appointment of its members by the States, which is determined by the same rule as that of direct taxes.

[2] Representation/Population; Taxes/Wealth

No one is arguing that the population of each State should not be the standard for determining each State's proportional representation. Likewise, using the same rule to determine each State's tax obligation will probably not be contested. However, the rule itself, in these two cases, is founded on two different principles.

In the case of representatives, the rule refers to the personal rights of the people, with which it has a natural and universal connection.

In the case of taxes, it refers to the proportion of wealth. It is not a precise measure. In fact, in most cases, it is a very unfit one. Despite the imperfection of the rule as applied to the relative wealth and contributions of the States, it is evidently the least objectionable among the practical rules. Since it recently received the general sanction of America, the convention selected it.

[3] Objection: Counting Slaves In Population

Admitting all this, it might be asked: But does it follow from using numbers to measure representation, or slaves combined with free citizens as a ratio of taxation, that slaves should be included in the numerical rule of representation? Slaves are considered property, not persons. Therefore, they should be counted in estimates of taxation, which are founded on property. And they should be excluded from legislative representation, which is determined by a census of persons.

As I understand it, this is the objection stated in its full force. I will state the reasoning, which may be offered on the opposite side with equal candor.

[4] Change Law, Slaves Become Citizens

"We subscribe to the doctrine," one of our Southern friends might observe, "that representation relates more closely to persons and taxation more closely to property. We join in applying this distinction to the case of our slaves. But we must deny the fact that slaves are considered as merely property and in no way whatever as persons. The true

state of the case is, they have both qualities. Our laws consider them, in some respects, as persons and, in other respects, as property.

"Since the slave is forced to labor, not for himself but for a master, since one master can sell him to another master, since he is subject at all times to be restrained in his liberty and chastised in his body by the capricious will of another—the slave may appear to be degraded from the human rank and classed with those irrational animals which fall under the legal denomination of property.

"On the other hand, by being protected in his life and limbs against the violence of all others, even the master of his labor and his liberty, and in being punishable himself for all violence committed against others—the slave is clearly regarded by the law as a member of society, not as a part of the irrational creation. He is regarded as a moral person, not as a mere article of property.

"The federal Constitution, therefore, is correct when it views the character of our slaves as a mixture of persons and property. This is, in fact, their true character. It is the character bestowed on them by the laws under which they live. And it will not be denied that these are the proper criterion. Non-slave states dispute the inclusion of slaves in the computation of numbers. But the pretext of laws, alone, has transformed Negroes into property. And it is admitted, if the laws restored the rights that have been taken away, the Negroes could no longer be refused an equal share of representation with the other inhabitants.

[5] Condemn Slavery, Yet Call Slaves Property

"This question may be looked at in another way. Everyone agrees that just as wealth and taxation are measured by numbers, numbers are the only proper measure of representation. Would the convention have been impartial or consistent, if they had excluded slaves from the list of inhabitants when calculating representation, then inserted them to calculate tariff contributions (taxes)? Could it be reasonably expected that the Southern States would agree to a system that considered their slaves, in some degree, as men when burdens were imposed, but refused to consider them in the same way when advantages were conferred?

"Wouldn't there also be some surprise that the same people who reproach the Southern States for the barbarous policy of considering part of their human brethren as property, should now contend that the government, to which all States are to be parties, should consider this unfortunate race more completely in the unnatural light of property than the very laws they complain about?

[6] Slaves: Computing State Representation

"It may be argued, perhaps, that slaves are not included in computing the state representation in any of the States possessing them. They neither vote nor increase the votes of their masters. On what principle, then, should they be taken into the federal computation of representation? By rejecting them completely, the Constitution would follow the very laws looked to as the proper guide.

[7] Constitution Defines # Representatives; States Define Voters

"This objection is repelled by a single observation. It is a fundamental principle of the proposed Constitution that the total number of representatives allotted to each State is determined by a federal rule, based on the total number of inhabitants. However, the State, itself, designates which inhabitants may choose the people who will be Representatives. Voter qualifications may not be the same in any two States. In some of the States, the difference is very material.

"In every State, some inhabitants who are deprived of the right to vote by the State constitution, will be included in the census by which the federal Constitution determines the number of representatives. Following this reasoning, the Southern States might argue that the Constitution doesn't require that all States have the same suffrage policy towards their own inhabitants. Consequently, the full number of slaves should have been included in the census of inhabitants, in the same way that other States count inhabitants who do not have all the rights of citizens.

"A rigorous adherence to this principle, however, is waived by the southern States that would gain by it. All that they ask is that equal moderation be shown on the other side. Let the case of the slaves be considered, as it is in truth, a specific one. Let the Constitutional compromise be mutually adopted, regarding slaves as inhabitants debased by servitude below the equal level of free inhabitants, which regards the *slave* as divested of two-fifths of the *man*.

[8] Government Protects Property, People

"After all, isn't there a better basis to defend this article of the Constitution. So far, we have assumed that representation relates only to persons and not at all to property.

"But is this valid? Government is established to protect property as well as people. Therefore, both may be considered as represented in the government.

“On this principle, in several States, particularly New York, one branch of government is intended to more especially be the guardian of property and is, accordingly, elected by that part of society most interested in this governmental objective.

"In the federal Constitution, this policy does not prevail. Property rights are committed into the same hands as the personal rights. Therefore, some attention ought to be paid to property when choosing those hands.

[9] Influence of Wealth

"For another reason, the votes allotted in the federal legislature to the people of each State ought to bear some proportion to the comparative wealth of the States.

“States, unlike individuals, don't have an influence over each other, influence arising from wealth. The law allows an opulent citizen only a single vote to choose his representative. However, his wealth frequently influences other voters towards his choice. Through this imperceptible channel, the rights of property are conveyed into public representation.

"A State possesses no such influence over other States. The richest State in the Confederacy will probably never influence the choice of a single representative in any other State. Nor will the representatives of the larger, richer States possess any advantage in the federal legislature over the representatives of other States, except the advantage resulting from their superior number. Therefore, if their superior wealth and influence may entitle them to any advantage, it should be secured to them by a superior share of representation.

"In this respect, the new Constitution is materially different from the existing Confederation, as well as from that of the United Netherlands, and other similar confederacies. In each of the latter, federal resolutions take effect only after the states composing the union voluntarily approve them. Hence the states, though possessing an equal vote in the public councils, have an unequal influence, corresponding with the unequal importance of these subsequent, voluntary resolutions.

"Under the proposed Constitution, the federal acts will take effect without the ratification of the individual States. They will depend only on the majority of votes in the federal legislature and, consequently, each vote, whether from a larger or smaller State, or a State more or less wealthy or powerful, will have equal weight and efficacy. In the same manner that individual votes in a State legislature by representatives of unequal counties have precise equality of value and effect, or if there was any difference in the case, it proceeds from the difference in the personal character of the individual representative rather than from any regard to the wealth of the district from which he comes."

[10] Arguments Favor Apportionment Plan

An advocate for the Southern interests might employ such reasoning on this subject. And although it may appear to be a little strained in some points yet, on the whole, I must confess that it fully reconciles me to the scale of representation that the convention established.

[11] States' Census Bias: Increase Representation, Decrease Tax

In one respect, the establishment of a single measure to calculate representation and taxation will have a very beneficial effect. The accuracy of the Congressional census will

necessarily depend to a considerable degree on the disposition, if not on the cooperation, of the States. It is important that the States should feel as little bias as possible to swell or reduce their numbers.

If their share of representation alone was governed by this rule, they would have a reason to exaggerate their inhabitants. If it decided their share of taxation alone, the opposite temptation would prevail. By extending the rule to both, the States will have opposite interests, which will control and balance each other, and produce the requisite impartiality. #54 [1-11 all]

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

It isn't extravagant to guess that the first census will, at the rate of one for every 30,000 people, increase the number of representatives to at least 100. Estimating Negroes in the three-fifths proportion, the population of the United States will be three million, if it isn't already. #55[6]

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

It is not disputed that one house of the legislative body should have the power to originate the inquiry or, in other words, prefer the impeachment. . . The convention borrowed this model from Great Britain. The House of Commons prefers the impeachment; **65** [5]

The division of impeachment powers between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges. And it guards against the danger of prosecution from a prevalent factious spirit in either one. **66** [2]

It [House of Representatives] will possess the sole right of instituting impeachments. **66** [7]

To assure judges will act responsibly, they are liable to be impeached by the House of Representatives and tried by the Senate. **79** [4]

Section 3. The Senate of the United States shall be composed of two Senators from each State,

Two Senators per State

And no State is entitled to more than two senators. **59** [8]

Purposes of Senate

. . . we will look at the purposes of the Senate. To determine these, we need to look at the inconveniences the republic would suffer from not having such an institution. **62** [7]

First. It is a misfortunate part of republican government . . . that the administrators may forget their obligations to their constituents and prove unfaithful to their important trust . . . A senate as a second house of legislature . . .must always be a beneficial check on the government. It doubles the people's security by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy. Without it, the ambition or corruption of one would be sufficient.

. . . Sinister conspiracies become more improbable as the differences between the genius of the two legislative bodies grows. Therefore, making them as different as possible . . . is prudent. **62** [8]

Second. All single, large assemblies have the propensity to yield to the impulse of sudden, violent passions and be seduced by factious leaders into intemperate, pernicious resolutions. Therefore, a Senate is necessary.

Numerous [historical] examples on this subject might be cited . . . A body formed to correct this infirmity should be, itself, free from it. Consequently, it should be less numerous. Moreover, it should possess great stability through terms in office of considerable duration. **62** [9]

Third. Another defect corrected by a Senate involves a lack of familiarity with the objectives and principles of legislation.

Most members of the House of Representatives will be men with jobs in the private sector. They will have a short term in office with no reason to devote their time while in public service to the study of laws, affairs, and comprehensive interests of their country. If the House was the only legislative assembly, it would make a variety of important errors. It may be proven . . . that many of American's present embarrassments can be charged on the blunders of our governments. And they have come from the heads rather than the hearts of most of the authors of them. Indeed, what are all the repealing, explaining, and amending laws that fill and disgrace our voluminous codes, but so many monuments to a lack of wisdom? Each legislative session discredits the preceding session, showing the value of the aids expected from a well-constituted Senate. **62** [10]

Fourth. The changes in public councils arising from a rapid succession of new members . . .highlights the absolute necessity of some stable institution in the government. Every new election in the States [which] changes . . . legislation. But a continual change, even if it is good legislation, is inconsistent with every rule of prudence and every prospect of success. Private life verifies this observation. And it becomes more just and more important in national transactions. **62** [12]

A history of the harmful effects of a mutable government would fill a volume. I will hint at a few only, each of which is a source of innumerable others. **62** [13]

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character.

All prudent people know that an individual who frequently changes his plans or carries on his affairs without any plan at all will quickly fall victim to his own unsteadiness and folly. His friendly neighbors may pity him, but all will decline to connect their fortunes with his . . . Every nation whose affairs betray a lack of wisdom and stability may expect every possible loss to the more systematic policy of their wiser neighbors . .

[Currently] America . . . is ridiculed by her enemies. And she is prey to every nation that has an interest in speculating on her fluctuating councils and embarrassed affairs. **62** [14]

The domestic effects of a mutable policy are even more calamitous. It poisons the blessings of liberty itself. It won't benefit the people that the laws are made by men of their own choice, if the laws are so voluminous that they cannot be read or so incoherent that they cannot be understood. Or if they are repealed or revised before they are promulgated or undergo such incessant changes that no man who knows what the law is today can guess what it will be tomorrow. Law is defined to be a rule of action. But how can it be a rule when it is little known and less fixed? **62** [15]

Another effect of public instability is the unreasonable advantage it gives the few sagacious, enterprising, and wealthy citizens over the industrious and uninformed mass of people. Every new regulation concerning commerce or revenue or affecting property value presents a new opportunity to people who watch the change and can foresee its consequences, an opportunity created, not by themselves, but by the toils and cares of the great body of their fellow citizens. When this happens, it may truthfully be said that laws are made for the *few*, not for the *many.* **62** [16]

. . . Great injury results from an unstable government. Lack of confidence in public councils discourages every useful undertaking where success and profit may depend on the existing laws continuing.

What prudent merchant will jeopardize his fortunes in a new branch of commerce when he doesn't know if his plans may be made unlawful before they can be executed? What farmer or manufacturer will commit himself to a specific cultivation or establishment when he has no assurance that his preparatory labors and investment will not make him a victim to an inconstant government? . . . **62** [17]

But the most deplorable effect of all is the reduced attachment and reverence that steals into the hearts of the people towards a political system that is so obviously weak and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable. Nor will it be truly respectable without possessing a certain portion of order and stability.**62** [18]

A ***fifth*** aim . . . is the importance of national reputation. As discussed in the previous paper, without a select, stable part of government, the esteem of foreign powers will be forfeited by an unenlightened and variable policy. . . **63** [1]

The judgment of other nations is important to every government for two reasons:

1) Independent of the merits of any specific plan or measure, it is desirable that other nations see it as coming from a wise and honorable policy.

2) In doubtful cases, particularly when the national councils may be warped by some strong passion or momentary concern, the opinion of the impartial world may be the best guide. . . **63** [2]

. . . A good national reputation . . . can only be found in an assembly so small that each individual member may share the praise and blame for public measures. Or in an assembly with such a long term in office that the pride and consequence of its members may become part of the reputation and prosperity of the community. **63** [3]

. . . A ***sixth*** defect is the lack, in some important cases, of a due responsibility in the government to the people, arising from the frequency of elections that in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. Nevertheless, when explained, it must be acknowledged as undeniable as it is important. **63** [4] [This is explained under the Senate term of "six years" clause.]

. . . [***Seventh.*** Sometimes] a well-constructed Senate [is] necessary . . . to protect the people from their own temporary errors and delusions.

The cool, deliberate will of the community should ultimately prevail over the objectives of its rulers in all governments and actually will prevail in all free governments. However, sometimes the people are stimulated by some irregular passion or illicit advantage, or misled by the artful misrepresentations of men with self-serving interests. Sometimes the people will call for laws that they themselves will afterwards be the most ready to lament and condemn. In these critical moments, will the interference of a temperate, respectable body of citizens to block the misguided course, suspending the blow planned by the people against themselves, until reason, justice, and truth can regain their authority over the public mind, have a salutary effect?

What bitter anguishes would have the Athenians escaped if their government had contained such a safeguard against the tyranny of their own passions? Popular liberty might have escaped the permanent blame for decreeing, to the same citizens, hemlock on one day and statues on the next. **63** [7]

It may be suggested that when people are spread over an extensive region they cannot . . . be infected by violent passions or the danger of conspiring to pursue unjust measures. . . [Although] the extended area will exempt Americans from some of the dangers incident to lesser republics, it will also expose them to the inconvenience of living for a longer time under the influence of the misrepresentations passed by interested men. **63** [8]

Remember, history shows us no long-lived republic without a senate. . . some institution that blends stability with liberty [is necessary]. . . The people can never willfully betray their own interests, but they may be betrayed by their representatives. The danger is greater when the whole legislative trust resides in the hands of one body of men than when the agreement of separate, dissimilar bodies is required in every public act. **63** [9]

Jealous adversaries of the Constitution will probably [say] . . . that a senate not appointed directly by the people and for the term of six years must gradually acquire a dangerous pre-eminence in the government and, eventually, transform into a tyrannical aristocracy. **63** [15]

To this, the general reply should be sufficient: Liberty can be endangered by the abuses of liberty, as well as by the abuses of power. . .

But a more specific reply can be given: **63** [16]

Before transforming into a tyrannical aristocracy, the Senate must first corrupt itself. Next it must corrupt the State legislatures. It must then corrupt the House of Representatives. And, finally, corrupt the people at large.

The Senate must be corrupted first before it can attempt establishing a tyranny.

To do this, it must corrupt the State legislatures; if not corrupted, the State assemblies would periodically send new members to the Senate, regenerating the whole body.

If the House of Representatives wasn't corrupted, the opposition of that coequal legislative branch of the government would inevitably defeat the attempt.

And without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order.

Can any man seriously persuade himself that the proposed Senate can, by any possible means within human abilities, achieve the objectives of lawless ambition through all these obstructions?

. . . [Historical examples] show that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent, aristocratic body.

Additionally, we have sufficient reason to believe that if such a revolution should ever happen from causes that man's foresight cannot guard against, the House of Representatives with the people on their side will at all times be able to bring the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional

authority of the Senate except a display of enlightened policy and an attachment to the public good that will gain the affections and support of the entire body of the people themselves. **63** [21]

Equal Representation in Senate

An objector from a large State exclaims loudly against the unreasonable equality of representation in the Senate. **38** [7]

The Senate, on the other hand, will derive its powers from the States as political, coequal societies. These will be represented on the principle of equality in the Senate, as they are in the existing Congress. In this, the government is *federal,* not *national.* **39** [12]

Equal representation in the Senate, apparently a compromise between the opposite demands of the large and small States, also doesn't need much discussion.

When people incorporate into one nation, every district should have a *proportional* share in the government. When independent, sovereign states form a league, the states, however unequal in size, should have an *equal* share in common councils. If these principles are true, in a compound republic, with both national and federal character, the government should contain a mixture of the principles of proportional and equal representation. . .

The voice and political situation of America call for a common government with the powers necessary to meet its objectives. The smaller States won't agree to a government founded on principles that favor the larger States. The only option for the larger States, then, lies between the proposed government and a government still more objectionable. From the alternatives, prudence advises us to embrace the lesser evil. And instead of fruitlessly worrying about what mischief may ensue, we should think about the advantageous consequences that may make the sacrifice worthwhile. **62** [4]

In this spirit, allowing each State an equal vote constitutionally recognizes and preserves the part of sovereignty remaining in the independent States. Large States are as anxious as small States to guard against an improper consolidation of the States into one simple republic. Therefore, the equality should be no less acceptable to the large States. **62** [5]

Equality in the Senate also creates a block against improper legislative acts. No law or resolution will pass without the concurrence, first, of a majority of the people [represented by the House of Representatives] and, then, a majority of the States [the Senate].

Sometimes this complicated check on legislation may be injurious as well as beneficial. The defense of the smaller States is more rational if they have any common interests different from those of the large States that would otherwise be exposed to danger. But since the larger States, by their power over the supplies, will always be able to defeat unreasonable exertions of this prerogative of the smaller States and, as the ease and excess of law-making are the diseases to which our governments are most liable, this part of the Constitution may be more convenient in practice than it appears in contemplation. **62** [6]

[chosen by the legislature thereof,]

The Senate, like the present Congress and the Senate of Maryland, derives its appointment indirectly from the people. **39** [5]

The Senate will be elected absolutely and exclusively by the State legislatures. **45** [7]

An objection to this position may be . . . that it exposes the national Senate to the danger that might flow from an exclusive power in the State legislatures to regulate the federal elections. Some people may claim that, by not appointing Senators, State legislatures could, at any time, give a fatal blow to the Union. [However] the interest of each

State to maintain its representation in the national councils would provide complete security against an abuse of the trust. **59** [6]

The Senate [will be elected] by the State legislatures. **60** [3]

It is also unnecessary to discuss the appointment of senators by the State legislatures. Of all the ways that this branch of government might have been formed, the method in the Constitution is probably the most consistent with public opinion. It has two advantages: It is a select appointment that gives State governments a role in the forming the federal government. It secures the States' authority and links the two systems. **62** [3]

And the State legislatures appoint the senators. This system has a vast advantage over direct elections by the people where the activity of party zeal, taking advantage of indifference, ignorance, and the hopes and fears of the unwary and uninterested, often places men in office by the votes of a small proportion of the electors. **64** [3]

The . . . State legislatures who appoint the senators will generally be composed of the most enlightened and respectable citizens. We may presume that their attention and their votes will be directed to only those men who have become the most distinguished by their abilities and virtue, and in whom the people perceive solid grounds for confidence. **64** [4]

the Senate, a body selected by the collective wisdom of the legislatures of the States, **66** [12]

. . . State legislatures . . . make the permanent appointments . . . **67** [10]

for six years;

The Senate is elected for the period of six years, only one year more than the Maryland senate and two more than the senates of New York and Virginia. **39** [5]

Senators will be chosen for a period of six years. **59** [8]

[Sometimes frequent elections reduces an elected official's sense of responsibilitiy to the people.] This remark will, perhaps, appear not only new, but paradoxical. Nevertheless, when explained, it must be acknowledged as undeniable as it is important. **63** [4]

Responsibility must be reasonable and effectual.

To be reasonable, it must be limited to objects within the power of the responsible party.

To be effectual, it must relate to those operations of that power that the constituents can judge.

Governmental legislation can be divided into two general classes: measures affecting its immediate, day-to-day operations, and a series of connected measures that have a gradual and, perhaps, unobserved operation.

The importance of the latter to the permanent welfare of every country needs no explanation. Yet, clearly, a legislature elected for so short a term that it can provide only one or two links in a chain of measures essential to the general welfare should not be answerable for the final result, just as a steward employed for one year can be responsible for improvements that can't be accomplished in less than six years.

Nor is it possible for the people to estimate the *share* of influence that each annual assembly may have on an outcome produced by a variety of actions over several years. It is hard enough to preserve a feeling of personal responsibility in the members of a *numerous* body for the acts of the body that have an immediate, detached, and obvious operation on their constituents. **63** [5]

The remedy for this defect is an additional legislative body with members having long enough terms to provide for objectives that require constant attention and a train of measures, so they can be effectually answerable for the attainment of those objectives. **63** [6]

. . . [Senators will be] able and honest men who remain in office a sufficient time to become thoroughly acquainted with our national concerns, and to form and introduce a system for the management of them. During their term in office, they can expand their political information, making their accumulated experience more and more beneficial to their country. . .**64** [5]

and each Senator shall have one vote.

the Senate, where members will vote individually, would rarely have fewer active voices than in the existing Congress. **75** [7]

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class, at the Expiration of the fourth Year, and of the third Class, at the Expiration of the sixth Year, so that one third may be chosen every second Year;

Their terms will rotate, with a third of them vacated and replenished every two years. **59** [8]

. . . The Constitution also has a prudent way to obviate the inconvenience of periodically transferring great affairs entirely to new men. By leaving a lot of the old ones in place, uniformity and order, as well as a constant succession of official information, will be preserved. **64** [5]

[and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]*

[Senate] appointments are *. . . provide[d] for* in the Constitution **67** [9]

. . . State legislatures . . . make the permanent appointments . . . The State Executives have the clear, unambiguous power to fill casual vacancies in the Senate by temporary appointments. **67** [10]

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The qualifications of persons who may . . . be chosen . . . are defined and fixed in the Constitution and are unalterable by the legislature. **60** [11]

The qualifications of Senators, as distinguished from those of Representatives, consist of a more advanced age and longer period of citizenship.

A Senator must be at least thirty years of age. A Representative, twenty-five. And a Senator must have been a citizen for nine years. Seven years are required for the Representative.

The nature of the senatorial trust requires more information and stability of character and the Senator should have reached a period of life most likely to supply these advantages, making these distinctions proper.

Since they participate in transactions with foreign nations, they should be weaned from predispositions and habits resulting from a foreign birth and education. Nine years is a prudent compromise between total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils. **62** [2]

The Constitution pays particular attention to this objective. By excluding men . . . under 30 from [being Senators], it confines the candidates to men about whom the people have had time to form a judgment. They will probably not be deceived by brilliant appearances of genius and patriotism which, like transient meteors, sometimes mislead as well as dazzle.

If it is true that wise kings will always be served by able ministers, it is fair to argue that an assembly of select electors, to a greater degree than kings, have access to extensive and accurate information about men and characters, so their appointments bear at least equal marks of discretion and discernment.

We can infer that . . . Senators, so chosen, will always be among men who best understand our national interests, whether as related to the States or foreign nations, the men best able to promote those interests, and whose reputation for integrity inspires and merits confidence. . . **64** [4]

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

The appointment of an extraordinary person as Vice President has been objected to as superfluous, if not mischievous. It has been alleged that it would have been preferable to authorize the Senate to elect out of their own group an officer answering that description.

But two considerations seem to justify the ideas of the convention in this respect. First, to always secure a definite resolution, the Senate's President should have only a casting vote. And to take the Senator of any State from his seat as Senator and make him President of the Senate, would exchange, in regard to his home State, a constant for a contingent vote.

Second, the Vice President may occasionally become a substitute for the President. . . **68** [10]

. . . When we include the President of the Senate, we won't hesitate to infer that the people of America would have greater security against an improper use of the power of making treaties under the new Constitution than they now enjoy under the Confederation. . . 75[7]

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

The State of the Union under a failed Constitution;
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The state of the Union under a failed Constitution
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Introduction

Alexander Hamilton, James Madison, and John Jay: An historical note

February 18, 1995

In 1776 the founding fathers signed the Declaration of Independence which declared that the 13 British Colonies in North America were joining in a Union of Independent States, to be known as the United States of America. The document by which the new nation proposed to govern itself was known as The Articles of Confederation.

The purpose of any document that proposes to constitute the law by which a society freely governs itself, is to insure that the document simultaneously provides the government with *sufficient power to govern, but insufficient to oppress*. By 1785 it became clear that the Articles of Confederation had only half succeeded. The government had insufficient power to oppress which was desired, but did not have sufficient power to govern.

So in 1787 the individual States mandated their delegates to meet in order to review and amend the Articles of Confederation, to correct the perceived problem. However instead of simply amending the Articles the delegates decided there was a need to replace the entire Articles of Confederation with a new and better approach, which they incorporated in a new document called the US Constitution. The approach they took went far beyond the mandate they were given. In addition the State of New York was opposed to the new Constitution. For the Constitution to become law each of the 13 States would have to vote for ratification.

In order to persuade the voters of the State of New York to ratify the Constitution, Alexander Hamilton (1757-1804), James Madison (1751-1836), the father of the Constitution, and John Jay (1745-1829), who became the first chief Justice of the US Supreme Court, wrote a series of 85 newspaper articles under the Federalist banner which they signed under the shared pseudonym "PUBLIUS". The efforts of these men resulted in The Federalist Papers which is an authoritative analysis of the Constitution of the United States and an enduring classic of political philosophy ranking in historical importance behind only the Declaration of Independence and the Constitution itself.

Some 25 times longer than the Constitution itself, The Federalist Papers takes the reader through the logical thought process that explained and justified the specific details of the US Constitution. When questions arise as to any aspect, interpretation or meaning of the Constitution, it is to the Federalist Papers, even today, that we first turn for guidance.

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Overview of the Nation Under a Failed Constitution

Federalist 86: Rebuttals to the legal profession's defenses.

An explanation of how the US Constitution has failed to provide the people with a government with sufficient power to govern but insufficient to oppress. An outline of the constitutional foundation and legal reasons for the charge that members of the American legal profession constitute (1) a same hands faction, and (2) are in effective unconstitutional control of all government in the United States.

Federalists 87, 88, and 89: Tyranny by the legal profession.

A detailed rebuttal of all the known arguments that the legal profession has brought forward to defend the charges brought in Federalist 86.

Federalists 90 and 91: Treason by the legal profession.

A detailed examination of the nature and manifestation of the tyranny exercised by the legal profession over this Nation, a diagnosis, a suggested treatment and cure.

Federalists 92. 93 and 94 : Cognitive dissonance as the source of self deceit.

An outline of the probability that any lawyer occupying elective office outside the Judiciary is guilty of treason. A rebuttal to the profession's arguments that their presence in elective office outside the Judiciary is not treason. The presentation of the conclusive legal case against the legal profession on the issue of treason.

Federalist 95: The need for public support to effect change.

An outline of the psychological dysfunction of cognitive and extreme cognitive dissonance also known as self-deceit, and the widespread existence of this condition among members of the legal profession.

Federalist 96: Evidence that American legal profession is very corrupt.

A discussion of the need and nature in a democratic society for public support in addition to conclusive legal arguments, in order to effect change.

Federalists 97 98 99 100: Rebuttal to cure of corruption by education.

A conclusive presentation demonstrating that the American legal profession is the most corrupt in the land and their members unfit to hold public office.

Federalist 101

The four instruments of tyranny. The natural evolution of legal professionals as tyrants. A rebuttal to the legal profession's proposals that corruption can be cured by 'education' alone.

Federalist 102: Deceit—the main instrument of the profession.

An analysis of the four instruments of tyranny and of the natural evolution of the legal profession as tyrannical.

Federalist 103: Ethical abandonment by the legal profession.

An analysis of the legal profession's main instrument of tyranny - deceit.

Federalists 104, 105, 106, 107: An analysis of the legal profession's formal abandonment of ethics.

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The Federalist: The State of the Union under a failed Constitution

86

February 8, 1995

The time has come when it is necessary for someone to take upon himself the task of bringing to the attention of his fellow citizens that those who are sworn to uphold the Constitution are not doing so. That as a result the Nation is embarked on a very dangerous course, the ill effects in terms of financial cost,[1] emotional cost and loss of constitutional rights, can be seen everywhere. This writer proposes to make his case to his fellow Citizens by writing a series of articles under the banner of the Federalist, numbered in sequence after those written by James Madison and Alexander Hamilton. They signed: "PUBLIUS." This writer will sign: "PUBLIUS II."

THE PROBLEM

The nation does not now and has not for some years experienced constitutional or representative government. That is because notwithstanding that the US Constitution was specifically written to prevent any single "same hands" group from accumulating all powers of government, one particular group has succeeded in doing precisely that.

James Madison, author of the US Constitution, wrote : "No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that ... the accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny."[2] *For then the laws are made not to serve justice, but rather to serve the personal profit of those who make them.*

To avoid the "same hands" accumulation of power, the Constitution incorporated a system of "separation of powers" and "checks and balances". This system created three separate branches of government. The Legislative (Congress), which makes the laws, the Judiciary (the Courts), which interprets the laws and the Executive (the Presidency), which enforces the laws. By separating the powers of government in this manner it was intended that each branch would serve as a "check" and "balance" to the powers of the other two. This was done in order to make certain that the government would never possess sufficient power to oppress the people.

However for many years now, all three branches of government and the powers they command to control all government,[3] legislative,[4] executive[5] and judiciary have effectively "accumulated in the same hands". Those "same hands" belong to the legal profession. As a result the "same hands" lawyer/judges now make the laws, interpret the laws and enforce the laws, thus defeating the spirit, intent and purpose of the Constitution. Such control *by this or any other group,* is unconstitutional because it violates both the separation of powers/checks and balances principles of the Constitution and the principle of representative government.

These constitutional violations strike at the very heart and soul of the US Constitution. These violations emasculate the Bill of Rights, create an elitist class similar to the European aristocracy of the eighteenth century, unaccountable to anyone but themselves. These violations enable both the Government and the elitist class, under color of law, to oppress the people, in ways too numerous to catalogue in a single article. The control acquired has also seriously undermined the integrity of the legal profession. Fortunately the profession still contains a substantial number of very honest individuals upon whom the nation can rely for the furthering of this just cause.

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[1] Estimates of financial costs to the nation vary between $300 billion and $1 trillion per year.

[2] Federalist #47, Jan 30, 1788

[3] The US Senate has had an absolute majority of lawyers for years. The House of Representatives has had an overwhelming plurality and a near majority for just as long.

[4] Both the President and Vice President and a majority of the Cabinet are lawyers. (in 1995).

[5] The Judiciary consists 100% of lawyers.

THE SOLUTION

The solution lies in returning constitutional government to the United States by ascertaining that members of the legal profession not be permitted to exercise control over either the Executive or the Legislative branches of government. The solution can be achieved through the ballot box by voting lawyers out of office, or through the courts, by constitutionally challenging their election to the non-judiciary branches of government. Lawyers would continue to function in all other areas as before. *In other words constitutional government requires the people to control the legal profession, not the legal profession to control the people.*

The reader is asked to remember that space limitations control the writer's ability to fully document arguments made. Let us begin with an examination of our rights as citizens under our Declaration of Independence.

Declaration of Independence

The Declaration of Independence holds certain truths to be self evident, "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; **that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it**, and to institute a new government, laying it's foundations on such principles, and organizing it's powers in such form, as to them shall seem most likely to effect their safety and happiness."[6]

It is clear at the present time that the nation's government has become destructive of the ends intended in the Declaration of Independence. The people are more distrustful of their elected officials than ever before, and deeply disturbed with government's inability to provide them with many of their rights under the Constitution. Among which are: Honest government, moral leadership, security, freedom from oppression, proper education, affordable access to the nation's system of justice, and affordable health care. It is therefore the right of the people to alter the government.[7] (In this case only to enforce the Constitution as written).

What is unclear to the people is what to do or how to do it. The fundamental source of the nation's problems is not easily apparent. That source does not principally lie in the flawed nature of particular individuals who are elected to government office, for all human beings lack perfection.

Rather the "flaw" lies with the way in which the "system" itself is being made to function by those responsible for its functioning. The "systemic flaw" is that the nation, although generally unaware of it, has elected to effective control of the Legislative and Executive branches of government, a plurality or majority of the "same hands" legal profession, as have already acquired absolute control of the Judiciary Branch of government.

It is the members of the legal profession who swore an oath to uphold the Constitution.[8] It is to them that the nation looks for protection from the oppression of government. It is they who bear the full responsibility of bringing to the nation's attention that the Constitution prohibits single group "same hands" control and that such control has occurred. They have done neither. Instead they have both acquired unconstitutional control for themselves and concealed the fact from the nation.

Yet it is probable that many in the profession are not even aware of what has occurred**.** For many years the legal profession has proceeded, unchallenged and unchecked, knowingly or not, with a history of constitutional violations and abuses against the people of the United States. These activities escalated in the last half century with the establishing of the so-called "Integrated Bars" in the individual States,[9] to which all practicing lawyers were required by law to belong, thus making every lawyer and judge "a part" of the judiciary.

"Integrated Bars" were unconstitutionally[10] created by the Judiciary Branches of the States as an "arm" of the State Supreme Courts. After which State Constitutions were amended to transfer the

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[6] Declaration of Independence, 1776

[7] Declaration of Independence, 1776

[8] All lawyers and judges are required to swear an oath upholding the Constitution.

[9] In Florida the State integrated Bar was created in 1949.

[10] The Supreme Courts of the individual States created these entities in which the Court alone makes the law, interprets the law and enforces the law, affecting all citizens in the State in violation of the separation of powers

admission and disciplining of lawyers and judges to the Judiciary Branch of Government of the individual States.[11] Thus the legal profession became accountable to none but its own peer group, unlike any other profession in the land.

Lawyers hold all government power

These and similar activities, whether by design or otherwise, produced a consolidation of all government power in the hands of the legal profession resulting in the following:

1. The profession has acquired virtually unlimited political power in the land, and with that the ability to make laws to serve its personal profit rather than justice.

2. The profession has maximized its ability to acquire the highest possible share of the nation's wealth for itself.

3. The profession has collectively though not individually, become the most corrupt, least respected and according to it's own surveys, least trusted profession in the land.[12]

4. The profession has (perhaps unwittingly), imposed on the nation enormous secondary costs essential for protection from the predatory nature of the profession.[13]

5. Members of the profession, sworn to uphold the Constitution and the concepts of representative government and separation of powers, have (perhaps unwittingly for many) violated their oath by creating and operating a government, substantially without either.

The pursuit of power and control of government by the legal profession is the natural expression of any group's attempt to maximize its own members' power and financial rewards. That is human nature. That is why the Constitution is opposed to any "single interest group" acquiring such control, whether tinker, tailor, soldier, sailor, lawyer, doctor or native American chief. What has occurred though not a "conspiracy", does have precisely the same effects. In law that is known as a "constructive conspiracy."

Critical questions:

I. How and when did the profession acquire control?

II. What are the abuses that allowed such control and the abuses that now afflict the nation?

III. Why is the nation still generally unaware of the existence of the problem or how serious it is?

IV. Who specifically is responsible?

V. What can and should be done about it?

Subsequent articles will address these questions.

Most important at this point is for the nation to become aware that as a direct result of the legal profession's unconstitutional control of all government an abundance of laws have been enacted, interpreted and enforced, for the personal profit of the profession, not justice. This imposes on the people of this nation a very high financial and emotional cost, as well as substantially depriving the people of their ability to exercise their full constitutional rights in any of the following areas:

1. Access constitutional remedies under the Bill of Rights, or
2. Gain reasonable access to the nation's courts, or
3. Exercise their first amendment right of free speech, or
4. Be free from a corrupt judiciary, or
5. Be free from the oppression of meritless lawsuits, or
6. Receive a fair trial, or
7. Live reasonably free from crime, or
8. Enjoy the right of self-determination through State constitutional amendments, or
9. Access affordable health care, or
10. Access safe and meaningful universal education, or

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principle of the Constitution. Many legal scholars have said so. No case has yet been brought to test the issue in federal court.

[11] In Florida it was done by constitutional amendment to Article V of the Florida Constitution.

[12] American Bar Association survey 1994. Occupational crime by Dr. Gary Green. (Nelson Hall, 1990)

[13] Professor Steve Magee, University of Texas at Austin.

11. Access divorce without war, or

12. Receive fair treatment in bankruptcies, or

13. Receive fair treatment in the adoption of children, or

14. Be free from the criminalization of activities not criminal anywhere else in the civilized world, or

15. Be free from oppressive and unreasonable regulation imposed by bureaucrats immune from accountability and the democratic process

16. Have the President pick his judges and Supreme Court Justices free of unwarranted influence, as well as many other areas too numerous to mention.

Excluding lawyers, and any other "same hands" group that may emerge, from the Executive and Legislative branches will correct the problem.

A similar problem existed in Britain in 1832.[14] There the British Lords (called Peers), controlled both the House of Lords and the House of Commons until they were excluded by Law and/or practice. The solutions called for here will do the same for this nation as excluding Peers from the Commons did for the British.

This writer is merely calling for action tried and true and the application of sound and well established historical legal precedent. The first step and purpose of these articles in achieving either solution, requires informing and educating the people about the nature and extent of the problem, and how to resolve it.

PUBLIUS II
(Ronald Biback)

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[14] The Great Reform Act of 1832 by E. J. Evans 1983 (Methuen & Co. New York, NY)

The Federalist: The State of the Union under a failed Constitution

87

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Rebuttal to the legal profession's arguments against exclusion from elective office in the legislative and executive branches of government. Part 1

Federalist 86 (February 8, 1995), identified the underlying cause of a substantial number of the nation's problems[1] as the failure of the US Constitution, resulting from the unconstitutional control of all government by members of the legal profession. To restore the constitution, Federalist 86 called for the removal from elective office in the legislative and executive branches of all states and the federal government, of all persons who are members of the legal profession, on the basis of the following argument:

The effective control by members of the legal profession[2] of all government violates the principles of representative government and separation of powers of the US Constitution.

Therefore, the necessary remedy to restore constitutional government requires the exclusion, through the courts or the ballot box, of members of the legal profession from elective office in both the legislative and executive branches of government. That position affirms the principle that the constitutional rights of the people to representative government free from single interest "same hands" control, or from control by the members of a favored class, supersedes the rights of the members of any single profession or favored class, to collectively acquire that control.

Opponents deny the validity of this constitutional interpretation. If they are right, the underlying problem caused by the harm of single interest control would remain in place. That would indicate that the Constitution as written was defective. The remedy would then lie with the ballot box, a constitutional amendment, or if all else failed, *another revolution*.

It is fortunate for all that the legal profession's opposing position is without merit. Let us examine it carefully.

In general, an argument is either valid or invalid. A valid argument has a premise that provides conclusive evidence for the conclusion.

An invalid argument fails in one of three ways:

1. Through a misstatement of facts;

2. Incorrect use of terms; or

3. In its defective "form," through the use of an improper process of inference.[3]

"Defective form" arguments are invalid because they are based on "fallacies" also known as sophistry. These false or fallacious "arguments" were first developed by the Sophists and classified by Aristotle, the father of logical thought, as "Sophistical Refutations".[4] All arguments that have surfaced so far are invalid for one or other of the aforementioned reasons.

Legal profession's arguments:

(1) Members of the legal profession do not control government;

(2) nor do they constitute a Madisonian "same hands" control group;

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[1] The problems identified include problems in health care, education, crime, access to the courts, the moral decline of the nation, and the loss of essential liberties. The estimated cost to the nation in dollars ranges between $300 billion and $1 trillion per year.

[2] Control by any single interest “same hands” group, such as the members of any profession and/or professional organization is unconstitutional.

[3] Encyclopedia Britannica, (page 280, Vol 23, 15th edition, 1988), *Logic*, The history and Kinds of, The critique of forms of reasoning, Correct and defective arguments.

[4] See footnote 17.

(3) nor should they be prohibited from running for any public office for that would be unfair, discriminatory and unconstitutional;

(4) it is in the nation's best interest that lawyers control government because government is about laws and that is their training;

(5) lawyers have historically been disproportionately represented in government and yet have served the nation well;

(6) constitutional interpretations by non-lawyers are invalid on their face;

(7) proponents of excluding lawyers from any elective office are "lawyer bashers" and/or are otherwise flawed human beings whose views are unworthy of consideration.

Rebuttal arguments:

1. Members of the legal profession do not control government.

(A false argument based on a *misstatement of fact.*)

The fact that members of the legal profession are either a majority or significant plurality of virtually every legislative body in the land is not disputed. Neither is the fact that a large number of state executive branches are headed by lawyers. Occasionally however, a semantic argument is made, that the word "control" is applicable only where the actual number of seats occupied by lawyers in a particular elected body exceeds 50%. However, the language of Federalist 86 is "effective control." Effective control in a democracy is achieved by the largest substantial plurality if no majority exists, and if the next largest plurality is significantly smaller than the first. Since those conditions prevail virtually everywhere in the nation the argument is without merit, for it misstates fact. It is true that where the executive branch is headed by a non lawyer the "control" may be less effective, but remains nevertheless.

2. Members of the legal profession do not constitute a Madisonian "same hands" control group.

(A false argument based on a *misstatement of fact*).

Some lawyers argue that members of the legal profession are not the "same hands" identified in Madison's statement whereby: '..the accumulation of all powers ... in the **same hands**.., may justly be pronounced the very definition of tyranny.'[5] They argue that because lawyers will often differ in gender, ethnicity, race, religion, political views and other ways, characterizing them as "same hands" is inaccurate. However, it was not the differences between elected officials that concerned Madison when he spoke of "same hands", it was the possibility of the existence of a particular "same hands" similarity of interest that might serve to unite elected officials against the public interest.

Thus the test is whether or not there exists among the elected members, the sharing of such a "same hands" interest. The answer is that the members of the legal profession, just like the members of every other organized profession, constitute "same hands" special interest groups. This is because every organized profession's purpose is to advance the interests of its members above the interests of all others.

Conclusive evidence is supplied by Madison's definition of what is and what is not republican government under the US Constitution: 'It is *essential* to such a (republican) government that it be derived from the great body of society, not from an inconsiderable proportion, or a favored class of it." (Emphasis original).[6] Since the legal profession is "an inconsiderable proportion" of society (less than 1 in 300 people), and constitutes "a favored class," it is twice barred from being in control of what Madison defined as: "republican government." That definition confirms that Madison meant to include groups such as members of the legal profession in his "same hands" statement.

3. Members of the legal profession should not be prohibited from running for any public office because to do so would be unfair, discriminatory and unconstitutional.

(A false argument classified by Aristotle as "secundum quid"[7]).

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[5] Federalist 51, (1788) by James Madison

[6] Federalist 39, (1788) by James Madison

[7] Secundum quid according to its truth as holding only under special provisos “applying a general proposition as a premise without attention to the tacit restrictions and qualifications that govern and invalidate its application in the matter at issue.” See footnote 3.

This is an argument against the concept of "unconstitutional exclusion." We are a democratic society forever seeking to be "inclusive". How then do we justify excluding lawyers from public office at all? The justification is found in the following reasons: Except for jury service, the legal profession has already used its power to exclude 259,000,000 citizens, or 99.7% of the nation, from any position of power in the judiciary, though the Constitution does not require it. Since the profession has entirely taken over one of three branches of government, without constitutional requirement or discernible authority, it is certainly fair and reasonable to require that their representation be limited to the judiciary only. Such representation alone would be equivalent to 100 times their proportion in the population.

The good of society sometimes requires that a choice be made by individuals. As one example, judges are not permitted to speak publicly on political matters or endorse candidates for certain public offices. While that is a limitation of their free speech first amendment rights, it does serve society's best interests. Thus, it is fair and reasonable that a person choosing to enter the legal profession, which enjoys 100% control of one branch of government, should, in exchange, give up the right to run for public office in the other two branches.

Excluding lawyers from elective office outside the judiciary involves the balancing of the rights of the people to constitutional government free of any "same hands," and/or "favored class" control, against the rights of lawyers to be freely elected to effective control of all government. If the Declaration of Independence was right in affirming that the rights of the people to: "institute a new government laying it's foundation on such principles and organizing it's powers in such form, as to them shall seem most likely to effect their safety and happiness",[8] then it follows that the right of the people to exclude lawyers from both the executive and legislative branches supersedes the rights of lawyers to control all government.

Prior to 1832, the British faced a similar problem. The nobility,[9] which by law exclusively controlled one of their three branches of government, the House of Lords, also controlled the second branch, the House of Commons. (The monarchy being the third.) The Great Reform Act of 1832, passed to prevent violent revolution against the nobility, stripped them of their control of the House of Commons. The historical legal precedent was thus created where our own law originates, for restoring constitutional government, *without the necessity for doing violence to an elitist group unconstitutionally exercising power under color of law.*

4. Lawyers are the proper people to control government because that is their training.

(A false argument classified by Aristotle as *secundum quid*[10])

Lawyers argue that government is about laws and that is their training. Therefore they say, it is right and proper that they should be running things because "those who are trained for the task should make the decisions." That is a false argument known as *secundum quid*. Thus, while it is true that as a rule decisions are made by the people best trained to do so, that is not true in all cases. This is one such exception to the rule, because constitutional prohibitions exist to make certain those decisions are NOT made by any single "same hands," and/or favored class group. In such cases the technically trained are limited to advising and recommending For example, the US Constitution designates the President of the United States, Commander-in-chief of the armed forces, regardless of any previous military experience. The most experienced and knowledgeable military minds are constitutionally limited to the power of advising. The Constitution makes representatives drawn from all walks of life, not the technical experts, collectively responsible for all public policy decision making.

5. Members of the legal profession have historically been disproportionately represented in government and yet have served the country well.

(A false argument classified by Aristotle as *non sequitur.*[11])

It not follow that what may have once been historically true is therefore true now. These are the days of Watergate, "Operation Court Broom" in Miami and Greylord in Chicago, not the days of Thomas Jefferson, Alexander Hamilton, and Abraham Lincoln.

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[8] Declaration of Independence 1776

[9] The British example of the “same hands”, “favored class”, “inconsiderable proportion” minority in effective control of all government at that time.

[10] See footnote 7.

[11] non sequitur. It does not follow. See footnote 3.

The nature of the practice of law and the integrity of lawyers has changed dramatically for the worse commencing after the Civil War.[12] Before that time the law was a highly respected profession, attracting individuals of integrity who sought first to do justice, not make money.

The opposite is often true today. The presumption of integrity once granted to lawyers as to all professionals, is no longer applicable. All too often the opposite presumption is the rule. The American Bar Association's own surveys indicate that lawyers are viewed as the most dishonest of all professional groups. To make matters worse, the survey indicates that those who know lawyers best, trust them least, and vice versa. In this context the attempt by the profession to cover itself with a cloak of honor earned by noble predecessors long gone, has no logical validity.

6. Constitutional interpretations by non lawyers are invalid on their face.

(A false argument classified by Aristotle as *ad verecundiam*[13]).

This position ignores the issues completely. It argues that one lacks the qualifications to speak at all, absent the advantage of a formal legal education. A sort of "father knows best" argument, logically invalid except against little children. James Madison, a non lawyer, wrote the Constitution. It is therefore not logical to assert that lawyers alone are qualified to interpret it.

7. Proponents of excluding lawyers from any elected office are flawed human beings unworthy of consideration. (A false argument classified by Aristotle as *ad hominem*[14]).

This argument is totally unrelated to the issues. It consists of personal attacks against proponents of views with which lawyers disagree. However, personal attacks do not constitute a substitute for logical argument. Instead they are persuasive evidence that little or none exists.

Subsequent articles will address the consequences of the unconstitutional control by lawyers in detail, outlining the connective links between that control and the harm to the nation.

PUBLIUS II
(Ronald Biback)

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[12] The American Lawyer by John R. Dos Passos, 1907, Rothman & Co publishers (1986)

[13] ad verecundiam an appeal “to awe” on the grounds that seeks to secure acceptance of the conclusion on the grounds of its endorsement by persons whose views are held in general respect. See footnote 3.

[14] ad hominem: speaking "against the man" rather than to the issue, in which the premises may only make a personal attack on a person who holds some thesis, instead of offering grounds showing why what he says is false. See footnote 3.

The Federalist: The State of the Union under a failed Constitution

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May 6, 1995

Rebuttal to the legal profession's arguments against exclusion from elective office in the legislative and executive branches of government. Part 2.

Federalists 86 and 87 identified the cause of the failure of the Constitution by asserting and proving that: Members of the legal profession unconstitutionally control all government.[1] Additional evidence of the constitutional violation by members of the legal profession will be provided by answering the following questions:

1. Was the Constitution written to make certain that no single 'same hands' group controls all government?[2] And if so:
2. Does Madison's concept of 'same hands'[3] include the members of the legal profession, as one potential 'same hands' group?

Affirmative answers to both questions would require evidence in the Constitution and/or the Federalist Papers respecting:

a) a concern by Madison, (who wrote the Constitution) about the danger of 'same hands' control;

b) the existence of language sufficient to identify members of the legal profession as one 'same hands' group;

c) an outline of proposed corrective measures; and

d) proof that the Constitution was written to implement the proposed corrective measures.

All of the necessary evidence is there, stated as clearly as the English language and the genius of man's mind allow.

I. A historical overview of the fear of a 'same hands' control group.

An examination of the political context of the times will serve to give the modern reader a better sense of the concerns and motivations that led to the writing of the Constitution, and of the great fear, prevalent at the time, of granting government the power to oppress. The historical facts are undisputed. The Nation declared its independence in 1776 from a despotic British monarchy. It agreed to be governed by a document called The Articles of Confederation, ratified a few years later. However the fear of even a popularly elected government oppressing the people caused the Articles to be written granting the government insufficient power to govern.[4]

In 1787 delegates from the several States gathered in Philadelphia to correct the problem. They believed that the essence of good government over a free people required the proper balance between individual freedom and security for all.[5]

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[1] The constitutional principles are discoverable through the text of the written constitution itself, and the Federalist Papers. The Constitution is a short document that mandates but does not explain. The intent of the Constitution is discoverable through the 85 articles written to defend the Constitution and promote its ratification, known as the Federalist Papers.

[2] Although every high school graduate should know that the answer is yes, asking the question in the present context provides the opportunity for a more thorough review of the issue.

[3] In which statement Madison declares that: '..the accumulation of all powers ... in the same hands ... may justly be pronounced the very definition of tyranny.' Federalist # 47, (1787)

[4] For example, Congress had the power to borrow money, but no source of revenue to repay. Congress had no power to enforce payment from the States for its needs. It could do nothing to prevent the States from 'trespassing on each other'. It could do nothing to compel delegates to attend and thus frequently lacked a quorum to conduct its business. Walter Berns, Taking the Constitution Seriously, (1992) Madison Books, ISBN 0-8191-7970-1

[5] Warren Burger, Chief Justice of the United States, 1969-1986, Foreword to the US Constitution

To achieve that end, government had to be granted *sufficient power to govern but insufficient to oppress.* There had never before been a government of the people, for the people and by the people. If free men were to agree to grant more power to their own government over them, they wanted to make sure—as sure as the power of the human mind and the clarity of the English language could guarantee[6]—that the additional power granted would still be insufficient to oppress.

The general fear of government oppression translated into a specific fear that a single 'same hands' group would acquire control of government, and whether elected, appointed or otherwise empowered, would become corrupt and oppressive.[7]

History teaches us that prior to 1776[8] only four 'groups' had, from time to time, successfully usurped enough power from the people to control government and become oppressive. These 'groups' were:

1. The monarchy;[9]
2. The aristocracy;
3. The military; and
4. The State sanctioned religion, (the Church).

The Constitution neutralized the four 'groups' identified as potential oppressors as follows:

1. The nation was organized as a republic, so there could be no threat from a **monarch**.
2. Planned constitutional prohibitions against titles of nobility would protect the nation from a potential **aristocracy**.[10]
3. The Constitution would make the elected civilian President also Commander-in-Chief of the Armed Forces, thus neutralizing any potential threat from the military.[11]
4. The planned first amendment to the Bill of Rights[12] would prohibit Congress from passing any law respecting the establishment of religion, or prohibiting the free exercise thereof, thus protecting the nation from oppression by any **State sanctioned religion.**

Still the fear persisted that any group united by a common interest, in control of all government and however acquiring power would become corrupt and oppressive. The nation believed what Lord Acton, the British statesman, had said: “Power tends to corrupt and absolute power corrupts absolutely.” It was thus necessary to protect against that danger above all other considerations.

The first step in doing so required a clear and comprehensive definition of the specific nature of the danger. The next step required writing a constitution and structuring a system of government that provided maximum protection against that danger.

II. Defining the danger of 'same hands' control.

Madison explained his specific concerns in the Federalist Papers. He first defined the problem as the need for a 'well constructed Union... to break and control the violence of faction.’[13] He then defined 'faction' as 'a number of citizens ... who are united and actuated by some common ... interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.’[14]

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[6] ‘…no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas...' James Madison, Federalist # 37. (January 11, 1788)

[7] Montesquieu, The Spirit of Laws.

[8] Between 1776 and the modern era a fifth group arose, so far in the US only. That group consists of the members of the legal profession.

[9] Or its national equivalent: The Russian Czar, the German Kaiser, the Roman Emperors, etc.

[10] US Constitution, Article I, Section 9.

[11] US Constitution, Article II, Section 2,

[12] Amendment 1 to the Constitution of the United States, ratified effective December 15, 1791, as part of the first ten Amendments (Bill of Rights).

[13] James Madison, Federalist # 10, November 22, 1787

[14] Ibid.

Madison repeated the same concept many times and in many different ways. He condemned the result of a *'same hands'* control by declaring that: '... the accumulation of all powers, legislative, executive and judiciary **in the same hands**, may justly be pronounced the very definition of tyranny.'[15]

He reaffirmed the danger of 'same hands' control by quoting the French philosopher Montesquieu, who said, "There can be no liberty where the legislative and executive powers are united in the same person or body of magistrates."[16] In which respect he was echoed by Hamilton who said, "... there is no liberty, if the power of judging be not separated from the legislative and executive powers."[17]

Madison also quoted Jefferson, the author of the Declaration of Independence, as follows: 'All the powers of government, legislative, executive and judiciary result to the legislative body. The concentrating (of) these in the same hands is precisely the definition of despotic government.'[18] To make certain he was understood, he restated the concept from a different perspective, by defining the government of a republic as one in which: 'It is essential ... that it be derived from the great body of society, not from an inconsiderable proportion, or a favored class of it.'[19]

Recognizing the danger of even duly elected individuals becoming corrupt, Madison articulated the case for the *separation of powers* concept.: 'An elective **despotism**, was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.'[20] *(Emphasis original).*

III. The steps taken to prevent the danger of 'same hands' control.

Madison first made the case against any 'same hands' control. He then outlined the necessary steps for making sure that such control never occurs, by writing a constitution implementing the concept of the **separation of powers** on several levels.

First. There was to be a **union of independent states**. Each State would have its own republican government. That would institute the first level of the separation of powers, between the individual states on the one hand and the federal government on the other. That means that any 'same hands' group would need to control both the individual state's government *and* the federal government.

Second. There was to be a second level of separation of powers in the federal and in each individual state government. **Every government would be divided into three separate branches**, the legislative, the executive and the judiciary branches, with the necessary prohibitions against any single individual holding power in more than one branch at a time.

Third. Within the **legislative branch, a bi-cameral system** would be set up. This would implement a third level of separation of powers. Each chamber would have different powers. Both chambers would have to agree on all laws passed by the legislative branch. Thus any 'same hands' group would need to control both chambers of all legislative branches of the nation.

Fourth. The right to vote would be granted to as **numerous an electorate** as the times allowed[21] to insure that as many different interests/factions as possible would be represented in government, to reduce the potential danger of the formation of any 'same hands' group.

Fifth. A **Bill of Rights** would be passed as soon as possible after the Constitution's ratification. It would outline particular rights that the people, (as original owners of all rights), would specifically retain, from and against, their government, Madison had thus set up what seemed like a fool proof system against any 'same hands' group ever acquiring effective control of all government. To overcome these obstacles a 'same hands' group would have to accomplish most, or a very substantial part of, all of the following:

1. Acquire control of both legislative houses in the federal and every state government,

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[15] James Madison, Federalist #47, Jan 30, 1788.

[16] Ibid.

[17] Alexander Hamilton, Federalist #78, May 28, 1788.

[18] James Madison, Federalist #48, February 1, 1788.

[19] James Madison, Federalist #39, January 16, 1788.

[20] Ibid.

[21] The nation had not implemented the universal right to vote. Women and slaves had no vote.

2. Acquire control of the judiciary branch in the federal and every state government,

3. Acquire control of the executive branch in the federal and every state government,

4. Acquire control through the elective process in violation of the Constitution,

5. Do so with the people being generally unaware of what was happening,

6. Do so in violation of the oath of office mandatory for every elected official.

A most unlikely scenario indeed! Yet that is precisely what has happened.

IV. Defining members of the legal profession as a 'same hands' group.

The Federalist Papers informs us that Madison feared all of the following: a) any 'same hands, whether of one, a few or many;' b) 'factions' defined as 'a number of citizens,... united and actuated by a common interest, adverse to the rights of other citizens;' and c) a government 'drawn from an inconsiderable proportion of society or a favored class.' Did he mean to include members of the legal profession as a 'same hands' group? Let us examine his statements.

A. Any 'same hands, whether of one, a few or many.'

The word 'hands' is unambiguous, as are the words *'a few or many*.'[22]

The word '*same*' means: 'Similar in *kind* or *quality.'* The word *'kind'* is defined as: 'a number of persons or things of the same character; a *class.'* The word '*character*' is defined as: 'the combination of *qualities* distinguishing *any class of persons.'* The word *'quality'* is defined as: *'a distinguishing characteristic.'*

So 'same hands' means 'hands of a class of persons similar in characteristics that distinguish them.' Certainly membership in the legal profession is a similar distinguishing characteristic of a class of persons. Therefore Madison's definition includes all such members.

B. Citizens united by a common interest, adverse to the rights of other citizens.

Members of every professional organization are '*united by a common interest, adverse to the rights of other citizens*.' That is the reason that individuals band together and organize on the basis of their profession. They do so first and foremost in pursuit of their own financial interests. Thus, regardless of any other activities they might pursue of general interest to the public, the members of the legal profession qualify under Madison's concept of '*same hands'*.

C. A government composed of citizens drawn from an inconsiderable proportion of society or a favored class.

The legal profession exercises complete control over the judiciary branch of government, and effective control over all others. Alone among the professions, it controls its own discipline. That is enough evidence to characterize the members of the legal profession as a *'favored class.'*

The profession represents less than one third of one per cent of the population which is certainly an *'inconsiderable proportion' of society*.

Thus a government controlled by members of the legal profession fails on both counts to meet Madison's definition of '*republican government'*. That brings members of the legal profession within the meaning of the 'same hands' definition and constitutes an independent violation of the constitution on the additional count of failing to meet the definition of republican government.

V. Thus all the evidence supports the conclusions that the Constitution was written to ensure that no 'same hands' group control all government, and that the members of the legal profession qualify many time over as a 'same hands' group.

PUBLIUS II
(Ronald Bibace)

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[22] All dictionary definitions are from *Funk & Wagnalls, New Comprehensive International Dictionary of the English Language*. The Publishers Guild Press, New York (1975)

The Federalist: The State of the Union under a failed Constitution

89

September 23, 1995

Rebuttal to the legal profession's arguments against exclusion from elective office in the legislative and executive branches of government. Part 3

(Outline of the formal argument before a Court of Law.)

Federalist 87 and 88 provided conclusive evidence[1] confirming the assertion that: Members of the legal profession unconstitutionally control all government. The evidence was drawn from the Federalist Papers and the Constitution. Some individual members of the legal profession agree with this position.[2] However seeking a resolution of this issue through the Courts means appealing to the very members of the legal profession who sit as judges,[3] to find 'against' their own colleagues and their entire profession.

It is therefore necessary, before making a case before a Court of Law, to establish the most complete, persuasive and technically sound legal evidence and arguments possible. Such a case will require the forging of a steel chain of connective legal links between the control of government by the members of the legal profession and the constitutional prohibition of doing so. That is what this article will endeavor to do in outline form.

An overview of the legal system.

The US Constitution is the supreme law of the land. The Judiciary Branch of Government, (the Supreme Court) bears the responsibility for *interpreting* the Constitution. In that capacity the Judiciary Branch has the power to overrule both other branches.

Nine Justices sit on the Supreme Court. Decisions are made by majority vote. Five votes constitute a majority. Thus the Constitution means, *at any particular point in time*, whatever a majority of the Court says it means.

Consistency in decision making is important to the Court's activities. However, Justices serve on the Court for a period of time and then pass away or otherwise leave the bench. New Justices who may have different interpretations of the Constitution are appointed. The passage of time sometimes causes the political and social climate of the land to change dramatically. Justices may develop different perspectives that lead to different legal interpretations of the Constitution. Decisions once thought accurate constitutional interpretations may later be reversed.[4] That is the nature and manner in which the Constitution is interpreted.

The Supreme Court accepts only a tiny number of the 'discretionary'[5] cases submitted. Thus the probability of accessing the Supreme Court at all is very slight at best. The chances are even less on this issue. That is because this issue constitutes a very real threat to the enormous power wielded by the 'same hands' group, of which the judges themselves are an integral part.[6]

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[1] More than one conclusive affirmative answer was provided. Arguably, only one is needed.

[2] Perhaps the greatest benefit to the profession that will result, will be a restoration of a much higher level of integrity than presently exists. As power is reduced, corruption diminishes.

[3] The issue of having to appear before any judge on a matter in which every judge can reasonably be regarded as having a vested interest in denying relief, is itself a major problem. A judge is a particularly honored member of the very system whose constitutionality would be under attack. To rule in favor of the position taken by these Federalist articles would require a test of character to which perhaps no person should be subjected. The judge would need to overcome a conflict of interest, the problem of cognitive dissonance, and the fear of the potential wrath of many of his colleagues. In addition the judge's decision might result in limiting any career advancements on the Bench. Every judge would also in a very real way be: *'a judge in his own cause'*. A state of affairs that Madison feared and against which he warned.

[4] *Brown v Board of Education (1954)* outlawing segregated schools is an example.

[5] Cases it must accept as a matter of law. This case as most cases, it does not.

[6] It is important to remember that the members of the legal profession in taking over unconstitutional control of all government, did no more than any other group might have done, if given the opportunity. Such is the regrettable

1. The Issue: Does the Constitution contain an implied constitutional provision concerning the principle of separation of powers that prohibits members of the legal profession[7] from effectively controlling government?

The main issue submitted contains the following sub-issues:

1.1 Does the Constitution contain an implied principle of separation of powers?

1.2 If so, would the effective control by members of the legal profession constitute a violation of that principle?

1.3 If so, are members of the legal profession in effective control of government?

1.4 If so, does this court have the duty and power to act on an implied, not express constitutional provision?

1.5 If so, is the remedy of prohibiting all members of the legal profession from elective office outside the judiciary a proper and appropriate remedy?

(The sub-issue raised in 1.3 is one of fact. All other sub-issues are issues of law.)

Argument by sub-issues.[8]

1.1 Argument on Constitutional inclusion of implied separation of power principle.

Black's law dictionary distinguishes 'implied' from 'express' as follows: 'where the intention with respect to the subject matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language or the conduct of the parties.'

Thus the first legal requirement before us is to show that the intention of the writers of the Constitution was to prohibit any single 'same hands' group from acquiring control of government.

The Constitution was written in 1787 to grant the government of the day sufficient power to govern because it was without such power. It lacked power because the nation feared that any 'same hands' group, even elected by the people, would become corrupt[9] and use its power to oppress the people. Therefore the Constitution was written and structured to make certain that no single 'same hands' group could ever succeed in controlling all government.

The cornerstone of that structure and thus implicit in it, is the principle of the separation of powers that separates the powers of government at three levels.[10] It was recognized that such separation would result in a loss of both government accountability and efficiency. That is because divided power diminishes responsibility for results and speed of action. That trade-off was deemed acceptable and considered the only way to gain constitutional ratification.

Madison was seemingly convinced that the separation of powers structure provided by the Constitution would make it impossible for any 'same hands' group to ever acquire control. Thus he did not deem it necessary to explicitly provide a constitutional clause addressing the matter.

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nature of man. Furthermore since *eternal vigilance is the price of liberty*, we must **all share in the blame**, for allowing it to happen.

[7] While the issue raised here only addresses the members of the legal profession, the question is valid as to the members of any profession, or Madisonian 'faction', or 'same hands' group.

[8] The argument is to the issue presented to the Court. However the reader may not be aware of the following established law, all of which is a pre-requisite to a favorable review and finding of the court: (1). The Constitution is the supreme law of the land. *United States v Butler et al*, 297 US 1, (2). The Supreme Court is the only branch of government that has the right and duty to interpret the Constitution. *Marbury v Madison*, 1 Cr. 137; 2 L.Ed. 60 (1803). (3). In interpreting the Constitution it is right and proper to examine the purpose and intent of the writers. That purpose and intent are found in the Federalist papers. (4). The Constitution as written includes by implication, whatever powers are needed to implement any legitimate end within its scope. *McCulloch v The State of Maryland et al*, (1819).

[9] Power tends to corrupt, and absolute power tends to corrupt absolutely'. Lord Acton.

[10] Beteen each State and the Federal government. By splitting government entities into three branches and by splitting the legislative branch into two chambers, the House and the Senate.

Not so most of the individual States, 40 of which address it explicitly in their own State Constitutions.[11] Some States, presumably for maximum emphasis, include it as part of their Declaration of Rights. That is the State equivalent of the US Constitution's Bill of Rights.

The language of the separation of powers clause differs somewhat from one state constitution to another. The principle and intent as expressed by Madison in the Federalist Papers are however, clear in all. For example the Texas Constitution addresses the point as follows: Under Article 2, Section 1, under the heading: THE POWERS OF GOVERNMENT

The Powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person or collection of persons, being of one of these departments shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.[12]

Thus it is very clear that the Constitution does contain an implied provision concerning the principle of the Separation of Powers.

1.2 Argument on effective control by lawyers constituting a violation of the principle of separation of powers.

Effective control of all government by any 'single same hands' group is what Madison characterized as 'the very definition of tyranny.'[13]

Madison defined a 'same hands group' or 'faction' as: 'a number of citizens ... who are united and actuated by some common ... interest, adverse to the rights of other citizens.'[14] Every professional association as well as every trade and business association represents just such a single 'same hands' group or 'faction'. For the members of that group unite for the purpose of advancing their own common interests first and foremost, some of which are necessarily adverse to the rights of other citizens.[15]

Thus it is very clear that control of government by the members of the legal profession violates the implied principle of separation of powers of the Constitution.

1.3 Argument on proposition that members of the legal profession do effectively control government.

At the present time the federal judiciary is controlled virtually 100% by members of the legal profession.

President Clinton and Vice President Gore, of the executive branch as well as 14 of 18 members of the cabinet (at last count) are lawyers.

In the legislative branch some 50% of the US Senate and almost 40% of the House are lawyers.[16] No other 'same hands' group has better than a very small proportion of those numbers. All elected non-lawyers *combined* would constitute a voice only in the legislative branch. The same numbers, to a greater or lesser degree, prevail everywhere in the individual States and have for some 30 years at least. These numbers prove that members of the legal profession do have effective control of government.

Thus it is very clear that members of the legal profession do effectively control government.

1.4 Argument on the question of whether the Court has the Power to act on an implied not express constitutional provision.

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[11] The 10 that address it by implication are: Alaska, Delaware, Hawaii, Kansas, Michigan, New York, North Dakota, Ohio, Pennsylvania and Washington.

[12] Some argue that lawyers, being '*officers of the court*', are part of the judiciary and therefore automatically prohibited under the separation of powers concept, from elective office outside it. While this argument has merit, opponents could easily work around it by simply changing the designation '*officer of the court*' to something else. Furthermore the US Constitution does not require any member of the Judiciary to be a lawyer. Thus were members of the legal profession not in *de facto* total control of the judiciary branches of government, the designation of '*officer of the court*' would not have the same significance in terms of the separation of powers principle

[13] Federalist 51, (1788) by James Madison

[14] Federalist 10, (1787) by James Madison

[15] Federalist 88, May 1995 by this author

[16] The numbers fluctuate from time to time, but never sufficiently in the last 30 years at least, to make any material difference to the effective control at issue

On constitutional issues the US Supreme Court has the absolute power to decide what it has the power to decide.

Its justices have life tenure. It answers to no-one. It is bound by no rules that it cannot change as it sees fit. It is not bound by the principle of 'stare decisis'.[17] It is not even bound by its own previous rulings on the very same question it has before it. Certainly it attempts to be generally consistent in its rulings. However it does not have to be.

It can be said with the greatest respect, that the Supreme Court can be described as the only American real life equivalent of the Queen of Hearts out of Alice in Wonderland.[18] Like her it is free to have anything mean: 'whatever a majority of the members of the Court say it means.'

Nevertheless legal precedent exists if the Court has need of it. In McCulloch v. Maryland (17 US (4Wheat.) 316, 4 L.Ed. 579(1819) Chief Justice Marshall concerning a similar issue on implied versus express power, stated: 'Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist (sic) with the letter and spirit of the Constitution, are constitutional.'

It is thus clear that the Court not only has the power absent precedent, to decide on the issue of implied versus express constitutional provisions, but has precedent to rely on as well.

1.5 Argument on the remedy proposed of prohibiting members of the legal profession from elective office outside the judiciary.

The best and most effective remedy is the one sought. It would still allow one third of one percent of the population, (or 1 in 300 people), to control one third of all government. That represents 100 times the level of proportional representation the Constitution sought to provide. It is therefore proportionately *one hundred times more than fair to the legal profession*. It is therefore necessarily that much less than fair to all others. However it will at least remove the tyranny from government immediately. No other remedy appears capable of such a result.

Thus, clearly removing lawyers from elective office outside the judiciary is the best and only appropriate remedy.

PUBLIUS II
(Ronald Biback)

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[17] *Stare decisis*. Lat. To abide by, or adhere to, decided cases. *Black's Law Dictionary*

[18] The example is not meant to be in any way disrespectful of the Court. It is simply the best way this author knows of making clear to lay people what the Court is empowered to do

The Federalist: The State of the Union under a failed Constitution

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The nature and manifestation of the legal profession's tyranny over the nation.[1]

Federalists 86, 87, 88 and 89, by this author identified the unconstitutional effective control of all government by members of the legal profession, as the most important single problem the nation faces today. That is because control by a single 'same hands' group, is a violation of the separation of powers principle of the US Constitution. That control was characterized by James Madison, author of the Constitution, as 'the very definition of tyranny.' That constitutional violation disqualifies lawyers from running for elective office outside the judiciary *as a matter of law*.

Disqualification is independent of whether or not the control results in tyrannical behavior. The identification of specific areas of tyrannical harm is brought to the public's attention as a tool to assist its understanding and encourage action. It is neither needed nor offered as evidence in the case against the legal profession.

The nation's unawareness of tyranny in government.

Few in the nation seem aware of the tyrannical nature of our government, or are able to identify its source. Thus the nation perpetually replenishes the source of tyranny, by continuing to elect lawyers in large numbers to the legislative and executive branches of government. That provides members of the legal profession with the continuing effective control needed to sustain the tyranny they exercise. How is that possible? To understand what is happening, we must carefully examine the precise nature and manifestation of the form of tyranny to which we have been subjected, and how it has remained concealed for so long.[2]

Definition of tyranny

The dictionary[3] defines:

'tyranny' as 'absolute power arbitrarily or unjustly administered.'[4]

'absolute' as 'unlimited, unconditional.'

Thus tyranny is: Unlimited power unjustly administered.

Effective control of government provides 'unlimited power'. Such power in government is always unjustly administered.

The first problem that we face is that the public perceives tyranny in government as connected to a tyrant or dictator abusing his own people in the most visible and egregious way. The public easily

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[1] The legal profession, as a whole, bears responsibility for having tyrannized the nation and some believe, brought it to the brink of destruction. *It does not however, bear that responsibility alone*. *Since the price of liberty is eternal vigilance* we must all share in the responsibility for having failed to be vigilant. These articles are written to help the nation rectify its problems not seek retribution against anyone. Therefore it is best for the nation to approach the resolution of the situation as Abraham Lincoln did the end of the Civil War. Thus with 'malice towards none and charity for all' the nation should forgive those who have trespassed against it and forget their past transgressions. It is vital to the long term well being of the nation that the members of the judiciary branch recover the honor and prestige that should accompany honest and faithful service in that branch. We all need to work towards that end, remembering that what happened to the legal profession could have happened to any other group given a similar opportunity.

[2] Federalist #10, by James Madison warned that: Men of factious tempers, of local prejudices or of sinister designs, may by intrigue, by corruption or by other means, first obtain the suffrages, and then betray the interests of the people.

[3] Funk & Wagnalls New Comprehensive International Dictionary of the English language (1978)

[4] Since Lord Acton's belief that: *Power tends to corrupt and absolute power corrupts absolutely* has achieved universal acknowledgment as true, it is hard to conceive of any *'Absolute power'* in the context of government, being administered otherwise than arbitrarily or unjustly.

recognizes tyrants on the extreme left or right of the political spectrum, but not in the center. Much less so, when the appearance of freedom continues to pertain.

It is true that so far most citizens are not aware of anyone being seized by 'jackbooted thugs' and taken away in the middle of the night. Nor of widespread torture of innocent people to extract false confessions. Nor of concentration camps or the more obvious trappings of known tyrants. *Yet tyranny is what it is and it can destroy the Nation.*

Government's job as intended under the Constitution

Our nation is a Republic governed by a constitutional democracy. A government's job in such a nation is to make, interpret and enforce laws in a manner that is fair and just to all.

The reason most[5] laws are needed in the first place, is that every society is faced with a large number of compelling and conflicting, legitimate state interests. These conflicting interests require decisions resolving them through the making, interpreting and enforcing of laws that balance the rights and obligations of all the conflicting parties as well as the interests of society, in a just manner.

There is only one way to ensure that the resolution of conflicts is fair to the great body of society. That is to ensure that the representatives charged with the decision making process are 'derived from the great body of society, not from an inconsiderable proportion or a favored class of it'.[6] For it is only by the interaction of the many factions thus represented, that the final results of resolving conflicts can hope to be fair to all.[7]

The existing government under the tyrannical control of the legal profession

We have established that effective control of government is in the hands of the legal profession. That the makers, interpreters, enforcers, advocates and adjudicators in virtually all material, government decision making situations, belong to that particular 'same hands' group. Thus that group exercises absolute power. It is axiomatic that such power will be and has been, administered unjustly. **That is tyranny**.

Defenders of the system point to some specific instances of seemingly just results, as justification for the whole system. This is an Aristotelian false argument known as *non sequitur.*[8] The fairness of a system is not shown by proving that some derive benefits from it, but rather that all are treated in a just and equitable manner under it. All systems of government, no matter how tyrannical, can show the former. Only a system of government by, of and for the people, can hope to show the latter.

A society's laws arise from conflicts between competing interests. Our legal system is an adversarial one, in which the truth is expected to arise from the clash of advocates advancing conflicting positions. That is what makes it so easy for this unconstitutional control group to tyrannize the nation without seeming to. Since every material decision made by the control group is made to resolve conflicting interests, it is almost always possible on a case by case basis to make a strong case for whatever decision is reached. It is only by viewing the accumulated result of the decision making process that the truth emerges. That is the process we are involved with here.

We can see now how the legal profession succeeded in tyrannizing the nation.

Here are some of the more egregious examples of its tyranny:

It has unconstitutionally monopolized the practice of law and rendered it exorbitantly expensive and thus inaccessible to most. It has then criminalized attempts by non-lawyers to defend their own corporate interests in court, or the interests of others, in any way.

It has de-criminalized activities practiced by its own members and considered criminal in other nations, granting special interests favored access to government.

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[5] A certain number of laws, like naming a national holiday for Washington's birthday, may not address any conflicting interests.

[6] James Madison in Federalist # 51 (1788). *Madison was addressing the fear of MAJORITY abuse of MINORITY rights, let alone minority abuse of majority rights*. It is clear from this that Madison felt completely secure that what has happened could never have happened.

[7] Ibid.

[8] *non sequitur*: It does not follow. Encyclopedia Britannica, *Logic, Aristotelian false arguments*.

It has unconstitutionally established so-called 'Unified Bars' in many of the several states. Each of which is a *body* elected by *nobody* making *laws affecting everybody.*

It has used the Unified Bars as instruments of alleged 'self discipline' to avoid real discipline.

It has established a system of legalized extortion that allows its members to sue anyone, anywhere, at any time, for any reason, with sufficient impunity that it forces defendants to pay a high price to settle a case, because that is still cheaper than winning it.

It continually invents legal justification for new alleged 'wrongs' upon which to sue. It does so in order to expand even further, its well established system of legalized extortion.

It has successfully insinuated itself into every aspect of the people's lives, so that little of importance can occur without some form of legally extortionary participation by its members.

It has, by making access to the courts prohibitively expensive, stripped almost all of the people of all of the protections afforded by the Bill of Rights.

It has created a nation with a massive illiteracy problem by allegedly, protecting the constitutional rights of students, while ignoring their right to either learn or be safe in school.

It has made divorce a war where no prisoners are taken, and where many participants suffer major lifelong adverse effects, financially, emotionally and psychologically.

It has re-established the oldest instrument of tyrants, the tyrannical principle of punishment without cause, and named it 'strict liability'.[9]

Specific impact of legal profession's tyranny on the nation.

The advancing through tyrannical control, of a particular group's agenda is always detrimental to the general society it is impacting.[10] However the different parts of the agenda do not necessarily carry the same degree of adverse consequences for the nation. Sometimes the worst damage to others brings the profession the fewest rewards. That is the nature of tyranny. Here are some of the forms that impact can take:

An unjust direct transfer of wealth from those who earned it to the profession. Here the gain to the profession and the loss to society are equal. (E.g., Excessive probate fees)

An imposition of unjust law resulting in expensive defensive action taken by society. Here the gain to the profession is very much smaller than the enormous loss to society. (E.g., The threat of frivolous malpractice suits on the cost of healthcare.)

An imposition of unjust law directly benefiting the profession. Here the profession's gain is a much greater proportion of society's loss. (E.g., The laws on class actions.)

An unjust imposition of the profession's philosophical views on the nation. Here the profession's financial gain may be very small, while the devastation to the nation is so great and so varied, that it is almost impossible to measure. (E.g., The devastation of our system of public education through the exaltation of student's constitutional rights, while ignoring their competing, conflicting and at least equally compelling, right to learn.)

Total cost of legal profession's tyranny of the nation

The total cost is varied and very high, but difficult to either identify completely or calculate precisely. The measurement of total cost includes the financial cost, the cost in quality of life and the cost of the loss of integrity in government.

Other costs are measured in terms of: the decline of public education; the inability for most of us to access our courts; the emotional distress felt by divorcing couples and their children; and the rising distrust in elected representatives by an alarming and increasing large majority of the Nation.

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[9] *strict liability*: Liability without fault. Black's Law dictionary. In lay terms that is punishment without cause.

[10] However, it sometimes provides benefits to some non lawyers that they might not otherwise have obtained, such as the windfalls that benefit a few in the present tyrannical tort system. The extreme example of this kind of thinking is found in what apologists for Adolf Hitler say: *'Yes he was a very bad man , but he did build the Autobahn.'*

The ultimate cost, perhaps imminent, is the complete destruction of our nation and a turning to violence, as the only solution to a government perceived as oppressive and non-responsive to its people.

Financial Cost

The financial cost has been estimated by Professor Steve McGee of the University of Texas, a former White House economist, at about one trillion dollars a year. That is about 15% of our Gross Domestic Product.

Emotional Cost

The emotional cost is first felt by the emotional devastation imposed on tens of millions of divorced individuals and their children. The profession has created a system in which lawyers are empowered to strip both the client and the client's spouse of as much of the family fortune as possible. Which lawyers do, while arguing that their actions are merely the fulfillment of their obligation to zealously represent their client. The former spouses and their children, often bereft of assets, and left emotionally shell-shocked by the experience, become the lifelong victims of the process. While the children then often become the pawns in continuing child custody problems, false accusations of sexual abuse and domestic violence.

The loss of self esteem and the breeding of hatred and distrust among divorcing family members is another byproduct of the system. Resulting greatly from unjust accusations of wrongdoing by lawyers against opposing spouses, it contributes to the production of dysfunctional children and parents who often hate each other.

Many others suffer great unnecessary emotional distress as a result of the society that lawyers have created. Few suffer as much as families in divorce.

Educational Cost to the Nation

The nation's public schools suffer from devastating problems created by lawyers. Lawyers have successfully challenged the right of schools to adequately discipline children, to keep disruptive children out of classes, to search children for weapons and drugs and to exercise control over violence in schools. They have compromised safety in schools and made the most effective teaching impossible.

They then succeeded in imposing a legal obligation and financial liability for educational results on the schools and individual teachers. Schools responded by lowering standards to avoid legal liability for failing students, allowing students to graduate without the basic skills graduation implies. As a result the nation now has some 100 million illiterate adults. The devastating consequences of an illiterate population trying to compete in an increasingly educated world market, cannot be overstated. The Nation's future is at stake.

The Political Cost to the Nation

The latest surveys report that 75% of the nation **does not trust its own government**. That is a remarkable condemnation of the system. It is normal for many, even a majority to *disagree* with their government. Such is the nature of the democratic process. *Distrust* however goes much farther and deeper. It indicates that we are in very serious danger of losing confidence in our political process. Beyond that total chaos may lie.

Juventus, a senator in ancient Rome once asked: *Who shall guard the guardians themselves?* He spoke of the elected representatives who were charged with guarding and protecting the laws that protected the people. He gave no answer. One answer he could have given is: *We the people shall guard the guardians*. That is what we can do. That is what we must do.

PUBLIUS II
(Ronald Biback)

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The Federalist: The State of the Union under a failed Constitution

91

October 17, 1995

The legal profession's tyranny over the nation.[1] The examination, diagnosis, treatment and cure.

Earlier Federalist articles[2] by this writer, identified the unconstitutional *effective control* of all government by members of the legal profession, as the most important single problem the nation faces today. That is because control by a single *'same hands'* group or *'faction'* is a violation of the principle of separation of powers of the US Constitution. That was considered *'the very definition of tyranny'* by James Madison,[3] who wrote the Constitution.

Federalist # 90 characterized the nature and manifestation of the legal profession's tyranny. Its nature lies in the ability of the legal profession to work its will on the nation, in a virtually unlimited manner. It does so through the effective control it has acquired of all government. Its tyranny is first manifested by the loss of precious liberties[4] guaranteed by the Constitution. It is further manifested by other very substantial, unnecessary costs. These costs occur in the financial, emotional, educational and countless other areas.

Such a state of affairs is precisely what the Constitution was written to prevent. ***Therefore the only logical conclusion is that either the Constitution is flawed or that it is not being enforced***. To determine which it is we must do the following:

1. Examine the Constitution's purpose and accomplishments; *(The examination)*;

2. Determine why the Constitution failed in its purpose of protecting us from the tyranny of the legal profession. *(The diagnosis)*; And

3. Determine what the necessary remedies are. *(The treatment and cure)*.

1. The examination.

The Constitution was written in 1787. The need arose because the Articles of Confederation did not provide the federal government with sufficient power to govern. That insufficiency was deliberate. It was born of the fear that more government power would lead to oppression. Correcting that insufficiency ***without allowing the new government to have sufficient power to oppress the people***,[5] ***became the principal purpose of the Constitution***.

Madison observed that tyranny and oppression historically arose from four identifiable sources:

1. The monarchy (or its equivalent);

2. The aristocracy;

3. The Church, (or organized religion of whatever persuasion);

4. The military. He observed two things.

First that the monarchy constituted tyranny in the hands of a single individual. Second that all other sources of tyranny arose, from what he termed, a single *'same hands'* group or *'faction.'* Which he

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[1]The legal profession, as a whole, must bear responsibility for tyrannizing the nation. It does not however bear that responsibility alone. Since the price of liberty is eternal vigilance, we must all share in the responsibility for having failed to be vigilant.

[2] Federalists #'s 86, 87, 88, 89, & 90, written in 1995.

[3] Federalist # 47, (1788) by James Madison. The same sentiments were echoed by Hamilton, Jefferson, and the French philosopher, Montesquieu.

[4] The loss of the protection of the Bill of Rights, of accessibility to the courts, of reasonable freedom from crime, of the right to a decent public education, and of affordable healthcare, to name only a few.

[5] Granting the government 'sufficient power to govern, but insufficient to oppress' was the fundamental goal of the founding fathers. It is another way of saying the purpose of a Constitution is to achieve the delicate balance between 'freedom and security'.

defined as: *'a number of citizens who are ruled and actuated by some common... interest adverse to the rights of other citizens... or to the permanent and aggregate interests of the community.'*[6]

So Madison wrote the Constitution, first to prevent all specifically known sources of tyranny from the possibility of acquiring power. Second, to prevent **any other potential 'same hands' group that might arise later, from acquiring power**.

He addressed the first part of his problem as follows:

1. To prevent the potential tyranny of a monarchy, the Nation was organized as a constitutional democracy;

2. To prevent the potential tyranny of the aristocracy, the Constitution prohibits the United States from granting and anyone from accepting, 'Titles of nobility.'[7]

3. To prevent the potential tyranny of the Church, the Constitution's Bill of Rights prohibits Congress from passing any law respecting the establishment of religion, or prohibiting the free exercise thereof,[8] (the separation of Church and State);

4. Finally, to prevent the potential tyranny of the military, the Constitution appoints the President of the United States, a civilian, the Commander-in-Chief of the Armed Forces.[9] That took care of any then known, potential 'same hands,' source of tyranny.

Addressing the second part of the problem was much more difficult. This is because Madison had to protect against any number of future same hands factions, then unknown. His solution consisted of providing a very elaborate system of representative government and separation of powers. That system became the cornerstone of the Constitution.[10] **That system made it *theoretically* impossible for any single same hands group to ever acquire control of all government**. The solution came at a high cost. That cost was the loss of both efficiency and consistent accountability in government.[11]

The Constitution has always succeeded in protecting the Nation against historical sources of tyranny.[12] Until fairly recent times, the Constitution even accomplished the same purpose, respecting sources of tyranny then not specifically identified. However we now know that the legal profession has been tyrannizing the nation for some considerable time. Thus we now have the worst of all possible worlds. We have lost efficiency and consistent accountability in government, yet we have not avoided the tyranny that the Constitution was specifically written to prevent.[13]

2. The Diagnosis.

The Constitution is a written document. It is dependent, for its interpretation and enforcement, upon men and women subject to human weaknesses. The Constitution was written to account for and overcome those weaknesses. That is why the cornerstone of the Constitution is the principle of the separation of powers and representative government. But the behavior of human beings is not easily or completely foreseeable. Man's behavior, in pursuit of greed and the lust for power, can and will change to successfully adjust to changing circumstances. ***Preventive measures must keep pace to ensure a free society***.[14]

The medical analogy. The analogy best suited to a discussion about the disease of tyranny and its cure, is found in the field of medicine. The human body is subject to diseases in many forms. It is protected by a system known as the 'immune system'. The body politic of the Nation is subject to the

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[6] James Madison, Federalist # 10, (1787)

[7] US Constitution, Article I, Section 9

[8] Amendment I to the Constitution, ratified in 1791 as part of the Bill of Rights.

[9] US Constitution, Article II, Section 2

[10] See Federalist # 88, page 3, by this writer.

[11] Consistent accountability exists only if the Executive and the Legislative branches are controlled by the same party at all times. That has not been the case in most of the last 15 years. Otherwise each branch takes credit for the good, and blames the other for the bad.

[12] Although some people feel that the word Esquire after a lawyer's name, does constitute a 'title of nobility'.

[13] Perhaps it is unreasonable to expect any constitutional democracy to survive without serious internal challenge for over 200 years. Perhaps that is what is meant by the phrase: 'eternal vigilance is the price of liberty'. Perhaps it is necessary to review the workings of the Constitution every so often to make certain all is as it should be. Perhaps it is most fitting that this writer, the person to raise the alarm, like James Madison who wrote the Constitution, is not a lawyer.

[14] Either by enforcing the Constitution as written, as in this case, or by amending it if necessary

disease of tyranny in many forms. It is protected from tyranny by its own 'immune system'. *That system is the constitutional provision for representative government and separation of powers*. If the body's immune system is insufficient to fully protect against specific diseases, like polio, diphtheria and tetanus, medical science develops vaccines for additional specific protection. Similarly, the body politic of nations have historically suffered from tyranny from certain specific sources. So the Constitution provides 'vaccines', in the form of particular provisions, for additional specific protection against the four known sources of tyranny.[15]

The human body's immune system acts automatically to defend against any intruder entering the body, to cause harm. The body cannot long survive without it. The immune system cannot however, protect against the HIV virus that causes AIDS.[16] That is because the HIV virus *destroys the immune system*. That leaves the body vulnerable to deadly diseases, which then kill it. *The body politic also, cannot long survive the destruction of its 'immune system'. That system is presently being completely destroyed by the legal profession, in the same way that the HIV virus destroys the body's immune system*. Let us examine how and why.

Over 200 years the legal profession, responsible for the enforcement of the Constitution, seeking its own best interests against that of the community, 'mutated' into the new tyranny. It changed from the defender and guardian of the Constitution to the principal source of tyranny in the Nation. In pursuit of the profession's own interests it acquired tyrannical control of the Nation's government.[17] It did so by first creating a national Bar association, known as the American Bar Association (ABA), then state bar associations. It then created a de jure[18] State judicial system controlled completely by lawyers/judges. And a de facto[19] federal system on the same basis. More power led to greater dominance in all elective offices. As its power increased, so did the corruption of many of its members and their activities.

The members of the legal profession are charged with guarding our Constitution. None know it better. That is why none other could have succeeded in corrupting it so completely. Lawyers ostensibly run for elective office as 'representatives of the people'. However whether consciously or not, they run first, last and always, for themselves and their own 'same hands' control group. Such activity by individual lawyers is unconstitutional. It may even be an act of treason.[20] However those charged by the nation to identify and remedy the situation, are themselves the cause of it. They are therefore far more likely to fight to preserve, than to correct it. The few who may be tempted to try to correct it, risk severe retribution from their colleagues.[21]

That is how and why the 'immune system' of the Nation's body politic has been destroyed by the legal profession, as effectively as the HIV virus destroys the human body's 'immune system'. <u>By taking over the effective control of all government for its own 'same hands' faction or group, the legal profession has stripped the people of this nation of the protective system of representative government and separation of powers intended to immunize the nation against tyranny</u>. The HIV virus eventually and inexorably causes AIDS. That results in certain death for the body. So does the virus of the legal profession's control of all government. It will quickly and inexorably cause the death of what is left of freedom and constitutional government.[22] The Nation is fast sinking into chaos.

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[15] See page 2, paragraph 1.

[16] A IDS: Acquired Immune Deficiency Syndrome.

[17] There is no suggestion that the profession was seeking tyrannical control, nor that an actual conspiracy ever existed to that end. Nevertheless, that is what ensued. In law that is called a 'constructive conspiracy'.

[18] de jure: in law

[19] de facto: in fact

[20] The intentional nullification of the principal of representative government and separation of powers, a cornerstone principal of the US Constitution, constitutes a material undermining of the Constitution. That constitutes the giving of aid and comfort to and adhering to the enemies of the United States. That is treason under Article III, Section 3, of the Constitution.

[21] There are many lawyers and judges aware of the situation and in support of the position advanced here. The legal profession contains large numbers of people, still untainted by the corruption that afflicts the profession. We call upon those people, above all others, to assist us in our task by speaking out , and not to withdraw from practice. We are aware of the risks we are asking them to take and remind them that the founding fathers, mostly lawyers, risked their lives for the good of the Nation not personal gain, when they signed the Declaration of Independence.

[22] Already perceived by many, as on its deathbed now.

The disease called AIDS strips the body of its immune system. That allows a multitude of deadly diseases to flourish. Similarly the virus of the legal profession strips the body politic of its 'immune system'. *That allows a multitude of tyrannical activities to flourish*. The HIV virus can lie dormant in the body for years before symptoms appear or are recognized. Similarly the virus of the legal profession within the Nation's body politic, can sometimes exist in a dormant state for years, without immediate symptoms of tyranny surfacing, let alone being recognized.

The legal profession has become the metaphorical AIDS carrier of the American body politic. It exists virtually everywhere and in all the Nation's activities. It is doing fundamental and often irrevocable harm to the people.[23] It is replacing freedom with tyranny. Fortunately the problem can be solved.

3. The treatment and cure.

In the medical field there are occasionally very simple treatments that can produce remarkable results. In 1848 Ignaz Semmelweiss[24] made an amazing discovery. It was that simply washing one's hands after dissecting cadavers and before touching a patient's open wounds, would save lives. So it is with the Nation's body politic. *The treatment that is called for requires only that the Nation recognize that lawyers are constitutionally barred from serving outside the judiciary branch of government. It would be nice but not even necessary that the Courts say so. Only that the nation understand it. After which the treatment calls for the nation to never again vote for any lawyer outside the judiciary branch. When that occurs the virus of tyranny will be destroyed and the nation will be cured*.

The matter is urgent. Time is very much of the essence. The Nation has at best, only a very few years left, to correct the situation and avoid civil strife of a very serious nature. The danger at hand may even include the permanent, total collapse of the system of government provided by the Constitution, and intended by the Founding Fathers.

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(Ronald Biback)

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[23] As one who loves the law, this writer makes this statement with deep sadness.

[24] Semmelweiss, Ignaz Phillip, (1818-1865) Hungarian physician who introduced antisepsis into medical practice. Encyclopedia Britannica.

The Federalist: The State of the Union under a failed Constitution

92

April 2, 1996

The legal profession's tyrannical control over the Nation and the federal crime of Treason.[1]

Earlier Federalist articles[2] by this writer identified the unconstitutional effective control of all government by members of the legal profession as the greatest problem the Nation faces today. From that control by a **same hands faction** arose the tyranny that Madison[3] feared. That tyranny has given rise to a multitude of very serious problems, sufficient in scope to threaten the complete destruction from within, of what remains of our Republic's constitutional democracy. Unacceptable levels of crime, ineffective public education, unaffordable justice, unaffordable healthcare, divorce/custody wars and domestic violence are some of the major problems that have resulted. The criminalization of the police attempting to hold the line against criminals protected by lawyers abusing constitutional protections is another.[4] We have here what they had in Rome when Juventus asked rhetorically Quis custodit ipsos custodies.[5]

In this context many people cry out that those responsible are guilty of treason. Treason is the greatest crime in the nation. It carries the death penalty and as a capital crime it is not subject to any statute of limitations.[6] Prosecution of this crime shields the nation against traitors, but also has a historic background as an instrument of abuse.[7] Yet it has never before been used by the people as a sword of freedom, to protect against the tyranny of their own government. That would be an application in the noblest cause of all.

The accusation of treason should never be made without 'reasonable ground for belief in the existence of facts warranting the proceedings complained of.'[8] Yet failure to report treason is itself a crime, known as Misprision of treason.[9] The examination here will be limited to whether or not **probable cause**[10] exists for finding that members of the legal profession occupying elected office in the legislative and executive branches of the federal government, are guilty of treason. If probable cause exists, perhaps the Nation should grant amnesty to those potentialy guilty in exchange for their resignation from public office, rather than prosecute them to the full extent of the law.

This is suggested notwithstanding the fact that this particular form of treason would be the most egregious form of all. For every person guilty of treason would have betrayed a threefold trust. First because he is a citizen of this country and owes it allegiance. Second, because he is specifically trained by his country as a lawyer who, as an officer of the Court and a part of the Judiciary, swore an oath to protect and uphold the Constitution. Third, because he occupies a fiduciary position as an elected representative of the people who, when he took office, swore a second oath to uphold the Constitution.

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[1] Treason can also be a crime at the State level.

[2] Federalists #'s 86, 87, 88, 89, & 90, & 91 written in 1995.

[3] James Madison, the author of the Constitution and co-author of the 1787 Federalist Papers.

[4] A system designed to protect the presumed innocent has become one that frees the factual perpetrator of the criminal deed on technical grounds, primarily for the financial benefit of the defense Bar.

[5] Latin for: Who shall guard the guardians themselves? He provided no answer.

[6] Title 18, USCS, Section 3281, Limitations of prosecutions, Capital Offenses,

[7] Despotic governments oppressed their own people by falsely accusing them of treason.

[8] Black's Law Dictionary : A definition of *Probable cause*.

[9] *Misprision of treason*: United States Statutes 18, Section 2382.

[10] Black's Law Dictionary: Another definition of Probable cause: An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime charged.

What is treason?

Treason is a crime by a person owing allegiance to the United States which threatens the security of the Nation. The offense is covered under Federal Statutes, Title 18, USCS, (Crimes and Criminal Procedure) Section 2381[11] which defines **treason** as follows:

Whoever, owing allegiance to the United States, levies war against them **or adheres to their enemies, giving them aid and comfort** within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned for not less than five years, and fined not less than $10,000; and shall be incapable of holding any office under the United States. (Emphasis added) The concept of 'adhering to their enemies, giving them aid and comfort' was further defined by the Supreme Court as: 'Strengthening or tending to strengthen the ability of the enemies of the United States, **or which weakens or tends to weaken the power of the United States to resist and attack such enemies.'**[12] (Emphasis added)

Acts that are treasonable may consist of a criminal act already more generally covered and more easily prosecutable under other statutes. Treason is very broad in scope since there are a multitude of acts that can produce the proscribed result. The act can be as egregious as sabotage in time of war. It can also consist of an act, seemingly innocent in itself, if such an act was intentionally done to advance a treasonous intent.[13]

The elements of the crime.

The two elements of the crime of treason are defined by Supreme Court Justice Douglas as the **'**overt act and the intent with which it is done.'[14] Thus a person guilty of treason must commit:

1. An overt act, with
2. Treasonous intent,[15] which
3. Adheres to and gives aid and comfort to the country's enemies, *or*
4. Strengthens this country's enemies, *or*
5. Weakens this country.

Thus the legal issue is :

Is it treason for a member of the legal profession, whose 'same hands' faction possesses absolute control of the Judiciary branch of the federal government, to hold elected office in either the Legislative or Executive branch of the Federal Government on the grounds that such an act constitutes a contribution to the nullification of the separation of powers clause implicit in the US Constitution, which materially undermines the Constitution, and thereby adheres to and gives aid and comfort to the enemies of the United States, or tends to strengthen the ability of the enemies of the United States, or tends to weaken the power of the United States to resist and attack such enemies?

ARGUMENT:

The unconstitutional effective control of government by members of the legal profession commenced with the takeover by lawyers and judges on a de facto basis of the federal judiciary, one of the three branches of government, absent any such requirement in the Constitution. For purposes of the issue at hand the assumption will be made that the said de facto control **taken alone**, does not rise to the level of threatening the Nation's constitutional democracy.

That situation leaves the Nation's non-lawyers with only two of three branches still excluded from absolute permanent control by members of the legal profession. It is only in these two branches that the 99.7% of the Nation who are non-lawyers, may attempt to exercise their constitutional right to representative government as originally protected by the cornerstone principle of the Constitution known as the Separation of Powers.

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[11] The Federal statute implements Article III., Section 3, of the US Constitution, which defines treason.
[12] See United States v Haupt, D.C.III., 47 F.Supp. 836,839.
[13] See Haupt v United States 330 US 631 (1947).
[14] See Cramer v United States (1945) 325 US 1, 89 L Ed 1441, 65 S Ct 918
[15] Providing the *Park doctrine* (footnote 19) does not apply.

Thus if any member of the legal profession,[16] a 'same hands' faction already in total control of one branch of government, takes any action that contributes to or results in, the acquisition of effective control of either or both of the other two branches, by the members of their profession, such an act could be construable as treason. **This is because such an act would either result, or tend to result, in the tyranny of a same hands faction effectively controlling all government**.[17]

All available evidence supports the conclusion,18 that it is unconstitutional for members of the legal profession to occupy elected office in either the legislative or executive branches of the federal government, on the grounds that such an act would constitute a violation of the separation of powers clause implicit in the Constitution. For the same act by a particular lawyer to rise to the level of the crime of treason it would be necessary that the act also:

1. Result in the 'adhering to, giving aid and comfort to the enemies of the United States', or 'strengthening or tending to strengthen the enemies of the United States, **or** weakening or tending to weaken the power of the United States to resist or attack its enemies,' and

2. Be done with treasonous intent, (unless the Park doctrine[19] is applicable).

1. The adhering to, giving aid and comfort to the enemy, or weakening or tending to weaken the power of the United States to resist or attack such enemies requirement.

The Constitution is the single greatest document ever written by a society of people who wish to govern themselves in a manner that provides their government **with sufficient power to govern but insufficient to oppress**. That document has kept this Nation reasonably free for over 200 years. It created a delicate balance between freedom and security. It is the very fabric that ties our society together.

The maintenance of this great document's integrity is an essential element of the well-being, freedom and security of the people of this Nation. Any act which materially compromises that integrity would constitute a material undermining of the Constitution, which would adhere to and give aid and comfort to the enemies of the United States, for such an act could and would materially weaken the people's faith in their own government.20 The act of either succeeding, or tending to succeed, in materially reducing or nullifying the checks and balances established by the Constitution for the protection of the people from their own government through the principle of the Separation of Powers, would qualify as an act which materially undermines the Constitution.

After the members of the legal profession established absolute de facto control of the federal Judiciary, the act of holding elective public office by any member of that 'same hands' faction or group, in either the Legislative or Executive branches of government constitutes an act which would result in the aforementioned undermining of the Constitution and would therefore qualify as **probable cause** for an 'overt act' of treason.

2. The treasonous intent requirement.

In Cramer v United States[21] Justice Jackson addressed the issue of treasonous intent in the following manner: Intent in the crime of treason is 'never susceptible of proof by direct testimony' ... 'Since

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[16] There are different levels of egregiousness to the crime of treason in this context. A president who is also a lawyer, would be in total effective control of the executive branch. Thus by his overt act that person would be responsible for adding an entire branch of government to the unconstitutional control of his 'same hands' faction . That is far more egregious than the overt act of a single member of Congress who is a lawyer. Both acts can qualify as probable cause for treason. Only the degree is different.

[17] Which is precisely the situation that exists today.

[18] See Federalist 86, 87, 88, 89, 90, & 91 written by this writer in 1995.

[19] The *Park doctrine* was established in United States v Park (1974), 421 US 658, 668, in a case involving a corporate officer criminally prosecuted for failure of subordinates to remedy violations of law. The *Park doctrine* applied the civil law concept of 'strict liability' (liability without fault), to criminal law. That was done in the belief that in some cases at least, public welfare supersedes individual due process rights. That doctrine, logically applied here, could eliminate the need to prove 'treasonous intent'.

[20] Current surveys repeatedly report a significant majority (76%) of this Nation's people do not trust their own government.

[21] *Cramer v United States*, (1945) 325 US1, L Ed 1459, 1460

intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt acts.' Thus with respect to treason the law permits that 'intent may be inferred from all circumstances surrounding the act.'[22]

The law further states that: 'In matters of treason the accused is presumed to have intended the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts.'[23] In the case at Bar all the evidence supports the legal inference of treasonous intent. This is because every lawyer has been specifically trained in the law, and can therefore legally be inferred to stand in circumstances and possessing knowledge that permits him to reasonably expect that the result of the act of holding elective public office, in either the legislative or executive branch of government, would tend to contribute to or result in, the unconstitutional control by his 'same hands' faction or group, of all government and hence constitute treasonous intent.

The law makes the legal inference of presumed treasonous intent the standard to be met for the finding of **actual treasonous** intent.[24] That standard has been met here. In addition an abundance of factual evidence exists to support the same conclusion. The legal profession is known to continually seek as much power in both the legislative and executive branches as it can. It does so to advance its own interests. Those interests like the interests of any other similar 'same hands' faction or group, naturally favor that faction first and foremost and are therefore opposed to the general interests of the Nation.[25] Any member of the legal profession who succeeds in increasing the profession's political power by occupying elective public office in the legislative or executive branches of the federal government, can by inference, reasonably be charged with that knowledge and therefore **probable cause** for treasonous intent.

Conclusion:

All the available evidence supports the general conclusion that probable cause does exist for believing that it is an act of treason for any individual member of the legal profession to occupy elective office in the legislative or executive branches of government.[26]

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[22] See *Haupt* case, supra.

[23] *Cramer v United States*, (1945) 325 US 1, L Ed 1441, 65 S Ct 918

[24] Assuming the ***Park doctrine*** does not apply, for if it does there is no need to prove intent.

[25] That is true regardless of the legal profession's allegation that what they do as a professional group is in the best interests of the Nation. All professional groups and associations make that claim. However much truth there may be in these allegations, every such group or association retains enough special interests opposed to the interests of the Nation, to qualify for Madison's definition of 'same hands faction' that the Constitution was written to oppose.

[26] However, the best interests of the Nation and the legal profession would be served if lawyers were voted out of office rather than prosecuted for treason. The Constitution, representative government, the Separation of Powers and the system of checks and balances would be restored through the ballot box. The Nation would be saved and could forgive and forget. The lawyers will have been saved from ***themselves*** and served from any risk of ending their careers convicted of treason.

The Federalist: The State of the Union under a failed Constitution

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July 31, 1996

Rebuttal to the legal profession's Defenses to the allegation that probable cause exists for stating that by occupying public office in either the legislative or executive branches of the federal government, members of the legal profession are guilty of the federal crime of treason.[1]

Federalist # 92, presented the argument that the legal profession unconstitutionally controls all government generally and the federal government in particular. That control began with the de facto control by the legal profession of the federal judiciary without constitutional authority. As a consequence, probable cause exists to conclude that any single member of that profession who occupies elective public office in either the executive or legislative branches of the federal government is guilty of having committed the crime of treason. That argument was intended to address the question in the most general way. This article will respond to the defenses already articulated by those who do not agree with that general position. The legal issue was presented as follows:

Is there probable cause to believe that:

It is treason for any member of the legal profession, whose 'same hands' faction possesses absolute control of the Judiciary branch of government, to hold elective public office in either the legislative or the executive branches of that government on the grounds that such an act constitutes a contribution to the nullification of the principle of the separation of powers implicit in the Constitution , which materially undermines the Constitution, and thereby adheres to and gives aid and comfort to the enemies of the United States, or tends to strengthen the ability of the enemies of the United States, or tends to weaken the power of the United States to resist and attack such enemies.

For a person to be guilty of treason the law requires that person to commit :

1. An overt act, with
2. Treasonous intent, which either,
3. Gives aid and comfort to the country's enemies, or
4. Strengthens this countries enemies, or
5. Weakens this country.[2]

Let us examine the facts, the defenses[3] and the rebuttals to the proposition that probable cause does exist.

Question 1: Did the accused commit the overt act?[4]

The 'overt act' at issue is the act of occupying elective public office in either the legislative or the executive branch of government by a member of the legal profession. **Every such act is a matter of public record**. There is therefore no dispute on this point.

Question 2: Was the overt act committed with treasonous intent?

The legal profession's answer is no, for the following reasons:

2.1 The act of occupying public office is an innocent act done under color of law that does not carry with it the presumption of treason.

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[1] Treason can also be a State crime.

[2] See Cramer v United States, (1945) infra & Haupt v United States (1947) infra.

[3] The standard defenses to treason are found in 18 USCS Section 2381, V DEFENSES. They are: Duress, Entrapment, First Amendment privilege, Immunity from Prosecution, Governmental Action and Miscellaneous. Only Government Action, addressed in 2.1 infra, is appropriate here.

[4] The legal profession's arguments will be presented in bold italicized print and the rebuttal in italics.

However, innocent acts are capable of being committed with treasonous intent. It is therefore no defense to argue that the overt act is itself innocent.[5]

2.2 The individuals accused of treason are generally men and women of excellent reputation as patriotic citizens, some of whom are decorated war heroes. Such individuals cannot be guilty of treason.

Neither the individuals' war record nor their past is at issue. Reputation and previous good deeds are not a defense to the issue of treasonous intent.

2.3 Evidence of treasonous intent is essential to the crime of treason and therefore must be shown to exist 'beyond a reasonable doubt'. Implied treasonous intent, even if it exists in theory, cannot be proved beyond a reasonable doubt.[6]

When deemed present by the Court, implied treasonous intent is the legal equivalent of actual treasonous intent and does meet the necessary standard of 'beyond a reasonable doubt.'[7]

Question 3: Did the overt act adhere to and give aid and comfort to our enemies or weaken or tend to weaken the power of the United States to resist such enemies?

The legal profession's answer is no, for the following reasons:

3.01 Members of the legal profession do not control all government, since they do not have a clear majority at this time in the House of Representatives. Absent that control there can be no nullification of the undermining of the Constitution or adhering to, giving aid and comfort to the enemy.

Neither absolute nor effective control of all government needs to exist for an act to 'contribute to the nullification of the principle of separation of powers.' It is sufficient that a member of the 'same hands' faction which possesses either effective or absolute control of a single branch of government, acquire elective power in another. The members of the legal profession do possess absolute control of the judiciary branch. That is sufficient for the acts in question to be deemed treason.[8]

3.02 Even if lawyers do 'control' all government they do not qualify as the kind of 'same hands' faction against whom Madison intended to protect the people by the creation of the Separation of Powers principle. That is because lawyers, although members of the same profession sharing a common interest adverse to the general interest, differ in a great many respects from each other in significant ways.

All 'same hands' factions differ from each other in significant ways. If that were a disqualifying criterion, Madison's statement about the very meaning of tyranny would be meaningless.9 The issue is whether or not any faction or group of people possesses any interest that is common to it and adverse to the general society. The legal profession's desire to advance its own best interests is an 'interest' common to it and adverse to society as a whole. The same is true of every professional group or association in the Nation. Thus it is clear that members of the legal profession are a 'same hands' faction within the meaning of Madison's language.

3.03 The word 'enemy' in the treason statute can only mean another nation with which this Nation is at war. Absent war there can be no enemy and hence no treason.

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[5] Haupt v United States 330 US 631 (1947)

[6] If the Park doctrine of 'strict liability' or *criminal liability without fault* established in *United States v Park* (1974) 421 US 658,668, is reasonably applicable here there is no further need to prove intent under the law. As a matter of pure legal theory, there appears to be little reason why it should not apply.

[7] *Cramer v v United States*, (1945) 325 US 1, L Ed 1459, 1460

[8] The record shows that the legal profession has 'effective' control of all government at this time. The profession controls 100% of the Judiciary and the Executive branch, over 50% of the Senate and about 40% of the House of Representatives. That constitutes total 'effective' control.

[9] James Madison, Federalist 47, (1788): No political truth is certainly of greater intrinsic value ... than that the accumulation of all powers legislative, executive and judiciary, in the same hands, ... may be pronounced the very definition of tyranny.

The dictionary defines the word 'enemy' in many ways, to wit: *One who cherishes resentment or malicious purpose towards another; an adversary; foe. One of a hostile army or nation.*[10] Every Nation is at all times faced with enemies who cherish resentment or malicious purpose towards it. Drug lords and other criminal elements are often referred to as 'enemies' of the Nation. Newspaper reports indicate the existence of counterfeiting of this Nation's currency on a scale so extensive as to necessarily suggest the participation of unfriendly nations viewed as 'enemies' of this Nation.[11]

To argue that the only interpretation of the word enemy is limited to a nation at war with this country is wrong. That is because the plain meaning of the word enemy is more inclusive. Furthermore such an interpretation would lead to the most ludicrous results. According to this argument individual members of the legal profession who were constitutionally elected in time of peace, would become guilty of the crime of treason at the very moment of the outbreak of war with any nation. That is logically absurd.

3.04 The words 'member of the legal profession' or 'lawyer' are too vague. Many members of the government are 'nonpracticing lawyers'. Some are not even active members of State Bars. At worst only active members of State Bars should qualify for 'same hands' faction definition and potential probable cause for treason.

Every person who graduates from law school has earned the right to be called a lawyer and thus share important common interests with other lawyers/judges who are members of his 'same hands' faction, which are adverse to the rest of society. A lawyer may or may not choose to sit for the Bar exam. He then may or may not choose to practice law. Nevertheless he retains a common interest with other members of his 'same hands' faction or group, which he may choose to take advantage of at any time. That is sufficient to include all lawyers within the meaning of the 'same hands' faction targeted by Madison to protect the Nation from tyranny.

3.05 The idea that is advanced is an interpretation of law that is both new and esoteric. It would be unfair to seek harsh immediate enforcement. Therefore all existing potential violators should be grandfathered.[12]

The concept of 'grandfathering' those already doing something that a new law will no longer permit is not valid here. First, because this is not a matter of a new law. It is merely the application of existing Constitutional law. Second, because treason is not a matter to be 'grandfathered' in, like a property use right that has become illegal after the fact. It is the most serious crime in the Nation.

3.06 Even if totally true there is something inherently unfair, wrong and unconstitutional, in singling out a particular profession and disqualifying it from public office outside the Judiciary branch.[13]

The particular profession allegedly 'singled out' <u>is the one that has already taken over absolute control of the federal Judiciary absent any constitutional authority.</u> The issue is therefore whether the 99.7% of the people of this Nation who are not lawyers, have a constitutional right to representative government protected by the principle of separation of powers, that supersedes the right of the legal profession to control all government. The answer is obviously yes.

3.07 No single individual, except the President of the United States, can by himself impact the separation of powers structure sufficiently to 'adhere to and give aid and comfort to the enemies' or weaken or tend to weaken the United States. Therefore all but the President are immune from the potential charge of treason.

The charge of treason involves overt acts that adversely impact this Nation sufficiently to adhere to and give aid and comfort to the Nation's enemies, or tend to 'weaken' this Nation. Any member of the legal profession holding office in either the legislative or executive branch represents the creation of a sufficient such tendency.

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[10] Funk & Wagnall's International Dictionary of the English language.

[11] *Sun Sentinel* editorial, Fort Lauderdale, Feb. 15, 1996

[12] To 'grandfather' means to allow as an exception to a new law those who were previously doing that which the new law prohibits.

[13] This issue was addressed in Federalist 87 by this writer in 1995.

3.08 The charge of treason potentially leveled against elected members of the legal profession implies a conspiracy which simply does not exist and absent which no lawyer may be guilty of the crime of treason.

The crime of treason does not require conspiracy. It is enough that one individual commit an unassisted, even secret, intentional act of treason for the crime of treason to exist.[14]

3.09 Lawyers have always been over-represented in government and have served the country well and are still doing so.

This argument is irrelevant to the issue.[15] If the law considers the presence of lawyers in the legislative or executive branches to be treason, there is no need to further justify their removal.

3.10 Although many other nations of the world are not dominated by lawyers in government they are having major problems, therefore it is not right to blame control by lawyers of our federal government for major problems that we are facing here.

This argument is also irrelevant to the issue for the same reason the previous one was.[16]

Conclusion:

Analysis of the legal profession's defenses to the charge that probable cause exists for the charge of treason against lawyers occupying public office in the legislative and executive branches of the federal judiciary, indicate that those defenses are without merit.

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(Ronald Bibace)

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[14] Conspiracy is a separate crime. It is defined in Black's Law Dictionary as the association, combination or confederacy of or between, two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act. It is not a requirement of treason but it could be present as an **additional** crime.

[15] It is also inaccurate. Lawyers have been overrepresented in government for years. However although they may have once served their country well , all available evidence supports the general conclusion that such has not been the case for a very long time.

[16] Furthermore, a careful examination of the problems of other nations indicates that few are suffering as much as we are in the areas of crime, the justice system in general, public education, healthcare, divorce/child custody wars, lack of confidence in government, to name only some of our major problems. Our constitutional system of government should be giving us the finest results in all of these areas because we have also been the richest nation in the world for a long time. It is the problems identified and addressed here that have caused the Nation's steady decline and that will if not corrected, bring the Nation down.

The Federalist: The State of the Union under a failed Constitution

94

April 2, 1996

The logical analysis and legal reasoning governing the Federalist 92 proposition on the legal profession's unconstitutional control of all government and the federal crime of treason.

Federalist 92 asserted the proposition that probable cause exists that lawyers occupying public office in either the legislative or executive branches of the federal government are guilty of the crime of treason. The position was developed as an extension of the constitutional prohibition against a single **'same hands' faction** or group controlling all government. The **same hands** group in question consists of the members of the legal profession.[1] That position is being asserted because the unconstitutional power being exercised by the 'same hands' faction in question, is the source of many of the Nation's most serious problems, and that situation is in urgent need of correction lest the Nation go down.

The assertion is being made for two reasons. The first is that it is required by law.[2] The second is in the hope that the legal profession will finally overcome the cognitive dissonance and self delusion so far extensively exhibited and finally come to grips with the grievous harm it is doing to this Nation. Notwithstanding the egregiousness of the crime involved it is hoped and respectfully recommended, that the Nation limit itself to requiring the resignation from public office of those deemed guilty in exchange for amnesty.[3]

This commentary is written to aid the understanding of those seriously interested in the issue. It is intended to make clear the sequence of legal arguments that led to the conclusions reached. It should also serve to identify the particular links in the chain of logical reasoning which fail to persuade those who may disagree with the conclusions.

To arrive at the conclusion asserted one must do the following:

1. Define the crime of treason.

2. Determine what the legal requirements are for a court of law to convict an individual of the crime of treason.

3. Establish why the presence of members of the legal profession in elective office in the legislative and executive branches of the federal government may be deemed an act of treason.

4. Establish that probable cause exists for the general assertion that the presence of members of the legal profession in elective office in the legislative and/or executive branches is treason.

These matters will be addressed one by one.

1. Define the crime of treason.

There are certain 'links' in the causal chain that are facts and others that are opinions. The following are facts:

1.1. The Constitution is the supreme law of the land and the Supreme Court is the sole entity with the Constitutional right, responsibility and authority to interpret the Constitution.

1.2 Article III, Section 3. of the United States Constitution **defines the crime of treason**. Title 18, USCS, (Crimes and Criminal Procedure) Section 2381 of the Federal Statutes which is the Federal Statute implementing Article III, Section 3, of the Constitution, **further defines treason as follows:**

> Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the

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[1] See Federalists 87,88,89,90,91, 92 & 93 by this writer.

[2] Failure to report knowledge of treason is a crime known as *Misprision of treason*. United States Title 18, Section 2382.

[3] The purpose is to remedy a very serious problem not to punish or place blame.

> United States or elsewhere is guilty of treason and shall suffer death, or be imprisoned for not less than five years, and fined not less than $10,000; and shall be incapable of holding office under the United States.

1.3. The case of United States v Haupt, D.C.III., 47 Supp. 836, 839 expanded the definition of treason to mean any act which 'strengthens or tends to strengthen the ability of the enemies of the United States or which weakens or tends to weaken the power of the United States to resist such enemies.'

2. Determine what the legal requirements are for a court of law to convict an individual of the crime of treason.

The following are statements of fact:

2.1. Supreme Court Justice Douglas in Cramer v United States (1945) 325 US 1, 65 S Ct 918, stated that the crime of treason consists of two elements, which are: the overt act and the treasonous intent. (Thus unless the **Park doctrine** applies {see footnote 7} an individual can only be convicted of the crime of treason if he commits an overt act with treasonous intent).

3. Establish why the presence of members of the legal profession in elective office in the legislative and executive branches of the federal government may be deemed an act of treason.

The following are statements of fact:

3.01 The Constitution was written in 1787 by James Madison.

3.02 The motivation for writing the Constitution was that the United States Federal Government operating under the Articles of Confederation, did not have sufficient power to govern.[4]

3.03 To make certain that the Federal government was given **sufficient power to govern but insufficient to oppress**, the Constitution incorporated a system of 'Separation of Powers' and checks and balances into the government's structure. The government was divided into three separate branches, the judiciary, the executive and the legislative. The system was designed to provide each branch of government with sufficient power to check and balance the powers of the other two branches.

3.04 The principle of Separation of Powers is an essential cornerstone principle of the Constitution because it protects the people of the United States from their own government.

3.05 There is nothing in the Constitution that requires any person to be a lawyer in order to serve as a judge or in order to represent others, in a federal court of law. Thus non lawyers may constitutionally serve in any and all offices of the federal Judiciary. Nevertheless the federal Judiciary is de facto under the absolute control of members of the legal profession.

3.06 The Constitution required ratification by the individual States in order to become law.

3.07 In 1787 the State of New York had expressed opposition to the Constitution and appeared unwilling to ratify.

3.08 To persuade the people of the State of New York to ratify the Constitution, James Madison, Alexander Hamilton and John Jay, wrote a series of 85 newspaper articles which became known as The Federalist Papers.

3.09 The Federalist Papers outlined in the fullest detail the intentions of the founding fathers and the author of the Constitution as to why the Constitution was written, what it was intended to accomplish, why the principle of separation of powers was essential to freedom and how its implementation would protect the people against their own government.

3.10 The Federalist Papers are recognized by the Supreme Court as the source of interpretation of the Constitution, second only to the Constitution itself.

3.11 James Madison, Alexander Hamilton, Thomas Jefferson and the great French philosopher Montesquieu were unanimous in believing the principle expressed by Madison in Federalist 47 concerning tyranny arising from any single hands faction or group controlling all government. Madison wrote:

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[4] See Federalist Papers, 1787

No political truth is certainly of greater intrinsic value.... than that the accumulation of all powers legislative, executive and judiciary, in the **same hands**, may be pronounced the very definition of tyranny. (Emphasis added)

3.12 James Madison defined the term 'same hands' or 'faction' in Federalist 10 as follows:

> By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse or passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

Henceforth the causal links represent opinions and conclusions arrived at by this writer:

3.13 Any action which would materially undermine the Constitution, would adhere to and give aid and comfort to the enemies of the United States, as well as weaken the United States and strengthen its enemies.

3.14 Any tendency which could result in the nullification of the principle of Separation of Powers, which is an essential cornerstone principle of the Constitution and which is the source of both representative government and protection of the people from their own government, would materially undermine the Constitution.

.**3.15** Because Madison wrote the Constitution to include a Separation of Powers principle to make sure that no 'same hands' faction could ever control all government, control or tendency to control all government by any 'same hands' faction would constitute either *nullification* or the *tendency towards nullification,* of the principle of Separation of Powers, and therefore a material undermining of the Constitution.

3.16 Madison's definition of a 'faction' consisting of 'same hands' applies to all professional groups as well as many other kinds of groups. The legal profession like all other professional associations or groups, is a *same hands faction or group* within the meaning of Madison's definition. Therefore all members of the legal profession be they lawyers or judges, are a part of and belong to, that which Madison defined as a 'same hands' faction or group.

3.17 When the members of the legal profession acquired absolute control of the Judiciary Branch of the Federal government they became a 'same hands' faction or group in control of one third of all government. From that moment forward any member of the legal profession who occupied elective public office in either the legislative or executive branch of government would by his presence constitute a 'tendency to nullify the principle of separation of powers of the Constitution which would result in the material undermining of the Constitution, which would adhere to and give aid and comfort to the enemies of the United States, etc.,' which action, by a person owing allegiance to the United States, constitutes treason.

3.18 At the present time the 'tendency' to nullify the principle of separation of powers has become a total 'nullification of the Separation of Powers.' That is because the effective control of all government is and has been in the hands of the legal profession for some time.[5]

4. Establish that probable cause exists for the general assertion that the presence of members of the legal profession in elective office in the legislative and/or executive branches is treason.

4.1 It is the duty of every person who owes allegiance to the United States and who has knowledge of treason to report it to the proper authorities under penalty of law. It is also the right of every person, in the eyes of the law, to be innocent until proven guilty. **Thus the words 'knowledge of treason' in the law can only mean 'probable cause' that treason exists**. That means to have 'reasonable ground for belief in the existence of facts warranting the proceedings complained of.'[6]

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[5] The Judiciary Branch of government has been under their absolute control for a very long time. The Executive Branch is 100% controlled by members of the profession because at this time, both the President and Vice President are lawyers. The United States Senate includes 50% lawyers and the House of Representatives about 40%. No other 'same hands faction' has more than a few members in either Chamber. Thus the legal profession is in total effective control of all of the federal government. *Effective* control remains in the hands of the legal profession even when the President is a non lawyer.

[6] Black's Law Dictionary: A definition of ***probable cause***.

4.2 The crime of treason requires a person to commit an overt act with a treasonous intent.[7] The overt act, for a member of the legal profession, is the act of occupying elective public office in either the executive or legislative branch of the Federal Government and is a matter of undisputed public record.

4.3 The treasonous intent aspect is covered by the law under Cramer.8 In that case actual treasonous intent was determined to be legally inferable from the circumstances and knowledge of the individual. Lawyers specifically trained in the law are required to know the Constitution. That knowledge and the circumstance of occupying elective office in either the executive or legislative branches, requires the law to infer that they legally intend to nullify or tend to nullify the separation of powers principle of the Constitution and that such action constitutes treason.

4.4 The above establishes 'reasonable grounds for belief in the existence of facts warranting the proceedings complained of,' which is **probable cause** for asserting that members of the legal profession who occupy the aforementioned elective offices are guilty of treason.

Conclusion:

It is evident from the legal argument presented that the assertion made is fully supported by the evidence.

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[7] That assertion makes the unproved assumption that the Park doctrine does not apply. That doctrine in *Park v United States*, (1974) 421 US 658,668, established the principle of 'strict liability' or 'liability without fault' in criminal cases. If applicable here the doctrine ***eliminates the need for proof of intent***.

[8] *Cramer v United States*, (1945) 325 US 1, L Ed 1459, 1460

The Federalist: The State of the Union under a failed Constitution

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July 31, 1996

The legal profession's tyranny over the Nation,

the self-delusion that keeps it in denial of that truth, and

the phenomenon of 'cognitive dissonance' that causes it.

(Part 1)

The legal profession appears incapable of recognizing that it has taken over effective control of government in this country. Or that such control is unconstitutional and constitutes tyranny. On this issue the profession remains impervious to logical argument or conclusive evidence. This 'mental block' transcends human reason. **It is self delusion that results from cognitive dissonance**. The condition is also called denial. This paper should provide the reader with a better understanding of what that is and how it affects the legal profession.

In 1492 Spaniards began 'legally' murdering other Spaniards by torturing them to death for not believing in Catholicism. Spain had just reconquered the southern part of the country from the Muslim Moors, after 800 years of Arab rule. Forced conversion to Catholicism of all non-Catholics in a unified Spain was viewed as vital to consolidating the conquest. The **victimizers** who tortured their **victims** to conversion or death perceived themselves as good. They asserted that what they did <u>was in the best interests of their victims</u>. They explained that death by torture was a necessary process to ensuring the salvation of their victims' eternal souls. These activities were known as the Inquisition.[1]

During World War II ordinary Germans under Nazi rule, brutalized and murdered large numbers of people because they happened to be Jews. Scapegoating Jews for their own problems was the excuse Germans used to murder and rob them. Many genocidal German **victimizers** regarded themselves as men of honor serving their country's laws and their conscience.[2] Six million Jewish **victims** were murdered in the Holocaust.

From 1776 to the Civil War, slavery was legal in all or part of the United States. Slavery provided substantial economic benefits to Slaveowners who perceived themselves as good people. The **victimizers** believed that in exchange for enslavement they provided their **victims** with the opportunity to become Christians and their only chance to get to Heaven. Millions of black slaves suffered the worst misery and death. Millions of their descendants regard themselves as continuing to suffer grievously from the legacy of slavery.

Around the middle of this Century the legal profession took over effective control of all government in America. That resulted in the kind of tyranny that the Constitution was specifically written to prevent. Now this 'same hands' **victimizer** group makes the laws, interprets the laws and enforces the laws. It does so not to achieve justice for all, but primarily for its own benefit. Madison, Jefferson, Hamilton and Montesquieu called this tyranny.3 All non members of the legal profession became its **victims**. Most of the **victimizers** deny that they are in control. A few admit it, but falsely assert that it is a good thing.

In all of the above examples what was done by the victimizers to their victims was horribly wrong. One of the most shocking and frightening aspects of these evil oppressions is that the victimizers perceived themselves as righteous. This tells us that the human mind has a substantial propensity to render itself blind to truth and justice. The cause is a phenomenon of self-delusion that results from 'Cognitive dissonance,' known in psychiatry as 'denial'.

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[1] The purpose of the Inquisition was primarily to protect Spain from the perceived threat of a very large Muslim population. The Jews were included because like Muslims they were non Catholics. Not as in Germany specifically *because they were Jews*.

[2] Hitler's Willing Executioners, by David Goldhagen (1996).

[3] Federalist #47, Jan 30, 1788 by James Madison, echoing the French philosopher Montesquieu's dissertation in *The Spirit of Laws*. Endorsed by Hamilton in the Federalist Papers & Jefferson.

1. What is cognitive dissonance and how does it give rise to self delusion?
2. What are the consequences to the victimizer and the victim?
3. Can this kind of self delusion be conclusively identified?
4. Can it be proven to apply to the legal profession?
5. Can its effects on the Nation be countered in time to avert disaster?
6. What is cognitive dissonance; how does it give rise to self delusion?

Cognitive dissonance is a psychological term defined as: Anxiety that results from simultaneously holding contradictory or otherwise incompatible attitudes, beliefs or the like.[4] The theory of cognitive dissonance was proposed by psychologist Leon Festinger in 1957.[5] The theory states, among other things, that a person cannot act in a manner that is good for himself but bad for others, without suffering psychological discomfort (or anxiety in lay terms). The greater the difference between the good for himself and the harm to others, the greater the discomfort and the need to do something about it.

Our concern is with the most severe kind of dissonance which Festinger identified as forced compliance dissonance. It occurs when one is subjected to pressure sufficient to make one do something wrong, but insufficient to overcome the belief that it is wrong. It can be resolved through the process of **changing one's beliefs**.[6] Thus under sufficient pressure the perceiver changes his 'belief' **from the truth he knows is evil into a 'perceived good'**. That is self delusion. Eventually the perceiver can no longer recognize as 'true' anything but his false perception. This allows the perceiver to 'believe' in false statements he makes to the effect that his evil acts are good.[7]

For example: Slavery is wrong. The inducement of economic benefits to the slave-owner was sufficient to own slaves, but insufficient to overcome the knowledge that slavery was wrong. The slaveowner resolved his problem of 'cognitive dissonance' **by changing his 'beliefs' from the reality that his act was evil, to a self deluding 'belief' that his act was good**. He did so by 'deciding' that slaves who were black were 'heathen savages' doomed after death to rot in hell for eternity. Slavery brought blacks the Bible and Christianity. That brought opportunity for Heaven and eternal salvation. Thus slavery was a good thing for blacks.

Thus 'forced compliance cognitive dissonance' is a means of relief from severe discomfort. Thus self delusion is born of self interest. It is a self serving, specific mind dysfunction, that permanently distorts the victimizer/perceiver's **opinion** respecting certain specific acts of his, by reversing his reality perception of **good and evil**. It does so while allowing all other functions of the mind to operate normally. The Inquisitors in Spain, the German people in World War II, Slave-owners and members of the American legal profession today, were or are, by and large all victimizers under its influence and control.

2. What are the consequences of cognitive dissonance/self delusion to the victimizer and the victim?

The consequences are devastating for both the **victimizer** and his **victim**, but in very different ways. The **victimizer** loses his 'soul', his reputation, his integrity and sometimes his peace of mind.[8] The **victim** is at risk of losing everything else.

The **victimizer** unknowingly loses his 'soul' by trading it for power and material advantage.[9] That power corrupts his profession above all others. He loses the ability to tell right from wrong on the matter

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[4] Random House Unabridged Dictionary, Second Edition, (1993)

[5] *Encyclopedia of Psychology, Second Edition, Volume I, edited by R. Corsini, (1994)* John Wilson & Sons, Publisher. ISBN 0 - 471-55819 - 2 . This entire section is based on this reference.

[6] Implicit in the change is that the 'beliefs' are transformed from truth to falsehood, from reality to fantasy. Were the beliefs false they would have been disposed of , with the dissonance, in a 'reality' context. Thus the original beliefs are real and the new ones false.

[7] Thus allowing him to speak a lie that Dr. Johnson called an individual's *'Moral truth' or perceived truth not in accordance with reality*, as opposed to 'physical truth' which is in accordance with reality. The unfortunate use by Dr. Johnson of the words 'moral truth' instead of say 'perceived truth' confers on the victimizer an implication of 'moral standing' that is not deserved. *Encyclopedia Britannica, The Great Ideas, A Syntopicon, Vol. II, Chapter 94, Truth p.915 (1952)*.

[8] Self delusion is not always absolute. Subconscious awareness of harming others does rob some victimizers of their peace of mind.

at issue. His mind creates a false 'anchor belief justification'[10] for the most oppressive acts against innocent victims. This kind of cognitive dissonance creates a wall in the mind impervious to truth and justice.[11] It confounds logical argument. It is as arrogant as it is wrong.

The victim suffers consequences that include the greatest evils known to man. The Holocaust, the Inquisition, and Slavery are at the top of the list. History is full of horrible examples of man's cruelty to man that is 'explainable' as the result of 'cognitive dissonance'. There are many historical examples of evils arising from this phenomenon.

The American people who are victims of the legal profession have suffered enormous harm, albeit less obvious and less dramatically graphic.[12] The severe adverse effects are felt everywhere but more so in the following areas:

1. Crime;
2. Healthcare;
3. Public education;
4. Divorce and child custody;
5. Access to the Courts;
6. Frivolous law suits;
7. Integrity in government;
8. Representative government; and
9. Human rights.[13]

3. Can this kind of self-delusion be conclusively identified?

Yes, it can. Self-delusion arising from forced compliance cognitive dissonance is a function of the relationships that exist between the victimizer, the victim and three critical factors: A false belief, power and truth.

When self-delusion is present the relationships are as follows:

1. The belief can be proved false because it is either unaccepted internationally and/or it is logically unsound;[14] 2. The victimizers share the belief but the victims do not; 3. The victimizers benefit from the belief while the victims suffer from it; 4. The victimizers exercise power over the victims; and 5. The truth hurts the victimizers and tends to help the victims.[15] Applying the test to the Spanish Inquisition, the Holocaust and slavery in the United States, we find that in all cases the false beliefs, the attributable relationships and therefore the phenomenon of self delusion, are present.[16]

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[9] The victimizer remains unaware of what is happening to him, for awareness of self delusion is a contradiction in terms.

[10] A belief, similar to the concept of blind faith, that is so anchored in the perceiver's mind that all information received is processed on the premise that the belief is true.

[11] Unless and until he experiences a moment of great insight that overcomes the effects of cognitive dissonance. It seems to occur in some members close to retirement age. Those who experience it at a younger age tend to change careers. That may explain why so many lawyers leave their profession. These are the very lawyers who should be encouraged to stay and fight. (See *Running from the Law* by Deborah L. Arron, [1991] Ten Speed Press, subtitle: *Why good lawyers are getting out of the legal profession*).

[12] In dollar terms the harm has been reliably estimated at one trillion dollars annually. In terms of human suffering the harm though enormous, defies specific quantification.

[13] See Federalists 86 through 94 by this writer.

[14] Sometimes ideas that are believed true by all are false. The lives of Copernicus, Galileo and Columbus testify to beliefs once taken for gospel by all before being challenged and disproved by these men. However none of the beliefs disproved could stand the scrutiny of objective analytical logical argument.

[15] Some situations, such as the legal tyranny in this land, could produce severe criminal penalties to those now victimizing the Nation.

[16] The test has been applied to many other similar historical events and found valid. The test has also been applied to similar but invalid instances and has worked there too.

4. Can it be proven that the American legal profession suffers from self delusion/denial arising from cognitive dissonance?

Yes it can. To do so we must establish that all the attributes that are present when this situation prevails are also present in the case at issue. We need to answer the following questions:

1. What is the belief and is it false?
2. Who believes it and who does not?
3. Who benefits and who suffers from it?
4. Who exercises power over whom?
5. Whom does the truth immediately[17] help and whom does it hurt?

Here are the answers:

1. The belief at issue is that the effective control of government by members of the legal profession either does not exist or is not unconstitutional but a good thing if it does. That belief is false. It is neither accepted by the civilized world nor logically sound.
2. The legal profession believes the false belief but its victims do not.
3. The legal profession reaps enormous financial and other benefits from the control it has acquired that the false belief justifies. The victims suffer grievous harm from the same thing.
4. The legal profession has effectively acquired total power over its victims through its control of government.
5. The truth will harm the profession's image, psyche, prestige, power base and financial standing. It could also result in some individual members going to prison. The truth will deliver the victims from victimization and tyranny.

Thus here too all the attributes are present. As a result it is conclusively established that the members of the profession suffer from self delusion/denial caused by cognitive dissonance on the issue of the aforementioned false belief. The inevitable conclusion is that members of the legal profession are by and large disqualified by this phenomenon from intelligently discussing the issue at all.[18]

5. Can its effects on the Nation be countered in time to avert disaster?

Yes, by educating the victims to the truth of what is happening.[19] Then the **victims** will stop voting for any member of the legal profession to any office outside the Judiciary Branch of Government. That will break the stranglehold the profession has on the Nation's throat and save the Nation from the present tyranny. **Time is short however. The victims must act quickly.**

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[17] In the long run the truth will help the ***victimizers*** too by restoring their soul and integrity.

[18] It is frightening to contemplate that we live in a Society in which irrefutable logical argument on this issue is unlikely to prevail. Even in a Court of law and even if Aristotle himself were making it.

[19] More and more of the ***victimizers*** in the legal profession are becoming conscious of the truth and breaking ranks with their colleagues, even when they remain in the profession. The growth of the Alternative Bar Association that seeks the abolition of the Florida Bar in that state and the growth of Holistic Lawyering is evidence of that fact. These lawyers should be commended for their courage and given all the public support possible.

The Federalist: The State of the Union under a failed Constitution

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June 14, 1997

The need for public opinion to recognize that control by lawyers of all government does grievous harm to the Nation, in addition to being unconstitutional.[1]

The legal case on the unconstitutional control by lawyers of government.

Federalists 86 through 95 by this writer conclusively established that as a matter of law the legal profession exercises unconstitutional, tyrannical control over the government and the people of the United States. The papers identified the areas of the life of the Nation where the most harmful effects of that tyranny are felt. Most people who have read the Papers agree with the conclusions presented.[2] That information is sufficiently widespread that legal proceedings against lawyers in elected office should have been started by the appropriate government authorities.[3] However, that has not happened. One reason is that effective legal action in a democracy often awaits the support of public opinion.

The need for public opinion to agree that lawyer control of government is harmful.

In a democracy, majority public opinion is by definition 'right'.[4] Earlier Federalists by this writer identified many areas of the Nation's life harmed by the legal profession's tyrannical rule. However, on major national issues, success in the courts or at the ballot box, is often dependent on agreement by public opinion that there is a need for change.[5] To that end evidence must be provided that material harm flows from lawyer control of government, in addition to having shown that such control is unconstitutional. For public opinion to recognize that harm is being done, there is a need to show that:

1. A case on harm can be made to a standard of proof acceptable to the Nation, and
2. The action called for will provide good results for the Nation.

1. The availability of evidence and the appropriate standard of proof.

Evidence of harm will be less absolute than the evidence provided on the legal issue of the unconstitutional control by lawyers of government. Much of the evidence is anecdotal, and becomes persuasive as a result of its quantity, consistency and the absence of any material rebuttal evidence. The standard of proof must be appropriate to the circumstances. In any case, the profession as a whole[6] can be expected to attack both the evidence offered and the adequacy of the standard of proof. Thus the following questions are appropriate:

Is proof of harm necessary to make the legal case against the profession?

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[1] The people are the rightful masters of both congresses and courts - not to overthrow the Constitution but to overthrow the men who pervert it. **Abraham Lincoln**, notes for speeches in Ohio, Sep 16, 1859. The instinct of the people is right. **Ralph Waldo Emerson**. Power, Conduct of Life, 1860.

[2] Although a substantial majority of those who have read the Papers agree, absolute numbers at this time are small.

[3] Private citizens may start legal proceedings also. The late well known constitutional lawyer and scholar, Professor Albert Blaustein, had agreed to prosecute the case at a reduced hourly fee. However, even at the reduced rate, he estimated it would cost $300,000 over 5 years to reach the Supreme Court on the issue. Thus cost considerations make it impossible for all but the rich to act.

[4] The philosophers Aristotle, Plato and Hume distinguish between the objects of *knowledge* and *opinion*, as the difference between science and *belief*, and as belonging to altogether distinct realms. Thus scientific controversy is viewed as occurring in the realm of *knowledge*, and political controversy in the realm of *opinion*. In a republican form of government however, since political action requires that decisions be taken, *consensus by majority opinion is the only democratic solution*.

[5] The change in segregation laws in 1954, (*Brown v Board of Education*), and the end of slavery (by the Civil War) are examples of unconstitutional laws, erroneous interpretations and bad laws surviving until the Nation reached a consensus to that effect.

[6] References to 'the profession as a whole' indicate the position, attitude and actions of the leadership of the profession, as publicly perceived.

If not, what standard of proof is reasonable for public opinion to agree on the issue of harm to the Nation?

In how many areas of the Nation's life is evidence of harm required for public opinion to achieve agreement?

Is proof of harm necessary to make the legal case against the profession?

Societies make laws to control behavior. Before specific concepts become laws they are debated and discussed. After they become laws no proof of harm is necessary on the issue of violation. For example, a motorist who drives in excess of the speed limit is guilty of violating the speed laws, regardless of whether or not any harm occurred. Thus the legal case on the issue of the unconstitutionality of the legal profession as a 'same hands' faction controlling all government, does not require any evidence of harm.[7] However, such evidence seems necessary in order for public opinion to achieve agreement on enforcement of the law.

What standard of proof is reasonable for public opinion to agree on harm?

B-1 General Standards of proof in law.

There are five standards of proof in use in law. They are in order of decreasing degrees of difficulty:

1. Beyond a reasonable doubt;
2. Clear and convincing evidence;
3. Preponderance of the evidence;
4. Probable cause; and
5. Reasonable suspicion.

1. Beyond a reasonable doubt.

This is the standard of proof required in criminal trials and is the highest burden of all. The quantification of standards of proof into 'percentages of certainty' is somewhat arbitrary, but still useful for purposes of comparison between standards. This particular standard is viewed as a requiring a level of certainty of 75% to 95% or more.

2. Clear and convincing evidence.

This standard of proof is sought in cases in which the law requires proof that is higher than preponderance of the evidence (over 50%), but not as high as beyond a reasonable doubt. Many people consider this to require a level of certainty of about 75%.

3. Preponderance of the evidence.

This is the standard of proof in civil cases. Here the law requires only that over 50% of the evidence favor one party, thus requiring a level of certainty of anything over 50%.

4. Probable cause.

This is the standard of proof required to make a preliminary determination only. For example it is applied to policemen to inquire into their justification for arresting or detaining a suspect. This level of certainty is often considered to be between 25% and 30%.

5. Reasonable suspicion.

This is the standard of proof required to determine whether a policeman acted reasonably or arbitrarily when stopping someone for questioning. It is lower than probable cause. It requires only that an individual appear to the policeman as suspicious by some reasonable, objective standard. The level of certainty required is less than 25% and perhaps as low as 10%. Standards of proof in law are a function of the severity of the potential penalty to the defendant, whether civil or criminal, and of whether the decision is final in nature. In a criminal trial where a defendant's life or liberty may be at stake, the law requires a very high standard of proof. In civil matters where lesser issues are involved, the law requires lesser standards for final determinations. Where the decision is not of a final nature standards of proof are

[7] It is the application of constitutional law. One may dispute the constitutional interpretation that such a statement represents, but not dispute the issue that no evidence of harm is needed.

lower still, dropping to probable cause or reasonable suspicion. Thus the law's intent is that the lower the potential harm to the defendant, the lower is the standard of proof required to make the case

. B-2. Standards of proof in the Court of Public Opinion.

In the Court of Public Opinion minimum standards of proof tend to prevail. Other factors such as expediency and minimum harm to the party affected sometimes play a part. Expediency, or the ease with which the Nation can make a decision, is a factor here. For example, even a mere rumor of a problem with a consumer product may be enough to hurt sales substantially, if the public can easily replace the product with another. Since the people can easily vote competent non-lawyers into office, expediency is applicable in this matter.

Minimum harm to the party affected requires scrutiny into two matters: A. The potential harm to the legitimate interests of the impacted party, and B. Any potential benefits to the affected party.

A. What harm to the legitimate[8] interests of the legal profession might occur?

There are almost one million lawyers in the land. At this time lawyers constitute about 50% of the US Senate, 35% of the US House of Representatives and 100% of the elected members of the Executive Branch. (Both President Bill Clinton and Vice President Al Gore are lawyers). That is a total of less than 200 people. State governments are smaller in size. Extrapolating to the whole country would result quantitatively, in a maximum of ten thousand lawyers excluded at any one time from senior elective offices[9] they might have occupied.

What then qualitatively is the nature of the impact? Some lawyers will lose the opportunity to earn an elected official's salary, to enjoy a position of power and perhaps to fulfill a sincere desire to serve their country. But these lawyers should suffer no loss of income, because elected officials are usually able to earn more in the private sector than in government. Lawyers who have a sincere desire to serve their country can be provided with unlimited opportunities to do so outside elected office. Job satisfaction, prestige, public respect and honor for lawyers will increase materially. Even the profession's power base will only be diminished, not eliminated. Because the profession's total control over the Judiciary, regarded by many as the most powerful of the three branches of government[10] will remain.

B. The potential benefits to the affected party.

If the action taken will provide benefits to the affected party, the public is more likely to require a lower standard of proof. It is well known that Power tends to corrupt and absolute power corrupts absolutely. (Lord Acton). Power has corrupted the legal profession as a result of its unconstitutional control of government. Abundant literature exists, written by lawyers, expressing grave concerns about the ethics of the profession. This distress arises in part from peer pressure forcing lawyers to systematically 'overbill'[11] their clients, and which then results in an enormous discomfort some lawyers feel about belonging to so corrupt a profession. So much so that many honest lawyers leave the profession. The removal of the power that has caused the profession to become so corrupt will result in restoring the legal profession's integrity and 'soul', thus providing it with significant benefits.

Therefore the general legal considerations, as well as the people's ability to act expediently with minimal harm to the profession, all support the adoption of minimum standards of proof, which are either reasonable suspicion or probable cause.

C. In how many areas of the Nation's life is evidence of harm necessary?

It has been established that the loss of absolute political power will have very little effect on the profession's legitimate interests and that simultaneously benefits will accrue to the profession. That should produce a net effect favorable to the profession's legitimate interests. Therefore, evidence of

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[8] The Nation can only concern itself with the *legitimate* impact on the profession, not with any adverse *illegitimate* impact. The loss by the profession of its illegitimate ability to enrich itself under color of law, and its ability to create and encourage conflict where none exists, will also be materially reduced.

[9] i.e. Elective office as State or Federal Legislators, or as State or Federal Chief Executive or other elected Cabinet officer, except Attorney General.

[10] The Judiciary branch retains the ultimate power to control the other two branches through its interpretation of the Constitution.

[11] A euphemism for stealing. 'Overbilling' through the mail is a federal crime.

material harm to any single area of the Nation's life should be sufficient to provide public opinion agreement. That is the goal.[12]

2. The potential effects of the action on the Nation.

A final consideration affecting Public Opinion on the decision to act, is the potential effect of the proposed action on the Nation. In the matter at hand, the effect would be the substantial reduction of the harm inflicted on the Nation by the legal profession, and the moral certainty that the Republic would be saved from its present slide into chaos and the loss of its democratic form of government. Yet all of the Nation's legal talent would remain available to Government on an advisory basis, as paid consultants or staff members. Therefore, except for the dubious proposition that the Nation would lose the services of one or more particularly brilliant lawyers who might refuse to serve except in elective office,[13] it is virtually impossible to identify any disadvantage at all.

Conclusion

Public agreement on the need for the removal of lawyers from elective office is required to provide the context for change. Political consensus through public opinion agreement involves the realm of Opinion not Knowledge. **A majority Opinion on political issues is by definition 'right' in a democracy**.[14] To that end evidence will be presented showing that material harm has been done by the profession to the Nation to a standard of proof of reasonable suspicion or probable cause, even though no evidence of harm is necessary to prove the case at law.

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[12] Evidence will be provided that far exceeds this goal. That should not obscure the fact that such additional evidence is not reasonably required to achieve a national consensus.

[13] It could be argued that such a refusal alone would constitute disqualification of any individual. For it would mean that the individual in question would be placing personal pride above his sense of duty to the Nation.

[14] Occasionally a democratic majority may be proved ultimately wrong. That is what happened on the issues of slavery and segregation. However since the choice is always between a democratic majority opinion, mistaken or not, and an elitist minority's self proclaiming, often self serving, allegedly 'superior knowledge', the lesser of the two evils will always be to rely on democratic opinion. *It is interesting to note that with respect to slavery and segregation, the members of the legal profession were originally the most responsible for creating and maintaining both oppressive practices. It was lawyers who argued the legality of slavery and segregation , and justices who ruled in their favor.*

The Federalist: The State of the Union under a failed Constitution

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June 14, 1997

The need for public opinion to support the removal of lawyers from elective office.[1] The issue of unfitness of lawyers for elective office. The corruption of the legal profession as a whole. The Rational[2] Approach. (Part 1 of 4).[3]

Federalist 96 discussed the need to provide evidence of the harm being done by the legal profession to the Nation, as a catalyst for change. The search for that evidence commences with the nature of man and government. Plato in The Republic conceived of a philosopher king as the ideal head of state. Montesquieu asserted in The Spirit of Laws that only government by virtuous men could provide a free, just and democratic society. But the nature of man falls short of that ideal. However the people do have a right to expect that their government will not be materially less honest than themselves. For it is axiomatic that such a government would harm the people. Thus, if it can be established to a standard of proof of reasonable suspicion or probable cause, that the **legal profession is materially less honest than the population as a whole**, public opinion should support the principle that all members[4] of that profession should be excluded from elected office.

The nature of man is such that no group is likely to be found in which all of the members are completely honest. The 'honesty scale' for legitimate groups or professions is a continuum possessing no bright lines of demarcation. What must be determined is whether or not the legal profession is materially more dishonest than the population as a whole.

To make such a case both the rational and the empirical[5] approaches will be used. The rational approach will examine what is known of man's nature as a means of determining which professions are logically and statistically most likely to become corrupt. The empirical approach will examine available factual evidence in an attempt to confirm that determination.

The Rational approach.

Man's behavior is governed by heredity and environment. Heredity constitutes the genetic makeup each of us is born with and remains unchanged through life. Environment is everything else. No studies are available that provide information on the influence that heredity or environment may have had on particular individuals, by the time they arrive at the threshold of their professional lives. Thus the only reasonable assumption is that at that point in time, on average, there is no material difference in integrity between groups. The influence of a lawyer's professional environment begins when he enters law school and continues throughout his career. Therefore it is the causal effect of that environment which we must examine.

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[1] See Federalist 96 by this writer.

[2] Philosophically there are two possible approaches to truth. They are Rationalism, or the rational approach, which is the theory that truth and knowledge are attainable through reason rather than through experience', and Empiricism, or the empirical approach, which is the belief that all knowledge is derived from experience through the senses. Funk & Wagnall's International Dictionary, 1973.

[3] This paper and Federalists 98, 99, and 100, should be read as four parts of a single unit.

[4] The argument that the Nation should not disqualify all members of a profession, if it is shown that the profession as a whole is materially less honest than most people, is invalid. It is a false argument identified by Aristotle as secundum quid, in his Sophistical Refutations. The issue is not the right of any individual to be viewed as 'innocent' until proven guilty, as if he were on trial for liberty or life. Rather the issue is whether the people of this land have a right to reduce the substantial risk of electing a corrupt government, by excluding from that government those who belong to a group or profession, demonstrably more corrupt than any other. Because it is a given that in addition to the increased probability that a particular individual from that particular group is corrupt in the first place, the continuing pressure to become corrupt is far greater for individuals in that group, than for members of all other groups.

[5] See Footnote 2.

What environmental causes corrupt a profession? How is integrity measured and corruption identified? It is said that while opportunity knocks only once, temptation keeps banging on the door for years. The results of the struggle between temptation and conscience demonstrates the level of integrity of an individual. It is the cumulative result of that struggle by the members of a particular profession, that determine its overall integrity.

Measuring Integrity and identifying Corruption.

For an individual:

A single dishonest act constitutes the temporary victory of temptation over conscience.

Several dishonest acts constitute the increasing power of temptation over conscience.

A continual pattern of dishonest acts constitutes the complete dominance of temptation over conscience.

That kind of victory for temptation constitutes corruption of the individual. When that corruption taints a sufficient number of individual members of a particular group, the entire group will be publicly perceived as corrupt.

Temptation: the mother of all corruption.

All men are subject to some degree of temptation. It is axiomatic that the greater the temptation the more likely the fall. The degree of temptation to which professionals in America are subject is a function of:

a) The temptation to which all men are subject; plus

b) the particular increase in temptation one's profession creates anywhere; plus

c) any additional temptation created by one's profession in America.

The four things that materially impact temptation are:

1. Opportunity,
2. Risk of discovery,
3. Probability, speed and severity of punishment, and
4. Peer Pressure.[6]

Let us examine the impact of these factors. First on everyone, then on lawyers worldwide, and finally on members of the American legal profession.

1. Opportunity

Temptation is increased by opportunity. A janitor in a bank may be tempted to steal the millions he knows lie in the bank vault. However absent any opportunity to get near the vault when it is open, temptation is reduced. On the other hand a senior bank teller who is trusted to operate inside the vault with ample opportunity to steal, will be subject to increased temptation.

2. Risk of discovery

Temptation is increased by a low risk of discovery. The risk involves both whether and when the wrongdoing will be discovered. The bank teller who has the opportunity to steal will be far less tempted to do so if discovery will be imminent. However if he believes that the theft will not be discovered for a long time, if at all, his degree of temptation will increase.

3. Probability, speed and severity of punishment

The less probable, slower and milder the potential punishment, the greater the increase in temptation. If the bank teller knows that being caught will result in swift, certain and severe punishment, temptation diminishes. Should he believe that if caught, punishment is improbable, mild and will be much delayed, temptation increases.

4. Peer pressure

Temptation is greatly increased by peer pressure. When an individual discovers that his peers are routinely involved in corrupt practices and he is urged to do the same, he either conforms or risks the

[6] Peer pressure in this context is the pressure by one's colleagues or peers to conform to prevailing corrupt practices. Although extremely rare in legitimate groups it is highly prevalent in the legal profession.

status of a pariah for his honesty. Peer pressure also serves to provide the false rationalization that since 'everybody does it' it is somehow alright.

Consequently, the greatest degree of temptation to become corrupt occurs when

a) a high degree of opportunity, combines with

b) a low risk of discovery,

c) a low probability of severe or speedy punishment, and

d) a high degree of peer pressure.

Let us examine how temptation impacts lawyers worldwide and United States lawyers in particular.

Lawyers' degree of temptation[7]

Some lawyers handle large sums of money for others. Lawyers are part of the social elite. They see better than most how the rich live. To these lawyers the level of temptation that their profession provides worldwide is among the very highest of any profession. In America, the power achieved by the legal profession's control of government has enormously increased all of those temptations for all lawyers. Every opportunity that can bring income to the members of the profession under color of law, has been developed more completely here than anywhere else. So has the temptation to be dishonest in the United States.

1. Lawyers' degree of professional opportunity.

As fiduciaries, lawyers play a role which combines high levels of temptation with high levels of opportunity. Lawyers often give investment advice to their clients or invest funds for their clients. They represent their clients in disputes with others. Lawyers thus have immense opportunity to do wrong. It is fair to say that no other professional group **worldwide** has as much opportunity. As with temptation and in the same manner, the American legal profession's control of government has dramatically increased its opportunity for wrongdoing.

2. Lawyers' risk of discovery.

Consumers can tell whether they are receiving their money's worth for most goods and services. A man pays to fix his car. If the car is not fixed he knows it. But when a man goes to a lawyer things are different. Often he has no idea what the lawyer should be doing, or how much is a fair price for the job. Afterwards he may be unsure of whether adequate service was provided. A client may lose a fortune in a lawsuit due to his lawyer's wrongdoing and never realize it. That tends to make the probability of discovery of wrongdoing slight or negligible, anywhere in the world.

The tyrannical power of lawyers in the United States makes things far worse here. The complexity of the law, serving lawyers to the detriment of their clients and the ever present threat of retaliation through frivolous countersuits is much greater in the United States. These and other factors lowering the risk of discovery and raising the level of temptation have been dramatically increased for lawyers in the United States.

3. Lawyers' probability, speed and severity of punishment.

Professionals everywhere who are not lawyers and who do wrong, face civil and criminal proceedings, as well as the imposition of licensing penalties that can be very severe. This may be true for lawyers outside the USA, but not for American lawyers.

Civil proceedings: Clients who have been cheated by their lawyers must spend more time and money consulting other lawyers, if they wish to discover how and of how much they were cheated. They are not generally inclined to do so, having been burned once. An additional obstacle is that lawyers are often reluctant to sue other lawyers. As a result clients are much less able or likely to sue their lawyers, even if they know that they have been cheated.

Criminal Proceedings: If the aggrieved non lawyer wishes to pursue criminal charges, he must again appeal to a lawyer who is a prosecutor to bring charges. He will find that prosecutors are very reluctant, except in the most egregious cases that include a substantial paper trial, to do anything.

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[7] Temptation levels are not uniform for all members of the legal profession. Temptation, though always high, will vary somewhat depending on a lawyer's particular career choice within the law. Private practice for example, offers more opportunities and increased temptation than does public defender work.

Licensing/State Bar Proceedings: Non lawyers who hold professional licenses are licensed by the State and supervised by the Executive branch of the State. However that is not true of lawyers in the United States. As a profession they unconstitutionally control their own 'licensing' or their 'legal right to practice', through State Bars that are arms of the State Supreme Courts. These State Bars write rules that favor their own and make it almost impossible for complainants to receive justice.[8] Thus fear of punishment from the State Bars does not materially discourage lawyer wrongdoing.

4. Lawyers exposure to peer pressure.

American lawyers are the only professional group in which many new members are routinely pressured by their peers to conform to corrupt practices. This pressure comes from lawyers at their own level and from those above them in the hierarchy. Routine 'overbilling' is the only way young lawyers can keep up with the expectations of many employers. Thus the temptation to become corrupt is reinforced by the threat of being fired![9]

The criminogenic occupational structure of the legal profession.[10]

The legal profession all over the world operates in a context that includes a number of the aforementioned factors that increase temptation. **In this country all the factors are present at the highest levels**. So much so that the profession's 'occupational structure' is defined by the eminent criminologist Dr. Gary S. Green, as being 'criminogenic', meaning that it tends to create criminals. That means that the American legal profession has achieved the epitome of both temptation and corruption.

Conclusion.

The examination on a rational basis of the factors that impact corruption indicates that all factors operate to make temptation as strong as it can get for the American legal profession. That therefore a materially increased level of corruption is statistically highly probable.[11] Although precise statistical evidence is unavailable due to the nature of the problem, it is reasonable to regard the result of the rational analysis as sufficient to exceed statistical legal requirements for proving a case.[12] That is why rational analysis supports the conclusion that the most corrupt 'legitimate' professional group[13] in the Nation is the American legal profession.[14]

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[8] This is true notwithstanding the State Bars' mandates and declared intention of protecting the public. The best available evidence indicates that only about 4% of the complaints against lawyers are not dismissed, whereas the average for all other professions is 25%, which is a rate of acceptance of the validity of complaints over six times greater than those against lawyers.

[9] See How lawyers screw their clients by Donald E. de Kieffer Esq., Barricade Books (1995)

[10] See Professional Occupational Crime by Dr. Gary S. Green, Published by Nelson-Hall (1991)

[11] A rough unscientific attempt at quantifying the element of 'temptation' is useful for comparison purposes. If all individuals start out at a factor of say 1, on a 1 to 10 scale of temptation, and if the four factors of Opportunity, Risk of Discovery, Punishment and Peer Pressure are each given a maximum value of 2.5, with the higher value representing the greatest increase in temptation, American lawyers would be at a 10. Lawyers worldwide would rank about a 5, while other professionals might rank between 1 and 3

[12] See Griggs v Duke Power Co. 401 US 424,432(1971)

[13] Obviously there are illegitimate 'professional groups' like some organized crime groups or youth gangs whose very existence is for criminal purposes.

[14] Even though there may be many lawyers within the profession who have succeeded in retaining their integrity in spite of all temptation.

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June 14, 1997

The need for public opinion to support the removal of lawyers from elective office.[1] The issue of unfitness of lawyers for elective office. The corruption of the legal profession as a whole.

(Part 2 of 4)[2] The Empirical[3] Approach.

Federalist 97 concluded, by the use of the rational approach to logical argument, that the American legal profession is materially more corrupt than the Nation, and that therefore all members of that profession should be excluded from elective office. The next step involves examining the available factual evidence to confirm that conclusion on an empirical basis.

The empirical approach - the unavailable evidence.

Let us first identify the kind of evidence that will not be found, and why. There will be no evidence of widespread criminal convictions of dishonest lawyers. The main reason is that the legal and criminal justice system created by the legal profession[4] makes it difficult or impossible to convict the rich and the powerful even if they are not lawyers, let alone those who are.

One has only to consider the recent criminal trials of O.J. Simpson (1995) and John Gotti (1992) to see the truth of that statement.[5] Simpson was acquitted of two murders most people are convinced he committed.[6] He succeeded by assembling a 'defense team' capable of 'beating the system' but at a cost only a tiny minority in the Nation could afford. John Gotti was only convicted of criminal wrongdoing on the third try.[7] A successful prosecution resulted only after the removal of Gotti's regular defense counsel from the trial, and the enlisting of the help and support of Sammy 'the Bull' Gravano as a key witness. Gravano is a confessed Cosa Nostra murderer of 19 people. His 'price' for testifying was immunity from prosecution on all murders.

If the 'system' had so much trouble convicting a known Cosa Nostra family head, about whom the FBI had so much information, what hope is there that the authorities can successfully prosecute large numbers of wrongdoers in the legal profession? A profession far more powerful, and one estimated to have harmed the Nation far more than all of organized crime.[8] One whose crimes are often all but invisible to anything but the closest scrutiny.

The empirical approach - the available evidence.

Notwithstanding the absence of the aforementioned kind of evidence, substantial empirical evidence does exist. For example:

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[1] See Federalist 96 by this writer.

[2] This paper and Federalists 97, 99 and 100, should be read as four parts of a single unit.

[3] The empirical approach, Empiricism, is the belief that all knowledge is derived from experience through the senses. The alternative, Rationalism, is the theory that knowledge is attainable through reason alone.

[4] Primarily for its own financial gain.

[5] O.J.Simpson was a very famous, wealthy, football player and part time actor, who was accused of murdering his ex-wife and her friend, Ronald Goldman. John Gotti, known as The Dapper Don, was the accused head of one of the Cosa Nostra New York 'families', who ordered the murders of many people.

[6] Including a unanimous jury in the 'wrongful death' civil suit, where Simpson did not have the benefit of his 'dream team'. Most jurors in that trial who spoke out, declared themselves convinced of Simpson's guilt to the criminal standard of proof of 'beyond a reasonable doubt' (see Federalist 96), not merely to the civil case standard of proof of 'preponderance of the evidence'.

[7] He was given a sentence of life in jail without the possibility of parole.

[8] The Nation's losses attributed to the corruption of the legal profession and its unconstitutional control of government was estimated at $1 trillion annually in 1989. The cost in human lives either ended by suicide, born of despair created by lawyer's activities, or destroyed in other ways, is impossible to measure but believed to be substantial.

Evidence in a book written by John Dos Passos, an American lawyer, in 1907, describing the decline in ethical and moral standards of the profession commencing with the Civil War.

Evidence in the Bible and international literature confirming that lawyers as a group, have generally been perceived as corrupt.

Evidence in American literature by lawyers describing the particular methods by which lawyers cheat their clients, as well as other wrongdoing by lawyers.

Evidence of the acknowledgment by the legal profession itself, that very serious problems exist concerning the lack of integrity of the profession, and the potential disastrous effects on the Nation.

Anecdotal evidence showing specific instances where the levels of corruption in the courts and of lawyers in elected office, have reached alarming proportions.

The absence of any material evidence contesting the conclusions reached by the profession's critics, or suggesting that any other profession is corrupt.

1. The American Lawyer by John Dos Passos of the New York Bar[9]

This book written in 1907 by John Dos Passos, a New York lawyer, is exceptionally insightful. The author, a man of the highest moral standing and an accomplished legal scholar, recognized in 1907 the grievous harm that the legal profession was inflicting upon the Nation. The philosophy he espouses, his concept of the proper ethos[10] of the profession, is in keeping with the very highest moral approach to the law. This writer agrees with Dos Passos as to the existence and seriousness of the problem, but not as to the cause or the solutions. Here are a few of the most significant passages from The American Lawyer,

> "While it is said (America) is a government of the people, by the people and for the people, it is not, perhaps going too far to add, -- subject to the lawyers (p.2) The lawyers swarm in all of the Departments of the National and State Government (p.2) When a lawyer undertakes an honest introspection of his profession...he must then say some ugly things about himself. (p.3) Fundamentally (lawyers) believe that .. they should serve their clients at all sacrifices, sometimes even of truth and justice. (By holding up to the lawyer a faithful picture of his real mission)... (it) then will be seen, that a large number of the lawyers are delinquents to society, not with malice prepense (sic), but from a failure to appreciate the real and full nature of their professional duties." (p.6)
>
> "(Lawyers).. have been led to excesses in advocacy -- often to gross exaggeration of facts -- and sometimes to crime. **Inordinate zeal for clients, and ambition to win...often sweep away moral and legal barriers. (p.10)** The abuse of power and opportunities, and of unlimited confidence is the primary sin for which lawyers are answerable." (p.11)
>
> "In the ordinary judgments of men, it is the law and lawyers that suffer most (when non meritorious suit are filed); as to the latter it brings a shallow reputation for cleverness, largely and sincerely blended with contempt; to the former a sense of its inadequacy to fulfill its ordained purpose. Law is a 'humbug' - a mere game of chicane (sic); **the lawyer a cunning scamp, not essentially different from other scamps, except that he is better protected and more to be feared**. Sheltered in the garb of his office, the lawyer can always insidiously and secretly, deflect the course of justice and defraud the law." (p.70)
>
> "Picture the lawyers training themselves in a school of dishonesty, trickery, and chicanery, diverting and stopping the machinery of the law, prostituting the forms of justice for gain, selling their knowledge, ability, experience, and such talent as they may possess, to the client who pays

[9] Original publisher: The Banks Law Publishing Co. New York, 1907, Current Publisher: Fred B. Rothman & Co. , Littleton Colorado, 1986. ISBN 0-8377-0524-X

[10] Ethos is the characteristic spirit, disposition, or tendency of the profession as expressed in their actions.

most for the service, and resorting to every device of cunning and deceit to gain their end... In (all ranks) of the profession can be found many lawyers whose services are sought only to enable guilty men to escape punishment; only to open the door for others to avoid consequences of the civil law, and of their contracts; only to defeat and evade the legislative will and public policy; only to show their clients how to cheat, defraud, vilify, and defame, without penalty or damage." (p.76)

"There is no arbiter (over the lawyer) but his conscience. In a very extensive search into the subject, I have found that there has always been a recognized temptation, or tendency, on the part of lawyers, to overleap the bounds of conscience.[11] and that these acts have frequently called for very stringent measures against them."[12] (p.125)

"The duty of a lawyer is threefold: to the State, as an officer and a citizen; to the court, as an officer and adviser; and to his client, as a fiduciary. He owes loyalty to the State, both as a citizen and as a sworn officer of justice; he owes respect and dignity in his deportment, to the courts, and candor or honesty in his statements and dealings with them; to his client he owes his talents, his knowledge, his time and his fidelity. In every employment which the lawyer receives, his primary duty is to the State.[13] In performing this duty, he can fulfill all his obligations to his clients and courts with fidelity and honor. If he attempts to go beyond this, he strikes a blow to Society. If a conflict arises between his duty to the Government and his client he must decide in favor of the former, for the interest of that client is subordinate to the interests of all other citizens constituting the State -- who are interested in maintaining the integrity of the judicial system. Salus populi suprema lex.[14]" (p.127-128)

"To bribe a policeman... to corrupt a magistrate... to pay a lawyer to use his knowledge to defeat the law; what difference is there in these acts? Is the lawyer's conduct less serious because it is hidden and secret? The law is defeated... The difference is not in the degree of the act but in the difficulty of detection... (p.129) (The lawyer) insidiously fills (the client) with false pleas and defenses, and he appears merely as the representative, whereas in fact he is often the principal actor. Is not the... lawyer as corrupt as any other officer who takes a direct bribe." (p.130)

"It is the common belief, inside and outside the profession, that the most brilliant and learned of the lawyers are employed to defeat or strangle justice. (p. 131) The lawyer's duty to society and the law must be constantly kept before him, for... the combined acts of a body of lawyers oft repeated,.. silently and secretly gnawing at the foundation of

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[11] Dos Passos' extensive research specifically confirms the conclusion reached in the rational approach, that temptation 'the mother of corruption' is forever 'banging on the lawyers' door'

[12] Stringent measures against lawyers are impossible when lawyers control all government. That is probably the main reason why the legal profession has sinned so grievously against the Nation. All available evidence indicates there is probable cause to charge all lawyers in elective office with treason. So far not a single one has been charged with any unconstitutional violation of any kind.

[13] This view of the lawyer's primary responsibility is identical to the rule of law established in Florida by the Florida Supreme Court's decision in Petition of FLORIDA STATE BAR ASS'N et al. 40 So.2d 902 at 908, where the opinion states: On the theory that it is such an important factor in the administration of justice this Court has held that a lawyer's responsibility to the public rises above his responsibility to his client. The very nature of our democratic process imposes on him the responsibility to uphold democratic concepts **regardless of how they affect the case at hand. (Emphasis added)**. In spite of the law this writer has not found a single Florida lawyer who was even aware that this is the law, or practices the law this way. Furthermore several Florida lawyers have expressed the opinion that to place their duty to Society above that to their client could result in a malpractice lawsuit against them. This false perception that the client's interests should prevail above all others appears to have been institutionalized by the Nation's Law Schools as part of their courses on Ethics.

[14] The welfare of the people is the supreme law.

> a great and magnificent structure, will gradually but surely cause it to... tumble into ruins. (p. 136-137) Let anyone consider the effect of forty or fifty thousand legal agents[15] spending their lives in distorting and prostituting the forms of justice, misapplying and perverting its principles, undermining the constitution and its laws, and he can make fairly accurate calculations as to the longevity, of the system of government, under which they exist and thrive." (p.137)
>
> "The profession of the law holds out a perpetual temptation to human weakness.[16] (p139) Upon what principle can (the lawyer) use the machinery of justice in knowingly aiding and abetting unfounded and dishonest suits? Upon what principle can he use the machinery of the law to accomplish results contrary to justice, truth right? **How can the law be efficacious, if it is slaughtered in the temple of justice, by its own chosen guards?**[17]... A lawyer, with knowledge of the facts, is 'morally responsible' for the act of a party in maintaining an unjust cause... If anything can be more distinctly immoral, I cannot conceive it." (p.145)

Dos Passos' book The American Lawyer, is exceptionally insightful and revealing. He saw with great accuracy and foresight most of the ills that the legal profession had already brought upon the Nation, and many of the further disasters that would follow. Dos Passos (1844-1917), was a lawyer possessed of great moral commitment, who was not afraid to speak out concerning the 'ugly truth' about his profession.

Dos Passos acknowledged the continuing powerful temptation to which lawyers are subject, thus confirming the conclusion provided by the rational analysis (Federalist 97). Dos Passos also confirmed that as early as 1907, lawyers controlled all government; that the ethics and behavior of a substantial plurality of lawyers were distinctly immoral and often illegal; and that a large number of lawyers were delinquents to society. He condemned lawyers and held the profession liable for the potential fall of this democracy. Since 1907 things have become substantially worse. Although Dos Passos failed to understand the constitutional violation at the heart of the problem, he makes this writer's case for the removal of lawyers from elected office because they are corrupt, as well as anyone.

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(Ronald Biba ce)

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[15] That comes to about one third of approximately 130,000 lawyers in the USA in 1907. There are almost one million lawyers in the USA today. It is reasonable to assume that the proportion of 'corrupt lawyers' is even higher now than it was then. That means that at this time either a substantial plurality or a majority of lawyers are corrupt, if as the evidence indicates Dos Passos' views were accurate both then and now.

[16] See Footnote 11.

[17] Juventus, a senator in ancient Rome, raised the same issue by asking: Who shall guard the guardians themselves? He supplied no answer. This writer believes the answer must always be: We the people!

The Federalist: The State of the Union under a failed Constitution

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June 14, 1997

The need for public opinion to support the removal of lawyers from elective office.[1] The issue of unfitness of lawyers for elective office. The corruption of the legal profession as a whole.

(Part 3 of 4)[2] The Empirical Approach.[3] (cont'd)

2. The worldwide condemnation of lawyers as corrupt.

The New Testament: A substantial majority of the people of the United States call themselves Christians. To them the New Testament is the Gospel and Jesus Christ is the son of God. The words spoken in the New Testament by Jesus are believed to be the word of God. St. Matthew, St. Mark, St. Luke and St. John were the four Apostles who authored the New Testament and recorded the words of Jesus Christ. Let us see what the St. James version of the New Testament tells us that Jesus said about lawyers, scribes and Pharisees almost 2000 years ago:

> But woe unto you scribes (lawyers) and Pharisees,[4] hypocrites, for ye shut up the kingdom of heaven against men: for ye neither go in yourselves, neither suffer ye them that are entering to go in! For you devour widow's houses, and for a pretence (sic) make long prayer; therefore you shall receive the greater damnation. .. For you compass sea and land to make one proselyte, and when he is made, ye make him twofold more the child of hell than yourselves... -- Matthew 23:13-15
>
> Beware of the scribes... which devour widow's houses, and for a pretence make long prayers: these shall receive the greater damnation... -- Mark 12:38-41
>
> Woe unto you, scribes and Pharisees, hypocrites! For you make clean the outside of the cup and of the platter, but within they are filled with extortion and excess. -- Matthew 23:25

In these comments Jesus Christ condemns lawyers as fit for hell, not heaven; as corrupt men who spread their corruption to others; as hypocrites who say one thing and do another; and as robbers.

International condemnation:

The world is full of literary references to lawyers as hypocritical, dishonest and corrupt. Here are a few examples:

> The lawyer... has become keen and shrewd... but his soul is small and dangerous. Plato - Theatetus at 172-173.
>
> First, my Lawyer being practiced almost from his cradle in defending falsehoods is quite out of his element when he would be an advocate for Justice... Jonathan Swift -Gulliver's Travels, Part IV. A Voyage to the Houyhnhms.

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[1] See Federalist 96 by this writer.

[2] This paper and Federalists 97, 98 and 100, should be read as four parts of a single unit.

[3] See Federalists 97/98 on the question of rationalism versus empiricism.

[4] Lawyers, scribes and Pharisees are the Biblical words used for the lawyers of those days. Lawyers: Luke's words for scribes, (Luke 11:45), who gave themselves to meticulous and dedicated study of the law. Many were Pharisees, but membership was not essential to the professional legal qualifications. Scribes were students and expositors of the law , whereas Pharisees were concerned with people's performance of the law. Oxford Dictionary of the Bible, Oxford University Press, ISBN 0-19-211691-6

> Suffer any wrong that can be done you, rather than come here. (Referring to the English High Court of Chancery Bar) - Charles Dickens - Bleak House, Chapter 1, (1853)
>
> The first thing we do, let's kill all the lawyers. William Shakespeare - The Second Part of King Henry the Sixth. Act IV, Scene 2.[5]
>
> I think we may class the lawyer in the natural history of monsters. John Keats

There are derogatory jokes about lawyers in many of the world's languages. Everywhere the legal profession has left a trial of tears.[6]

> Lawyers and painters can soon change white to black. Danish proverb.
>
> Win your lawsuit, lose your money. Spanish proverb.
>
> 'One thing I supplicate, your majesty; that you will give orders, under a great penalty, that no bachelors of law should be allowed to come here (to the New World); for not only are they bad themselves, but they also make and contrive a thousand iniquities.' Vasco Nunez de Balboa to King Ferdinand V of Spain, 1513.
>
> I don't think you can make a lawyer honest by an act of the legislature. You've got to work on his conscience. And his lack of conscience is what makes him a lawyer. Will Rogers

3. Evidence by American lawyers showing how lawyers cheat their clients and other wrongdoing.

There is an abundance of evidence in the form of books written by American lawyers about the dishonesty of their brethren. Here are a few examples:

How Lawyers Screw Their Clients. by Donald E. de Kieffer.[7] Barricade Books Inc. 1995 Mr. Kieffer describes in detail the manner in which lawyers 'overbill' (a euphemism for stealing) their clients. He explains that the pressure to 'overbill' is so unrelenting and the penalties for not doing so are so severe, that moral rot is inevitable.

No Contest. (Corporate lawyers and the perversion of justice in America) by Ralph Nader[8] and Wesley J. Smith, Random House, 1996, ISBN 0-679-42972-7

The authors describe in detail the 'evil' of corporate lawyers unethically and illegally using the law to advance corporate interests and their own. They call the sinners, the corporate legal establishment. Yet the condemnation of trial lawyers who prey on corporations and individuals under color of law, is very widespread. There is truth to both views. Nader's book is a case of the pot calling the kettle black.

Lawyers and Thieves by Roy Grutman[9] and Bill Thomas, Simon & Schuster, 1990, ISBN 0-671-66960-5, traces the growth of American legal greed.

Running from the law by Deborah L. Arron,[10] Ten Speed Press, 1989, ISBN 0-89815-413-8, describes the reaction of those in the profession who can least stand its absence of ethics. They tend to

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[5] These words are spoken by a participant in Jack Cade's revolt in the year 1450, against tyranny in England. Cade is a historical figure who achieved some temporary success in the reduction of tyranny in England. The extreme words: 'Kill all the lawyers', expresses a common frustration felt by the average Englishman with the corruption of lawyers and the legal system at that time

[6] Obviously there are some good things that lawyers have done as well as many honest lawyers. However, when the overwhelming public impression is that lawyers are corrupt, the only conclusion that is supported by that evidence, is that the lawyer activities are all too often detrimental to the Nations they inhabit.

[7] Mr. Kieffer is a partner in the Washington D.C., firm of de Kieffer, Dibble and Horgan, and has authored more than 200 articles and written 5 books. He served as general counsel to the Office of the United States Trade Representative in the Reagan Administration

[8] Ralph Nader is a nationally known consumer advocate attorney and Presidential candidate in 1996.

[9] Roy Grutman is a well known trial lawyer who has represented Bob Guccione, Jerry Falwell, and Jackie Collins, among other celebrity clients.

leave the profession, even though that often means a substantial reduction in income. Arron quotes Schaef and Fasel in the Addictive Organization as saying that a closed system which uses denial as its major defense mechanism will 'lose its best people'.

The Soul of the Law by Benjamin Sells,[11] Element Books Inc. 1994, ISBN 1-85230-796-X, writes of the severe distress caused by the pressure on lawyers of the prevalent ethos in the profession. In areas of dissatisfaction and stress, lawyers generally rank higher than all other professions. A full third of lawyers suffer from either clinical depression or substance abuse or both, highest in a survey of 105 professions. 28% of male lawyers and 41% of female lawyers said they were dissatisfied with their work. That is double the 1984 figures and shows that things are getting steadily worse.

Many other books have been written recently criticizing prevalent practices of American lawyers. Here are the titles to a few: The American Moralist: On Law, Ethics and Government (1992), George Anastaplo, A Nation under Lawyers, (1994) by Mary Ann Glendon, The Death of Common Sense by Philip K. Howard, The Lost Lawyer, (1993), by Anthony Kronman, The Betrayed Profession, (1994), by Sol M. Linowitz.

4. Acknowledgment by the leadership of the legal profession of its corruption.

There have always been men of integrity in the legal profession among whom the most likely critics of the profession will be found. Of late the increased awareness by the world and the profession that something is drastically wrong has led to a particular theory. That theory seems to find its clearest expression in the work of Harrison J. Sheppard, a lawyer practicing in San Francisco. He is a Fellow of the American Bar Foundation, and a member of the State Bar of California. His views are the closest the profession has come to publicly acknowledging its problems.[12] Mr. Sheppard presents his perception of the problem and potential solutions. His view of the existence of the problem is understated but accurate. Unfortunately his perception of the cause and therefore the solutions is not.[13] Of the problem Mr. Sheppard says the following:

My experience as a lawyer,... have led me to conclude that our typical professional practices do not serve our clients or the general public nearly as well as they should, **that commonly expressed criticisms of lawyers have a sound basis in fact;** and that the every day pressures of the practice of law have led many lawyers to forget the significance of their oath to support the Constitution and the law of the United States and this State, **with potentially serious consequences for our democratic society. (Emphasis added)**

5. Anecdotal evidence of the widespread corruption of the legal profession.

A 1993 survey of the State Bar of California showed that Americans rate members of the American profession last in honesty and integrity among all the honored professions.

A 1993 survey by the American Bar Association indicated that the more contact people have with lawyers the less they trust them. In other words those who know them don't trust them and those who trust them don't know them.

The Watergate scandal that disgraced the Nixon administration involved criminal wrongdoing by many people at the top levels of government. It is reported that 21 out of the 23 men convicted of criminal behavior were lawyers! Among them were John Mitchell, Attorney General of the United States, John Dean , counsel to the President, Ehrlichman, Colson, and many others. Nixon's vice-president, Spiro Agnew, was also convicted of criminal behavior on a separate matter.

Dan Rostenkowski, a lawyer and former Speaker of the House, is in prison at this writing for criminal behavior while in office. Mr. Jim Wright, a lawyer and formerly Speaker of the House, had to resign in disgrace to avoid criminal prosecution.

The President of the United States, Mr. Bill Clinton, a lawyer and a former university professor of constitutional law, is being sued by one Paula Jones, for sexual misconduct while Governor of the State

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[10] Deborah Arron graduated from UCLA school of law in 1975 and practiced law as a civil litigator until 1985. She has since 'run from the law' herself, having closed her practice and turned to helping other lawyers to also 'run from the law.'

[11] Benjamin Sells is a Chicago psychotherapist, lawyer and syndicated newspaper columnist.

[12] Privately there are a great many lawyers who will confirm their experiences with corrupt colleagues.

[13] The problem as presented does not identify constitutional violations as the cause. The solutions presented call for the teaching of civility and non adversarial problem resolution to the profession. That will not work. This writer will address these issues in Federalist 101. Mr. Sheppard's analysis is well intentioned but misguided.

of Arkansas. He is also facing potential criminal charges on unresolved Whitewater allegations, as well as potential illegal campaign funds solicitations.

There are citizen's organizations arising all over the United States attempting to cope with the perceived corruption of lawyers in many different fields.14

This writer submitted a study to the Florida Supreme Court in 1989, which provided conclusive statistical evidence that Florida Bar dismissal of citizens' complaints could not have resulted by chance, but had to have resulted from wrongdoing.15

Operations Courtbroom in Miami, and Greylord in Chicago are two examples of corruption reaching into the very courtrooms of the Nation.16

Random acts of violence against lawyers, in apparent retaliation for their perceived corruption, is growing in this land.

6. The absence of any material rebuttal by the legal profession.

To all of the above accusations and the abundance of evidence that the legal profession is corrupt, the profession offers rebuttals without merit. These are:

The unsupported assertion that 'the American legal system' is the best in the free world, notwithstanding all the evidence that suggests it is much closer to being the worst.

The assertion that 'there are rotten apples in every barrel' and the false implication that the legal profession's rotten apples are no more numerous than those in other professional barrels.

Unsuccessful attempts to discredit critics by ad hominem and other Aristotelean false argument attacks.

What the profession has never done is either specifically rebut in writing any of the many volumes of work done by its own people condemning the integrity of the profession, or agree to publicly debate the issues with its principal critics. The evidence suggests that the legal profession cannot do the former and will not do the latter.[17]

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[14] This writer is aware of no other free world country where such activity exists at all

[15] The Court never responded

[16] These names refer to the uncovering and conviction of criminal wrongdoing by a cabal of judges in both cities. It is probable that such criminal behavior is only the tip of the iceberg.

[17] For it is said that it is better to say nothing and be thought corrupt, than to debate the issue and remove all doubt.

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The need for public opinion to support the removal of lawyers from elective office.[1] The issue of the unfitness of lawyers for elective office. The corruption of the legal profession as a whole.

(Part 4 of 4)[2] Conclusions.

In Federalist 96 this writer set himself the task of establishing to a standard of proof of reasonable suspicion or probable cause, that the legal profession was materially more corrupt than the population as a whole. That therefore the legal profession should be excluded from elective office to avoid the inevitable harm to the whole Nation that would flow from control of government being in the hands of its most corrupt profession. To make the case both the rationalist (Federalist 97) and the empirical approach (Federalists 98 & 99) were used. Here is a summary of the evidence and the conclusions that evidence supports.

The evidence

The **rational approach** concluded that all the factors that tend to create corruption in a profession are present in the legal profession in as powerful a mode as they ever get for any profession. Thus the legal profession can rationally be expected to be the most corrupt in the land, and materially more so than the average citizen. **The empirical approach provided the following evidence:**

Jesus Christ is quoted in the New Testament as condemning the profession and calling it corrupt.

The Philosopher Plato called the profession corrupt. International literature, proverbs and sayings, all speak of the profession as being corrupt.

The criminologist Dr. Gary Green, states that lawyers operate in an environment that is criminogenic, i.e. that creates criminals.

Books written by American lawyers describe in detail just how extremely corrupt the profession is.

The record indicates that in all three branches of government, the corruption of the legal profession has reached alarming proportions and very egregiously harms the Nation.

The American Bar Association 1993 survey indicates that Americans who know lawyers best trust them least.

The corruption of the legal profession is at such a high level, that it is adversely affecting the psyche and well being of large numbers of lawyers in practice. So much so, that many honest lawyers leave the profession in disgust, at considerable financial sacrifice.

The corruption is so severe that it is blamed for both random and specific acts of violence against lawyers.

The profession's leadership recognizes to a significant degree, how severe the corruption is.

The significance of the absence of a specific kind of evidence.

Proof of a proposition can sometimes be provided by the absence of a particular kind of evidence. Thus it is significant that there is no material evidence of the widespread corruption of any other legitimate profession. That reinforces the concept that the legal profession is materially more corrupt than any other. There is not even evidence from other countries that their legal profession is nearly as corrupt as that in the United States. The foregoing is demonstrated by the following **absence of evidence:**

In his book 'Occupational Crime', Dr. Gary Green found it necessary to address only two of the 'respected professions', the legal and the medical profession. He found only the legal profession 'criminogenic', and had no general condemnation of the medical profession.

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[1] See Federalist 96 by this writer.

[2] This paper and Federalists 97, 98 and 99, should be read as a single unit.

This writer is unaware of a single work by members of any other profession, generally condemning their own profession for widespread corrupt practices.

This writer is unaware of any other free world nation which perceives its legal profession as even approaching the level of corruption attained by their colleagues in the United States.

This writer is unaware of any other free world nation in which citizen organizations spring up spontaneously to attempt to counter legal corruption.

This writer is unaware of any free world European nation, with as shameful a history of corruption among its lawyers legislators as has this one.

The legal profession has provided no material response to these accusations.

General conclusions as to the corruption of the legal profession.

The evidence that both the legal profession as a whole, and a substantial number of its members, are corrupt is overwhelming. That conclusion is directly supported by affirmative evidence and indirectly supported by the absence of any material contrary evidence. The original purpose of Federalists 97,98,99 and 100, was to discover whether there was enough evidence to prove that the legal profession was corrupt, to a standard of proof of reasonable suspicion or probable cause. The evidence supports the conclusion that the case has been made to standards of proof exceeding those goals. The evidence is reasonably sufficient to have proved the case to the standard of proof of preponderance of the evidence to most readers, and even to the standard of beyond a reasonable doubt to some. **Further conclusions as to the corruption of the leadership of the legal profession and of lawyer legislators.** Although the corruption of the legal profession as a whole is now well established, it remains true that the profession still contains many individual members who have retained a high measure of integrity. So the question now of interest becomes: **Is the legal profession's leadership**[3] **likely to be more or less corrupt than the general membership?** Cream rises to the top of the milk, but regrettably so does scum to the top of the cesspool. Every group tends to promote to positions of power within its own organizational structure, those best able to advance its selfish interests. In the army[4] for example, those who do well must show a host of universally admired qualities. These qualities are: **integrity**, intelligence, courage, daring, technical proficiency, loyalty, calm under fire, leadership, flexibility, physical prowess, good health, a stable personality, an ability to work well with others, and an ability to treat all according to the content of their character not the color of their skin. Those who rose to the top of their profession had to have these qualities. The army gave us General Marshal, General Bradley, General Douglas Mac Arthur, General Dwight D. Eisenhower, General Colin Powell, and General Schwartzkoff. All men of the highest moral standing as well as men of extreme competence.

At the other extreme are the criminal organizations. There, advancement to the top also requires particular qualities, many of which are universally condemned. Organized crime groups 'qualities' include blind loyalty with violations punishable by death; a willingness to do criminal acts without question and to commit murder when asked. Further 'qualities' required are a complete absence of conscience and a ruthless willingness to spread evil, misery and grief to all and sundry in order to make a criminal profit. Here too it is those who best exhibit the 'qualities' prized by the group who rise to the top. Organized crime gave us Al Capone, Bugsy Malone, Lucky Luciano, Albert Anastasia, the Gambino family and 'Dapper' Don Gotti.

The legal profession like other organizations, seeks to achieve the highest benefits for its members. Its criminogenic occupational structure tends to bring it closer in organizational objectives to criminal rather than legitimate organizations. When the battle for the hearts and minds of the members is between ethics and greed, greed often wins. Particularly in a profession that has achieved almost absolute power over the Nation. To keep and expand that power for the profit of the profession, no matter what evil befalls others is what will help candidates for power to reach the top. Thus those who show the greatest willingness to do what is necessary to further the profession's greed, are likely to rise to its leadership. That is best done by keeping the Nation under the legal profession's tyrannical rule, while vehemently denying that tyranny exists.

We can thus thank the legal profession for Mr. Nixon, Mr. Spiro Agnew, Mr. John Mitchell, Mr. Ehrichman, Mr. Kliendienst, Mr. Colson, Mr. Dan Rostenkowski, Mr. John Wright, and now Mr. Bill Clinton

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[3] The leadership of the profession consists of those within the profession who exercise the most power whether in one of the branches of government, in academia, in financial circles, or anywhere else power is exercised.

[4] In this country the army's goals do not differ materially from the Nation's.

and Mr. Al Gore to name only a few. The last two may or may not face criminal charges. For the moment there are investigations pending on matters potentially implicating Mr. Clinton criminally on the Whitewater matter, as well as potential new allegations of soliciting campaign funds illegally against both the President and the Vice president.

The evidence shows that it is all but certain that those who rise to the highest power in the legal profession, are more likely to be corrupt than are their own rank and file.[5] Since the levers of power are greatest in the federal government in Washington D.C. the evidence indicates that those lawyers able to reach elected office are also probably the most corrupt.[6] The latest campaign finance scandals apparently tarring virtually all politicians[7] is a prime example of the corruption of lawyers[8] spreading to non-lawyers as a survival mechanism.

The effect of the corruption of lawyers on the judiciary.

The Nation is already unconstitutionally forced by the legal profession to limit its choice of judges to their own ranks. It is fortunate that the judges, once chosen, are generally less subject to the levels of temptation that existed when they were lawyers. So at least the Nation sees some relief there. It is also true that even corrupt lawyers prefer honest judges. So the judges chosen may well be more honest than those who chose them. Sometimes dishonest lawyer politicians will seek to cloak themselves with the good reputation of honest lawyers by nominating them for judgeships. These factors mitigate some of the harm to the Nation.

The harm to the Nation of electing corrupt representatives.

The usual consequences of having dishonest men in power is known. They will enrich themselves illegally at the Nation's expense. However the impact on the Nation of having its entire government dominated by the single most corrupt group in the land is mind boggling in its implications. Here are some of the natural consequences:

The moral decline of the Nation starts with the leadership. Thus the consistent presence of the most corrupt group in the land as the Nation's leaders cannot fail to cause the general decline in the moral and ethical standards of the Nation. That has happened.

The spread of corruption to non members of the legal profession as a survival mechanism sometimes perceived as the only way to get just results from an unjust system.[9]

The United States is the most powerful Nation in the World, and the cutting edge of democracy. It is a Nation which needs to lead by example. Instead its world image is one of a corrupt government and Nation. That diminishes this Nation's ability to exercise the moral authority that it's position of power and its history should command.

When the leaders of the Nation are corrupt, the message to those who work for them is that it is OK to be corrupt. All parents know that authority figures cannot successfully teach children or subordinates to 'Do as I say, not as I do!' So corruption spreads to otherwise honest people.

Man's nature is selfish. Man needs to constantly fight his nature to achieve his best. Every time a man does something wrong it becomes a little easier to do wrong again. Thus with corrupt leadership in power the decline of the Nation's moral values and ethical standards can be expected to continue apace. That has been happening.

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[5] The evidence even suggests a direct correlation between lawyers in power and their personal level of corruption. The higher the level of power the greater the probability of corruption.

[6] As in all things there are undoubtedly exceptions to this rule. This blanket statement of probability of corruption cannot be used to condemn any particular individual

[7] When the rules of the game are made, interpreted and enforced by corrupt lawyers, it may not be too far to say that even non lawyers wishing to run for public office will be forced to accept corruption as the price for getting elected, pay their own way like billionaire Ross Perot, or stay home.

[8] A potential defense for very corrupt lawyers is that the psychological dysfunction arising from extreme cognitive dissonance (See Federalist 95) renders them incapable of distinguishing right from wrong when the law clashes with their financial interests. Some say that this defense is too close to the much discredited 'insanity defense' and should not serve as a defense at all. This writer believes the argument is at least a factor favoring mitigation of punishment.

[9] The apparent acceptance by all members of the justice system that policemen routinely lie under oath to avoid the consequences of having their case thrown out under the exclusionary rule, is one example

Conclusion.

The legal profession is unquestionably corrupt. The evidence indicates lawyer legislators are probably even more corrupt than are their colleagues. Their presence in elective office is unconstitutional, morally destructive and harmful to the Nation to the point where it will soon bring the Nation down.[10] Their presence appears to force their non-lawyer colleagues into corrupt practices merely to stay in government. The continual flow of information on the corruption of the Nation's leaders undermines confidence in government, leads to the disaffection of most of the population and causes fringe groups to seek revolutionary remedies. It is also the reason why the most misguided believe in the use of domestic terrorism as an instrument of change.[11]

Is there in the Nation any person with a soul so bereft of decency as to knowingly condemn his country to be governed by men and women selected from the most corrupt group in the land? The answer for a free people must be a resounding NO. Thus on the issue of corruption alone the evidence is so strong that the Nation should see fit to remove all lawyers from elective office at once. Of course the fact that those lawyers are also unconstitutionally in office, makes the decision easier still.

PUBLIUS II
(Ronald Biback)

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[10] It is in the face of overwhelming evidence and with a heavy heart that this writer asserts these facts. Every American has an emotional investment in the integrity of his government and his leaders. That is why all citizens are diminished when they realize the kind of leadership they themselves have put in place!

[11] Of which misguided number Timothy McVeigh, convicted of bombing the Federal Building in Oklahoma which killed 168 people in April 1995, is certainly the worst offender to date.

The Federalist: The State of the Union under a failed Constitution

101

June 22, 1997

A review of Federalists 86 to 100. An explanation of how the legal profession became so corrupt and why it continues to tyrannize the Nation with 'a clear conscience'. A rebuttal to the proposition that the profession's solution of 'educating lawyers' will resolve the problems created by the Nation's legal profession.

A review of Federalists 86 to 100. An explanation of how the legal profession became so corrupt and why it continues to tyrannize the Nation with 'a clear conscience'. A rebuttal to the proposition that the profession's solution of 'educating lawyers' will resolve the problems created by the Nation's legal profession.

In 1995 this writer undertook to continue the writing of the original 1787 Federalist Papers. That was done to bring the following to the attention of the American people:

1. An analysis of why the Constitution was written;

2. An explanation of how the Constitution's separation of powers principle was designed to protect the people from tyranny arising from any 'same hands faction'; and

3. An explanation of why the Constitution failed to protect the people from the 'same hands' faction known as the legal profession.

To that end 15 Federalist Papers (Numbers 86 to 100) have been written.

Summary of Conclusions of Federalists 86 to 100.

Federalists 86 to 100 argued and concluded the following:

That the legal profession is the most corrupt profession in the land and unconstitutionally controls all government.

That there is probable cause to believe that any member of the legal profession who holds elective office in either the legislative or executive branch of government is guilty of treason.

That as a result of this control and probably treasonous behavior, the Nation has been and continues to be very seriously harmed in virtually all areas of its life,

That unless the members of the legal profession are removed from this unconstitutional control of the Nation's government it will not be long before the Nation will go down, and its democratic form of government lost.

It is not surprising that such assertions may be regarded with skepticism by many well intentioned and even highly intelligent people.[1] An explanation is required for the seemingly incredible proposition that the men and women who are sworn to protect the people from tyranny by upholding the Constitution, are themselves responsible for tyrannizing the Nation.

Enormous power, unfettered ambition and psychological dysfunction as explanations for the legal profession's corrupt and tyrannical behavior.

Most men are susceptible to the blind pursuit of unfettered ambition. It is primarily Society, acting in its own collective best interests, which provides brakes to each individual's pursuit of this vice. A just Society also expects each individual's conscience to provide some obstacle to anti-social acts. When an individual or a group attain sufficient power to destroy Society's obstacles to their unfettered ambition, all that remains is each individual's conscience. When the psychological dysfunction of extreme cognitive

[1]This is true notwithstanding that many Americans display a strong distrust of lawyers and a powerful sense that lawyers must be responsible for many of the Nation's problems. It is the level of corruption these Papers establish that is so hard to comprehend.

dissonance[2] in a particular individual is added to unfettered ambition, the obstacle of conscience disappears. Then there is nothing left to prevent that person from giving in to the worst of his nature. That is what has happened to many members of the legal profession.

The legal profession's effective control of all government has provided them with enormous power. That is what began the insidious process. Later, extreme cognitive dissonance surfaced in many lawyers and destroyed in them the last obstacle to corruption. These lawyers became incapable of distinguishing between right and wrong on issues relevant to either justice or their professional obligations to the Nation. Many of these lawyers hold high office. They assert that the disastrous legal system they impose on the Nation is good. Due to their psychological dysfunction they feel neither remorse nor guilt, nor do they see any need for change.

At the other end of the spectrum are the more honest lawyers. These lawyers still have functioning consciences. They are not afflicted by extreme cognitive dissonance which quiets the soul by transforming the perception of evil into good. They are afflicted with a sufficient level of cognitive dissonance and the discomfort that brings to cause many to leave the profession. These are the lawyers who 'run from the law', often at considerable financial sacrifice.

Others stay, but pay a heavy price for remaining in the form of higher levels of depression, drug and alcohol abuse, than the members of any other profession.

The above explanation shows how a once learned profession has sunk so low. Nevertheless, it is always important to remember that within that profession there remain many honest men and women trying their best to correct the problems they perceive. They are the most likely to come to the aid of the Nation. They need to do so very soon for there comes a time when as Dr. Martin Luther King put it: Silence becomes betrayal.

Rebuttal to the legal profession's latest 'solution' to the problems it creates.

Even among the most honorable of those in the profession there remains a need to accurately perceive the problem. Otherwise the proposed solutions will not work. There are three types of 'solutions' that can be proposed for any problem: useful solutions, useless solutions[3] and worse than useless solutions.

A useful solution works. It resolves the problem.

A useless solution does not work. It fails to resolve the problem. But at least it fails quickly.

A worse than useless solution not only fails to resolve the problem, but its failure is slowly perceived. Thus while it is being tried, it provides the false sense of security that a problem is being resolved. Meanwhile the problem continues to fester, sometimes beyond the ability of any solution to resolve.

For example a woman suffering from breast cancer is told that a mastectomy is essential to save her life. That is the only useful solution. The offer of a liquid 'concoction' that will allegedly cure her cancer in 48 hours if she drinks it is a useless solution. But at least she will know within 48 hours[4] that the 'solution' failed. Her condition will not yet have materially deteriorated. She can still be saved. On the other hand if she is told that the 'concoction' will cure her cancer, but only over an extended period of time, that is a worse than useless solution. Because by the time it is clear that the solution is useless, she will either be dead or her condition will have deteriorated beyond the ability of any useful solution to save her life.

The legal profession's worse than useless 'solution' to the problem of tyranny.[5]

Problem resolution involves several distinct aspects. These are:

1. Recognition that a problem exists;

2. Identification of the source of that problem;

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[2] Cognitive dissonance is the psychological dysfunction that, when taken to extremes, will cause the mind to reverse its perception of good and evil on certain specific issues. On those issues it becomes impossible for the mind to distinguish between right and wrong. (See Federalist 95).

[3] Obviously solutions that don't work are not solutions at all. They merely appear to be until they fail.

[4] Or as long thereafter as it takes to test her condition.

[5] Tyranny is this writer's definition of the problem. The profession defines the same problem in an understated and different manner. However the essential concept that the legal profession is causing the Nation grievous harm now and may potentially bring it down is the common theme.

3. Identification of a useful solution and

4. Implementation of the solution.

1. Recognition that a problem exists.

John Dos Passos in The American Lawyer[6] recognized as early 1907:

- government was controlled by lawyers,
- lawyers were corrupt and used their office primarily for personal gain,
- they did not exhibit a sense of duty,
- many practiced law only to defeat and evade the legislative intent and public policy, and
- if this activity continued the Nation faced grave danger.

Harrison J. Sheppard[7] is an attorney and Fellow of the American Bar Association. In 1997 he expressed a view that appears to be shared by many honorable members of his profession which says much the same thing. So it appears that there is consensus on the fact that a major problem exists.

2. Identification of the 'source' of the problem.[8]

Dos Passos identified the following as the 'sources' of the problems.

1. Deficiencies in education and instruction for lawyers;

2. The emphasis in law of form over substance;

3. The excessive numbers of lawyers;

4. Lack of manners among lawyers;

5. The advent of wealth over intellectuality, refinement and literary culture as the sole criterion of social position;

6. The change of law into business;

7. Increased litigation;

8. The lack of impartiality of judges;

9. The creation of contingency fees;

10. The absence of two classes of lawyers, solicitors and barristers; and

11. The absence of gowns or appropriate badges in court. Sheppard identified the source of the problem as a lack of education by lawyers on the need for non adversarial problem solving techniques.

3. Identification of a 'useful' solution.

Dos Passos gave up totally on 'reforming' his own generation of lawyers. He said that an old and pernicious system cannot be extirpated, as one would raze a house, and build a new one in its place. Therefore it would be useless to attempt to reform the present generation of lawyers, as a whole. As a long term solution to correct the problems that he identified, he recommended the following: Specific reforms in the education of lawyers and the greater use of civility; a limitation on the number of lawyers; reform of the contingency fee laws; making law a profession of refinement and culture and not a business; a decrease in litigation; two classes of lawyers; gowns for lawyers in court; and greater scrutiny of judges.

Sheppard's suggested recommendations involve:

1. Promotion within law firms and government agencies of a problem solving model of legal practice;

2. Continuing legal education in negotiation, civility and conciliation skills; and

3. Reform of legal education emphasizing problem solving non adversarial techniques.

Analysis of the legal profession's problem solving approach.

It is clear from Dos Passos' book that all of the problems perceived by the honorable members of the legal profession today were in existence in 1907. The problems have become much more severe

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[6] Current publisher: Fred B. Rothman & Co. Littleton, Colorado, 1986 ISBN 0-8377-0524-X

[7] American Principles and the Evolving Ethos of American Legal Practice, an Article by Harrison J. Sheppard to be published in the Loyola University Chicago Law Journal Winter 1997 issue.

[8] In fact only a symptom and not the source.

since then. Dos Passos' solutions—in his own view—were not going to work for at least a generation. It is reasonable to assume that some parts of the solution were at least proposed or tried by the more honorable among the profession. What is clear is that whether or not they were tried, things have become materially worse. Thus the solutions if they were tried, have not worked and may even have delayed effective reform.

Sheppard's position appears to be addressing the same problems and proposing essentially the same solutions. The results will be no better. Let us see why. The proper identification of the source of the problem is essential to discovering its solution. Confusing the symptom with the source will lead to a useless or worse than useless solution. Thus for all the years that AIDS was unidentified, doctors mistook other diseases for the sources of illness of patients who had AIDS. Prevention of AIDS only began occurring after the medical profession became aware of the existence of AIDS.

So it is with the problems created by the legal profession. Neither Dos Passos nor Sheppard nor any other published views of the legal profession, correctly identify the problem as tyranny. Tyranny specifically identified by James Madison in Federalist # 51 as: Control by a same hands group of the powers of the Legislative, Executive and Judiciary Branches of government. Tyranny that is only resolvable through the removal of all lawyers holding elective office outside the Judiciary. Either through the Courts on a Constitutional basis or by the people through the ballot box.

The profession suggests education as a solution. Yet the legal profession is arguably the best educated, the smartest and the most erudite of all the professions. Is more education likely to make them more honorable? And if it is, why hasn't that happened in the last 90 years since Dos Passos identified the same problems and suggested many of the same solutions? Why have things become dramatically worse?

History teaches us that no group that acquired power ever gave it up voluntarily. Yet that is what is being proposed. For the power of the purse possessed by the legal profession is visible to all. Even to those who deny that it was acquired through the unconstitutional control of government. The legal profession's power and its ability to extort enormous wealth from the Nation under color of law is based on its ability to do all the things that Dos Passos and Sheppard would 'educate' it away from. If the 'education' succeeded, demand for legal services would drop materially.[9] So would aggregate lawyer income and in many cases, individual lawyer income. It is Utopian to suggest that may happen voluntarily. There is therefore no possibility that any of these reforms will ever come to pass as a result of 'education'.

Disastrous Implications of the legal profession's views.

As an exercise in logic it is interesting to note the disastrous implications for all free people of the possibility that the legal profession's views may be correct. For the profession recognizes the possibility that the legal profession's activities may well lead to the loss of this Nation's freedoms and Republican form of constitutional democracy. Yet the profession is steadfast in its views that the profession has not violated the Constitution in any way.[10] It further asserts that the Constitution is unflawed in its text, its interpretation by the Courts and its enforcement by the Executive. That means that a Constitution as perfectly written, interpreted and enforced as the mind of man is capable of conceiving, cannot protect the people from the whim, abuse or pleasure of its own legal profession! That means that **no constitution can be written that will perform that function.**[11] That means that the dream of a people being able to write a Constitution to govern themselves that provides the government with sufficient power to govern but insufficient to oppress is gone from the Planet forever! That means the eventual loss of freedom for all the people of the Planet.

Conclusion:

The American legal profession's high degree of corruption is explained by the acquisition of unbridled power that created the blossoming of unfettered ambition and eventually resulted in the psychological dysfunction of extreme cognitive dissonance. Serious thinkers in the profession recognize

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[9] Sheppard suggests that a good part of the drop in legal activity would be replaced by the new 'problem solving' and negotiating activities he recommends lawyers be taught. There is an enormous disproporation of American lawyers to population (1 in about 300) compared to the average for the rest of the world (1 in about 4000). That disproportion arises from the very activities Mr. Sheppard proposed to 'educate' them to avoid. The resulting prospective drop in legal activity and aggregate income will sink the proposal.

[10] Primarily because it denies that it is a 'same hands group' within Madison's meaning of the term.

[11] For if it could that would mean our Constitution is somehow flawed, which concept is rejected by the legal profession.

that the Nation is in potentially mortal danger from its activities. Yet the profession's proposed solutions through education are worse than useless. For not only will they not work but for as long as these solutions appear to offer hope, that hope will serve only to delay useful solutions.

PUBLIUS II
(Ronald Biback)

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The Federalist: The State of the Union under a failed Constitution

102

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A review of the four 'instruments' of tyranny:

(1) The power of the sword;

(2) the power of the word;

(3) the power of the word of the Lord; and

(4) the power of the purse.

The 'natural evolution' of the American legal profession as tyrannical.

When James Madison wrote his Constitution in 1787 he identified and sought to neutralize five known sources of tyranny. The four specific sources of tyranny were:

- the monarchy,
- the aristocracy,
- the military and
- the Church.

The one non-specific source of tyranny was identified by Madison as any same hands faction that might acquire control of all three branches of government. He succeeded in neutralizing the monarchy by creating a Republic, the aristocracy by prohibiting titles of nobility, the military by making the head of the military an elected civilian, (the President) and the Church by separating Church and State. He expected to neutralize any potential 'same hands faction' by creating a system of separation of powers. Madison however, failed either to identify or deal with the four instruments of tyranny.[1]

The instruments of tyranny.

The history of the world until the American Declaration of Independence in 1776 is very much a history of tyranny. Even after 1776 most of the world continued to be subjected to the tyranny of its conquerors or its own rulers. They were often absolute rulers and they ruled by 'violence and guile'[2] Almost everywhere they were joined by 'priests' whose business it was to interpret the equally absolute and despotic will of the gods, to keep the people in submission.[3] Implicit in these attributes of absolute power was economic power or the power of the purse. Thus we have four 'instruments' of tyranny. The first is 'violence' which is the power of the sword. The second is 'guile' which is defined as: the act of deceiving, or the disposition to deceive.[4] That is the power of the word. The third is the 'endorsement' or support by 'priests' of the power of the temporal ruler. That is the power of the word used to invoke the power of the word of the Lord. The fourth is implicit and is economic power or the power of the purse.

The neutral nature of both the 'sources' and the 'instruments' of tyranny.

Both 'sources' and 'instruments' of tyranny may be used for good or evil. Let us look at the sources of tyranny. History tells us that there have been good monarchs and/or other heads of state, such as King Solomon in ancient Israel, and Emperors Marcus Aurelius and Claudius in Rome. There have been some aristocrats concerned with the people's welfare, and some military leaders like Napoleon, much loved and admired by their people. The Church has been responsible for much good in the world, even though it can also be charged with having caused grievous oppression. Finally a form of 'same

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[1] Ibid.

[2] See Funk and Wagnall's New Comprehensive Dictionary of the English language. (1978)

[3] Which principle continues to be true with respect to the legal profession in the United States, but not others who have acquired wealth legitimately.

[4] Correcting abuses by non lawyers who may also be masters of the power of the purse will probably have to await the removal of the present tyrannical control of government by lawyers.

hands' faction controls parliamentary governments fairly satisfactorily in Great Britain and elsewhere, without the kind of separation of powers the Constitution intended to provide for us here.

The same is true of the 'instruments' of tyranny. For example the power of the sword can enslave or free people. The American sword freed Europe enslaved by the German sword in two World Wars. The power of the founding fathers' 'word' led this Nation to Independence. Hitler's word led his people to death and destruction. The power of the word of Lord was misused by the Spanish Inquisition to torture people to death in the name of the Lord. Jesus' 'word' preached love and charity to all.

Finally the power of the purse has been used to support evil ends like Naziism or fascism or to do great good like endowing great Universities, as was done in the United States.

Potential for tyranny was the criterion for constitutional exclusion from power.

Madison's Constitution permanently excluded all known specific **potential sources of tyranny** from power without making exclusion subject to evidence of wrongdoing. Because protection from tyranny can exist only by absolutely excluding from power all those who possess control of the **potential** sources of power. To determine who to exclude from power Madison examined the 'sources' of power and identified those individuals or groups who controlled that power. These can be designated as **the masters of the particular power**. **The unchecked masters of the remaining 'instruments' of tyranny.**

By protecting us from the three known specific sources of tyranny Madison's constitution simultaneously protected us from their use of the sword as an instrument of tyranny. His Constitution also protected us from that instrument of tyranny known as the power of the word of the Lord (at least as interpreted by man), by separating Church and State. However that still left the Nation vulnerable to tyranny from two of the four masters of the 'instruments' of tyranny. To wit: the masters of the power of the purse and the masters of the power of the word. The masters of the power of the purse are those who hold the levers of public or private economic power. In general the masters of the purse, when united, have habitually also been the sources of tyranny. For it is their power to tyrannize in the first place that allowed them to acquire wealth[5] and wealth that allowed them to perpetuate their tyranny. The issue of so called 'special interests' and the undue influence of wealth in the political arena is one current manifestation of the abuse of the power of the purse.[6]

The masters of the power of the word are the media and the members of the legal profession. The instrument of the law and communication is language. The experts in the use of language are the members of the legal profession and the journalists of the media. Language is an imperfect instrument. It is used to express the mind's intention into communicable information. It is also used through the art of persuasion, to translate the communicated word into desired action.

The members of the media are trained in the use of language for the purpose of becoming objective fact finders to seek out and report the truth.[7] The interest they share in common and with the Nation is the principle of freedom of the press. However like any other business or professional group they do possess an interest in their own financial power and well being adverse to the Nation's interest. They are therefore a Madisonian 'same hands faction' and like any other such faction a potential threat to the Nation if they were to achieve control of all government. However they exercise no control over the judiciary and very few of their numbers occupy elective office. Thus the mainstream media, although a Madisonian same hands faction, are not now and may perhaps never be a threat to the Nation. The members of the legal profession are a different matter They are trained in the art and science of persuasion which is Aristotelian logic. They are also trained to recognize and use false arguments that make the weaker argument look the stronger. Society has charged members of the legal profession with the duty to learn the language and its subtleties as well as Aristotelean logic and to use that knowledge righteously.[8] They have a common interest in advancing their own power and finances not shared by the

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[5] Albeit they may sometimes report truth through the prisms of their own political bias.

[6] It is this wirter's opnion, apparently not shared by the legal profession, that a lawyer's knowledge should be used as that of all professionals with a concern for the publc interest and a sense of righteousness. The position of the legal profession is that lawyers must adopt an 'amoral' role in counseling their clients.

[7] See prize winning article The Lawyer's Amoral Ethical Role by Professor Stephen I. Pepper, College of Law, Denver, page 613 of The Ethics of Lawyers edited by Stephen Luban, New York University Press. The very title of the article Amoral Ethical Role is an oxymoron. Ethics is the study of moral law. Amorality is the absense of concern with moral law!

[8] The evidence shows that there were only 5 possible 'candidates' for tyranny in America. When the first four were neutralized by the Constitution the only 'candidate' left standing was the legal profession!

Nation. They have already used that power to take over total control of all state and the federal judiciary branches of government. The evidence indicates that they have abandoned any moral role in their profession and no longer recognize any obligation to instruct their clients to conform with existing law.[9] The power of the word like all of the other 'instruments' of tyranny can be used or misused. For the power of the word is also the power to deceive. The members of the legal profession have developed the power of the word to deceive to new heights. That power is effectively theirs on a virtually exclusive basis. However the power of the word differs from the other instruments of tyranny because it can only survive as long as the deception continues.

The natural evolution of lawyers as tyrants.

It is fascinating to observe that the tyranny of the legal profession represents a kind of Darwinian natural evolution.[10] The original four specific sources of tyranny were well known and neutralized by Madison. That process simultaneously neutralized two of the four masters of the 'instruments' of tyranny. Therefore any new sources of tyranny could only arise from the last two masters of the 'instruments' of tyranny (the masters of the power of the word and the masters of the power of the purse). Either would still need to overcome the obstacle of the separation of powers doctrine prohibiting any 'same hands faction' from acquiring control of government. That means that the only unified same hands group left that could foreseeably tyrannize the Nation was the legal profession. Because it was master of the power of the word with the full knowledge and virtually exclusive power to misuse the word. It could acquire political power and through that power, acquire the power of the purse. It was the only same hands group or faction that could 'legitimize' the acquisition of full control of the Judiciary Branches of Government. It alone through guile could overcome the Constitutional obstacle of the separation of powers doctrine. No other group is now, ever was, or may foreseeably ever be qualified by specialized knowledge to do so. That is because the only other possible source of tyranny left would be those who possessed great economic power in the land. But economic power alone would not be enough. There would also have to be a central organization uniting the wealthy for the purpose of tyranny. That has never existed. There would also have to be an alliance with the masters of the power to deceive, the members of the legal profession, to control the Judiciary. Otherwise the Judiciary would raise the separation of powers doctrine as an obstacle to power.

History of the evolution of lawyers as tyrants.

The legal profession is regarded by many as one of the 'learned professions'. Yet lawyers have always been regarded as having a tendency to be corrupt. That is because in all societies the power of the word possessed by lawyers is particularly susceptible to abuse. To counter the temptation to become corrupt Society has always attempted to instill in the hearts and minds of the members of the legal profession, a sense of justice and righteousness. To be sure there would always be some rotten apples in the barrel. But at least every effort would be made to control the situation.

In the United States lawyers were considered as honorable as their colleagues elsewhere, at least until the end of the Civil War. After the Civil War there occurred a transformation of the law from a profession into a business. A new race of lawyers sprang up lacking the dignity, learning and influence which prior lawyers possessed.[11] That was the end of the concept of the lawyer as a righteous man.

This 'new race of lawyers', now in business for itself and not practicing law for the public good, began expanding its power, influence and corrupt practices. The American Bar Association was founded in the late 19th Century. It brought together lawyers in an effort to define and advance their common financial interests. Subsequently, commencing around the middle of the 20th Century the American Bar Association was instrumental in organizing State Bars in every State. These State Bars monopolized the practice of law in the hands of lawyers. They became bodies elected by nobody, making laws for everybody.[12] The State Bars also acquired full de jure or de facto control over all the judiciary branches of government.

Through the power of monopoly and the power of the State Bars lawyers began to acquire the power of the purse and run for public office in greater and greater numbers. Experts at rhetoric and the powers to obfuscate and deceive, they became very successful at acquiring and retaining elective public

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[9] See The American Lawyer, pages 32-34, by John Dos Passos ISBN: 0-8377-0524-X

[10] The laws are reffered to as Bar Rules and impact every citizen in the State which they are enacted.

[11] See footnote 11.

[12] The legal profession would undoubtedly protect us from <u>any other same hands faction</u>

office. They redefined ethics in a form of Orwellian Newspeak. They called it the Lawyer's Amoral Ethical Role.13 As if any righteous person's ethics could ever be consistent with the concept of amorality. Seeking relief from extreme anxiety caused by the evil ways of their profession, many members developed the psychological dysfunction known as cognitive dissonance, which transforms the perception of the evil they do into the good they would like to think they are doing.

Conclusion.

There are 5 internationally recognized potential sources of tyranny. They are: the monarchy, the aristocracy, the military , the Church and any 'same hands faction' in control of government. There are 4 'instruments' of tyranny, The power of the sword, the power of the word, the power of the word of the Lord and the power of the purse. The Constitution protects us adequately from 4 out of 5 sources of tyranny but only 2 out of 4 'instruments' of tyranny. The Constitution has failed to protect us from a same hands legal profession14 source of tyranny. We are also totally unprotected from the two instruments of tyranny which are the deceitful power of the word and the power of the purse. The legal profession's tyranny of the Nation is a 'natural evolution' of its exclusive possession of the power to misuse the word, of its power to completely control the judiciary, and of its substantial possession of the power of the purse. To tyrannize the Nation it has developed deceit and self deceit to the highest level ever known to man.

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(Ronald Biback)

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The Federalist: The State of the Union under a failed Constitution

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The American legal profession's exercise of deceit to tyrannize the American people.

Federalist 102 outlined the natural evolution of the legal profession as tyrants. It possesses the power of the word and is one of the two possessors of the power of the purse. It is also the only 'same hands' faction which is now or is ever likely to be, in complete control of the Judiciary branch of government. That makes the legal profession the last and only 'same hands' faction capable of controlling all government and establishing tyranny. But the members of the legal profession do not possess the power of the sword or the power of the word of the Lord. So the instruments of their tyranny are limited to economic power, abuse of the power of the Judiciary and the misuse of the power of the 'word', which is deceit

Deceit evil and benign.

What precisely is deceit? The dictionary tells us that deceit is: The act of deceiving, deception, lying; a lie or other dishonest action; trick. But deceit is not always bad. For example a person may tell a dying loved one that he will not die. That is deceit. But it is well intentioned or benign deceit, for its purpose is to ease anxiety. The magician's craft is also based on deceit and trickery. But it is also benign and well intentioned, for its purpose is to entertain. So the question of whether deceit is good or evil is dependent on the intent of the deceiver. So we distinguish between evil and benign deceit. The legal profession deceives with evil intent. To advance that evil intent the legal profession has raised the 'art' of deceit to new levels. To fully understand the depth and extent of that deceit will require the establishing of new expressions for different levels of deceit.

Deceit with evil intent: simple, double, triple, poly deceit and color of law deceit.

The power of the members of the legal profession is rooted in deceit. Deceit more devious in quality, quantity and kind than the world has ever beheld before. Deceit even of themselves, which is called self-deceit and arises from cognitive dissonance.[1] To undo the harm done by the legal profession the Nation will have to strip from its members the mask of deceit. To do so it will be necessary to carefully examine the legal profession's unique ability to deceive the public and its attempts to 'redefine the truth'.

The ordinary concept of deceit involves a person deceived who is aware of the deception. We shall refer to this kind of deception as simple deceit. The next level of deception is one in which the deceit is concealed indefinitely. That kind of deceit we shall call double deceit, because there are two deceptions, the original deceit and the concealment of the deceit. The next level of deception we shall call triple deceit. It consists of the two deceptions called double deceit, plus yet a third deception. This third deception consists of falsely portraying the first dishonest act as one that benefits its victim. Even higher levels of deceit we shall call poly deceit or multiple deceit. That deceit involves some combination of simple, double and/or triple deceit to achieve a given result.

There is one more level of deceit. We shall refer to it as color of law deceit, which is the abuse of the power of the judiciary. It occurs when laws, rules or other mandated behavior are deliberately given a false interpretation. It is the misuse of the power of law, the alleged ambiguity of language and the unscientific nature of opinion to deceive the people. It is constantly used by the legal profession to enact unconstitutional laws, and enforce and falsely interpret constitutional issues for its own benefit. It is the kind of deceit that former Justice Robert Jackson, our Nation's chief prosecutor at the Nuremberg trials of Nazi War Criminals referred to in the role of judges and law in legitimizing tyranny as: 'the most odious of all oppressions are those which mask justice.'[2]

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[1] See Federalist #95.

[2] See Contrary to Popular Opion, page 35 by Alan M. Dershowitz (1992) ISBN 0-86687-701-6

The legal profession's specific uses of various forms of deceit.

Simple deceit is the tool of pickpockets, con men, and various other professional scam artists. In simple deceit the victim is deceived long enough for the dishonest act to be perpetrated upon him. The criminal then expects to make his getaway before his victim becomes aware of the crime. But the criminal has no hope or expectation that the crime itself will remain concealed. Usually the legal profession will avoid such rudimentary techniques.[3] That is because the legal profession is seeking to conceal its crimes from its victims so that the victimization can continue indefinitely.

Double deceit is the minimum level normally practiced by the profession. The best example is the well documented and widely exposed standard practice in the profession of overbilling.[4] The client is overbilled and never realizes it. So deception can continue indefinitely.

Triple deceit occurs if a client's overbilling is 'adjusted'. If the client complains, the lawyer may give him a 'courtesy reduction' adjustment on the bill. He will still be overbilled but not as much. In which case the lawyer will generally explain that the bill was right originally and that the reduction is a good will gesture to keep the 'unreasonable client' happy. When that happens, the false framing of the action as benefiting the victim raises deceit to the level of triple deceit.

Poly deceit occurs when deceit is raised to a more complex level, such as concealing tyranny from the Nation, falsely asserting that lawyers are not members of any 'same hands' faction, establishing and maintaining State Bars, etc.

Color of law deceit is the abuse of the power of the judiciary and occurs all the time. It involves 'misinterpretation' of law by the judiciary. It escapes sanction even when uncovered, because the judiciary will not sanction itself for deliberate misconduct in its own general interest, and no one else is empowered to do so. It is the blatant and disgraceful application of a double standard! Let us see how and why.

Ignorance of the law is no excuse under the law. To 'ignore' the law may either mean to be 'unacquainted with' or to 'willfully disregard' the law.[5] Neither excuse is acceptable from nonlawyers. When Judges make unconstitutional rulings nothing happens to them. Even when every logical argument is clearly against their ruling and other equal dignity Courts have determined the unconstitutionality of the issue.[6] Their position when forced to retreat is effectively: Sorry, we erred!

But it is the job of judges to know constitutional law. So we are left with three choices. Either they are horribly incompetent, but only when it comes to issues that help the legal profession. Or they willfully disregard the law. Or they suffer from severe cognitive dissonance and can no longer tell right from wrong on these kinds of issues.[7]

Detecting deceit in general.

Deceit whether for good or evil, involves certain tools, techniques, means and methods that are similar. It is therefore useful to analyze the well documented methods used by magicians, those well known entertainment masters of deceit!

How do magicians fool us? According to Dr. Barbara L. Thaw, author of *The Armchair Magician*,[8] the plain truth is this: 'The smarter the man, the easier he is to fool.' That is because the smarter we become, the less likely we are to attribute obvious causes to mystifying effects. Human nature is predictable and magicians take advantage of human nature to work their magic! All illusions (deceit) take

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[3] The only members of the legal profession who make use of simple deciet are the few who are either to desparate, too stupid or too arrogant to curb their excesses. It is these lawyers who supply the State Bar with the few cases they have absolutely no chouce but to discipline in some manner. It is not uncommon for depression, alcholism and/or drug abuse to have played a role in their fall.

[4] See Federalist #99 for a list of current books by American lawyers detailing these crimes.

[5] See Black's Law Dictionary, 1968 by West Publishing.

[6] As when the Florida Supreme Court first enacted and then consistently maintained the unconstitutional 'gag rule' or confidentiality rule concerning complainant right to speak about complaints to the Florida Bar. The Rule was unconstitutional. The Bar's own Special Commission said so three times over a decade. The Federal Courts at the Appellate level on a 12-0 decision said so and still the Florida Supreme Court did nothing until this writer pressed the case as a non lawyer before the court.

[7] To suggest that judges make these kinds of decisions unimpaired by cognitive dissonance is to suggest an unacceptable degree of stupidity.

[8] See *The Armchair Magician* by Dr. Barbara L. Thaw and Stephen J. Ronson. (1994) ISBN 0-440-50671-9

place in the minds of the perceiver. They result from the interpretation or misinterpretation of clues received from the five senses.

A magician's art is dependent on a number of principles. These are false assumption, misdirection, concealment, and the magician's choice or forcing, (which we shall refer to as **the illusion of choice**). All of the 'tricks' of the magician's trade are used by the members of the legal profession. The members of the legal profession are primarily involved in the intellectual field of persuasion or logical argument. Let us examine how deceit is practiced there.

Detecting deceit in 'logical argument' as practiced by the legal profession.

Aristotle, the father of logical argument, informs us that : Some reasonings are genuine, while others seem to be but are not...[9] Aristotle tells us that the study of a class of false arguments he refers to in his Sophistical Refutations will make a man seem to be wise when he is not. That was the purpose of the Sophists of his day and as we shall discover, the purpose of the legal profession of our day. Let us first examine the principles of logical argument established by Aristotle and then the nature and kinds of 'Sophistical false arguments' refuted by Aristotle.

In general an argument is valid or invalid. A valid argument has a premise that provides conclusive evidence for the conclusion. An invalid argument fails in one of three ways: (1) Through a misstatement of fact; (2) Incorrect use of terms; or (3) In its defective 'form', through the use of an improper process of inference.[10] A quick summary of an invalid argument would be the use of either: False statement, false language, or false logic. Therefore along with the magician's tools of deceit the legal profession can falsely persuade by the use of invalid arguments. So the seven combined main instruments of deceit are: (1) False assumptions, (2) Misdirection, (3) Concealment, (4) Illusion of Choice, (5) False statements, (6) False language, and (7) False logic.

Aristotle identified a number of false or fallacious sophistical arguments. These arguments are based on false logic, defective form or an improper process of inference. Here are a few false arguments selected for their popularity with the American legal profession.

Secundum quid: (according to its truth as holding only under special provisos). Which means a general rule does not always apply to every case. Ad hominem: (speaking against the man) Arguments that speak against the man not the issues. Ad populem: (an appeal 'to the people') Arguments that avoid logical reasons and appeal to popular attitudes. Ad misericordiam: (an appeal 'to pity') Arguments that argue for sympathy not justice. Ad verecundiam: (an appeal 'to awe') Arguments that seek acceptance of a conclusion based on endorsement of that view by people held in general respect. Non sequitur: (it does not follow) Arguments that have a complete lack of connection between the given premise and the conclusion drawn.[11] With this information we can begin to identify the legal profession's deceit on a case by case basis.

Tools of deceit used by the legal profession.

In addition to all of the above tools the legal profession's color of law deceit tool can be exercised in many ways. Here are a few of those ways. The Big Lie;[12] Deliberate misinterpretation of law; Procedural abuse; Abuse of process; Judicial intimidation; Frivolous lawsuits; The analysis of the tyranny of the legal profession will be made on a case by case basis in future Federalist papers. In each case we will seek to pinpoint the specific application by the profession of the tools of deceit. Here are a small number of examples of tools of deceit as practiced by the legal profession.

(1) False assumptions[13]: The following are only a few of the false assumptions created by the profession: (1) That the profession is ethical, (2) That a lawyer's primary concern is his client, (3) That if a lawyer continues to represent a client, it is because he does not have a conflict of interest with that client (4) That lawyers are trained in law and therefore make the best lawmakers, (5) That it is best for the

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[9] See Sophistical Refutations, page 227 by Aristotle, Great Books of the Western World, Volume 8, Aristotle: 1, (1952) Encyclopedia Britannica, Inc.

[10] See Logic Encyclopedia Britannica (Volume 23, page 280) 15th edition 1988. The history and kinds of, The critique of forms of reasoning, Correct and defective arguments.

[11] Ibid.

[12] The Big Lie is the repetition by 'sources of authority' of a lie so often that it finally becomes 'the truth.' The Nazi's did it in Germany in the 1930's when they said the Jews were responsible for Germany lising World War I and that Germans were a 'master race.'

[13] All of the following false assumptions are employed in the use of the Big Lie.

people that lawyers monopolize the practice of law, (6)That lawyer's are not tyrannizing the Nation, (7) That the American legal system is the best in the world.

(2) Misdirection: This involves directing attention away from the real issue. Here are two of the misdirection activities of the profession. (1) Directing the public's attention to the differences in positions on public issues between two men who are lawyers, when the real issue is that as lawyers they will improperly benefit regardless of whose position prevails.(2) Doing the same in civil litigation.

(3) Concealment: This covers a large number of possible criminal activity and is essential to the profession's ability to continue to deceive. Here are a few examples of concealment; (1) Concealing real time worked on a case to be able to overbill. (2) Concealing conflicts of interest of various kinds, (3) Concealing the billing practices of charging expenses in contingency cases lost, to the accounts of clients whose cases are won. (4) Concealing wrongdoing in the handling of trust accounts unless and until wrongdoing can no longer be concealed.

(4) Illusion of choice: Making voters believe they have a real choice when the most if not all the candidates in particular races are lawyers, and a part of the tyranny.

(5) False statements: The numbers of false statements made by lawyers are legion. The specifics of these false statements will be raised on an issue by issue basis.

(6) False language: The misuse of the words ethics, morality, amorality and justice are at the top of the list.

(7) False logic: Here too a case by case application of the above mentioned examples of Aristotle's Sophistical Refutations will best serve our purpose.

Conclusion.

The American legal profession uses deceit and economic power to tyrannize the Nation. The forms of deceit used are: simple, double, triple, poly deceit and color of law deceit.[14] The profession uses all of the tools of the magician's art of deceit as well as the false arguments developed by the Sophists in the days of Aristotle, to confuse the unwary. The Nation must examine and expose this deceit and the tyranny that it conceals before the Nation goes down.

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[14] This is by no means an exhaustive list. It is only the most obvious forms of deceit observed by this writer over the years.

The Federalist: The state of the Union under a failed Constitution

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July 15, 1997

The abandonment of ethics by the American legal profession through the adoption of the 'Lawyer's Amoral Ethical Role'. The resulting material decline in the Nation's moral standards.

(Part 1 of 4)[1]

Previous Federalists have outlined the corruption of the legal profession, the instruments of its tyranny and the general methods used by the profession to advance and maintain its tyrannical control over the Nation. Let us now turn our attention to the first obstacle faced by the legal profession in acquiring and maintaining its unconstitutional control of government. That obstacle is the profession's ethics. All professions have ethical rules. Let us see why.

The importance of ethics.

Ethics is defined as: The basic principles of right action. These basic principles can be defined as honesty, virtue, righteousness, honor and fair dealing. All good people aspire to achieve such standards for their own conduct. All people hope to find those principles present in the conduct of those with whom they interact. Professional groups recognize that ethical principles cannot be legislated by the State. So they adopt a set of ethical rules and then publicly assert enforcement upon their members.[2] For the most part, excluding the glaring example of the legal profession, the assertions may be viewed as valid and a public good.

The abandonment of ethics by the legal profession.

No one can conquer militarily with an army of conscientious objectors or tyrannize a nation with an army of conscientious, ethical lawyers. Therefore to overcome the 'ethical obstacle' and as a result of 'absolute corruption corrupting absolutely', there evolved within the American legal profession an abandonment of all ethical standards. There then came a time when the profession had to 'justify' to itself and the world this new 'role'. To do so it decided to sponsor a competition calling for scholarly papers to address this problem.

Accordingly in 1985 a competition was organized by the Association of American Law Schools. The winner was Professor Stephen L. Pepper whose essay was entitled: The Lawyer's Amoral Ethical Role.[3] The first sentence of which essay reads: This essay presents a moral justification[4] for the current generally accepted amoral ethical role of the lawyer.[5]

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[1] This paper and the next three Federalists #105-107 should be read as a single unit.

[2] Indeed professional groups are able to obtain State recognition and a degree of monopoly power by agruing that their Professional Association is better equipped to enforce ethical standards than the State could. That was one of the 'arguments' used by the legal profession when it sought total self regulation through the creation of monopolistic so called United State Bars.

[3] This writer has had more experience than most with the deplorable prevailing ethics of the legal profession. Nevertheless the profession's formal attempt at a moral justification of the so called 'amoral ethical role' sent a chill of fear coursing through his veins. The words of the great Canadian poet Robert Service from the ballad The Shooting of Dan McGrew came to mind: Then on a sudden the music changed, so soft that you scarce could hear/ But you felt that your life had been looted clean of all that it once held dear;/ That someone had stolen the woman you loved; that her love was a devil's lie; That your guts were gone, and the best for you was to crawl away and die. Published by Dodd, Mead, Inc.

[4] There is not now nor can there ever be any moral justification for 'consciously amoral' behavior, for such behavior is inherently immoral.

[5] See The Ethics of Lawyers, page 613, edited by David Luban, New York University Press by Stephen L. Pepper, College of Law, University of Denver.

This 'prize winning essay' acknowledges the so-called amoral role as the standard 'ethical role' for the practice of law in America. The result of this official acknowledgment is that lawyers are instructed to set aside any moral values or formal code of professionally approved ethics when advising their clients. Since that is the opposite of what ethics is about, logic dictates that only deceit and/or self-deceit can explain the retention of the word ethical in the definition of this new 'role'. Let us now examine the meaning of A Lawyer's Amoral Ethical Role in terms of (1) its application in practice and (2) its true moral status.

(1) The practical application of the Lawyer's Amoral Ethical Role.[6]

The legal profession tells us that, when applied in practice, the phrase means the 'suspension' by the lawyer of any moral or ethical standards, when advising his client. To that end we are told that: (1) The Law as written, or as potentially subject to challenge, must be viewed only in terms of its practical consequences and not as a desirable societal end; and (2) The Law should be viewed as subject to the widest and most advantageous possible interpretation for the client and not in the best interests of society as a whole.

For example negligence law must be viewed not as a question of what is right or wrong but merely as: a non consensual taking from the injured party on the part of the tort-feasor, subject … to the cost of damages.[7] Thus an industrial concern assessing and planning conduct which poses risk of personal injury or death to third parties will be guided by a lawyer following this view away from perceiving the imposition of unreasonable risk as a 'wrong' and toward perceiving it as a potential cost.[8] That means that a lawyer following this new 'amoral role' will guide his client to action that could kill! The only concern being the dollar cost of the victims' death to the client!

(2) The legal profession's moral 'justification' for the 'amoral ethical' role.

The legal profession tells us that the desirable social goal of providing 'equal access' to the law for all is a moral good. That 'moral good' mandates access to the law uninhibited by moral obstacles which may not reflect the particular moral view of the client. That is what the 'amoral ethical' role accomplishes. The profession's 'justification' for this position as 'morally right' is asserted by invoking values of individual autonomy, equality and diversity. It says the lawyer remains a 'moral man' temporarily suspending his own sense of morality in the interests of his clients! Most readers will recognize that these arguments are false and pure sophistry. A detailed rebuttal will be made in Federalist 105. For the time being let us examine the real meaning of the word amoral in the context in question.

The real meaning of Amoral in the phrase: A Lawyer's Amoral Ethical Role[9]

A full understanding of the meaning of the word 'amoral' and the implications of 'amoral' decisions on the decision maker (the actor) requires a step by step analysis.

Step 1. Distinction between decisions with and without moral implications.
In the field of human behavior we distinguish between acts which carry moral implications and consequences, and acts which do not.[10] Decisions with moral implications are called moral decisions. Decisions without moral implications are called non-moral and sometimes amoral decisions.

Step 2. Distinction between clear and unclear moral decisions.
Acts which carry moral implications involve moral issues which are sometimes clear and sometimes not. When the moral implications are clear the decision is either a moral or an immoral one. When the moral implications are unclear or contradictory a decision is sometimes made to ignore the moral issue. A

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[6] This prize winning essay by Professor Pepper is the main source for the profession's position as defined in this paper and the next.

[7] Calabresi, Torts - The Law of the Mixed Society, in B. Schwartz, ed., American Law: The Third Century 103, (1976) as quoted in Professor Pepper's Article on page 69/625.

[8] See footnote 5, page 69/625.

[9] In analyzing the real meaning of the phrase A Lawyer's Ethical Rule we must examine the operative word: Amoral. The complete listing of the Random House Dictionary of the English Lange 2nd Ed. Unabridged (1987) definition of Amoral is: 1. Not involving questions of right or wrong; without moral quality; neither moral nor immoral; 2. Having no moral standards, restraints or principles; unaware or indifferent to questions of right and wrong; a completely amoral person.

[10] Not all acts have moral implications. One may eat dinner or not eat dinner as one chooses. Such an act has no moral implications. But refusing to feed one's hungry child, without good reason, is an act that does have moral implications.

conscious decision to ignore a debatable moral issue is sometimes called ‘amoral’, non-moral or non-judgmental.[11]

Step 3. Effect of the decision making process on the decision maker.
In general it can be said that the nature of the act defines the actor. Thus in general moral acts define the actor as moral and immoral acts define the actor as immoral. Thus if a decision involves clear moral issues and/or consequences the decision maker must make either a moral or an immoral decision. That decision defines the actor.

Step 4. Responsibility and accountability of the decision maker (the actor).
Most human beings in civilized societies are required by law and expected by Society to take responsibility for their actions. That responsibility leads to legal and moral accountability for actions taken.

Step 5. The ‘amoral’ actor. The moral imbecile and the wild animal.
Some human beings are incapable of being legally or morally responsible for their actions. They suffer from amoralia,[12] a psychiatric disorder, also known as ‘moral imbecility’. They have psychopathic personalities. Human beings suffering from this disorder are said to make ‘amoral’ decisions. Wild animals who kill prey for food are regarded by men as incapable of knowing the difference between right and wrong. That condition is defined as ‘amoral’ also.

Therefore we can see that ‘amorality’ is an appropriate term for moral imbeciles, non judgmental approaches to generally recognized debatable or conflicting moral views, and wild animals. Otherwise on actions that have clear moral issues and/or consequences moral men have only two choices. They can either act morally or immorally. Neither theology, psychiatry, philosophy or civilized societies recognize any other choice.

The concept of characterizing a conscious choice to set aside one’s morality in order to make a decision with immoral consequences and to call that an ‘amoral’ decision is a logical absurdity. Where moral issues are clear, an amoral decision can only be the result of an involuntary disorder of the mind, but never a conscious choice. Therefore the attempt to characterize an immoral decision as amoral is an attempt to employ sophistical false arguments to avoid responsibility and accountability for immoral actions.

Is a coerced immoral decision amoral?

Is an immoral decision made under duress or life threatening circumstances and thus coerced, amoral? The Nazi War crimes trials gave us that answer. An immoral decision remains immoral even if coerced under life threatening circumstances. The claim by Nazi defendants that they lacked responsibility for immoral, criminal acts was thrown out of court at the Nazi War Crimes trials in Nuremberg. They tried to separate their ‘immoral’ army actions from what they claimed was a ‘moral’ private life by arguing that they were coerced and thus acting ‘amorally’.[13] The Court rejected their argument as a defense. Coerced evil is still evil.[14] Nor does evil have to be all encompassing of an actor’s decision making process for him to qualify as evil. Even Hitler is said to have loved his dog, little children and art.

The ‘Amoral Ethical Lawyer’: Moral or immoral?

There is no conflict between this writer and the profession as to what lawyers are instructed to do. We agree that in counseling their clients lawyers are instructed to act as if they are either indifferent to morals or lack morals completely. The only issue is whether that behavior means that they in fact have no morals. The evidence strongly supports that conclusion. Even the profession admits the possibility exists that lawyers may be doing evil.

Professor Peppers states: If one cannot rely on the client or an alternative social institution to provide that (moral) guide to suggest a moral restraint on that which is legally available, then what the

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[11] Historians and others sometimes prefer to avoid the moral dilemma of 'choosing between conflicting moral views'. They do so by writing in a non-judgmental or 'amoral' manner.

[12] Amoralia: Moral imbecility, psychopathic personality, see *Psychiatric Dictionary* by Robert J. Campbell, (1996-7 7th ed.) ISBN 0-19-510259-2

[13] Though they did not use the precise language in their defense, the essence of their argument invoked the issue of 'amorality' vs immorality.

[14] Although it could concievably be used as an argument for mitigating punishment.

lawyer does may be evil: Lawyers in the aggregate may consistently guide clients away from moral conduct and restraint.[15]

It is undisputed that American society has suffered a major decline in moral standards over the last 30 years. The evidence supports the conclusion that the legal profession bears the greatest responsibility for this state of affairs. However whether one agrees or not with this conclusion it is reasonable to assert that neither the client nor any other institution can be relied on to provide the moral restraint Professor Pepper's hopes exists. That means that what the lawyers are doing **is** in fact, not just **may be** evil. In which case this writer's conclusion that the profession as a whole is immoral not amoral is confirmed even by Dr. Pepper's own analysis.

Does 'part time immorality' exist?

People are not good who decide they will be good and moral 'outside office hours' but that during office hours they will 'suspend' their morality, regardless of the reason. Anyone who acts in a consistently immoral manner is immoral. Anyone who is not a mental defective and who claims to be acting amorally not immorally when he commits what would otherwise be immoral acts is either deceiving himself or trying to deceive others.[16]

Willful 'amorality' absent real moral conflict is therefore logically immorality.
So the concept of an 'amoral ethical role' like the concepts of a 'loving genocide' or a 'virtuous murder' is nonsense and without meaning. Where there is genocide there cannot be love. Where there is murder virtue cannot lie. Where there is amorality there are no ethics. For amorality is indifference to ethics.

The Nation expects all professions to adhere to ethical standards and perhaps lawyers more so than all others. It is now clear that the legal profession has officially abandoned all ethical standards, at least in the providing of advice. It has embraced the role of facilitating evil. We will examine its attempt at justifying this action in Federalist 105.

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[15] Professor Pepper's article page 71/627.

[16] Self deception arising from extreme cognitive dissonance has permeated and perhaps even dominated the legal profession for decades. Persons most likely to suffer from self deception are the legal profession's leaders, including the staff and leaders of the Nation's Law Schools. It is therefore not surprising to observe Aristotelean false arguments originating from these sources.

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July 15, 1997

The abandonment of ethics by the American legal profession through the adoption of the 'Lawyer's Amoral Ethical Role'. The resulting material decline in the Nation's moral standards.

(Part 2 of 4)[1]

We will now rebut in detail the legal profession's attempt to justify its abandonment of ethics, referred to as the adoption of the 'Lawyer's Amoral Ethical Role'. Let us begin by examining the profession's arguments as presented by Professor Stephen L. Pepper in his 1985 'prize winning essay': The Lawyer's Amoral Ethical Role.[1]

The legal profession's moral 'justification' of its abandonment of ethics.

The full title of Professor Pepper's paper is: "The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities". The moral 'justification' for the new amoral role is 'premised primarily upon the values of individual autonomy, equality and diversity'. The basic theory is that morality is viewed as an obstacle to a client's access to the law.

Let us examine these alleged 'justifications'. Like all false sophistical arguments this argument has the initial appearance of logic, but it is the appearance only. The generally desirable values asserted as being served are:

(1) avoidance of conflict of interest,

(2) autonomy, which is independence, (

3) equality, which is synonymous with equity and justice, and

(4) diversity, which is a code word for equality of treatment for all members of our diverse multi-ethnic society.

The legal profession rests its case on those four points. Here are the details of its position:

The 'conflict of interest' and 'autonomy' arguments.

The law is a public good available to all and society is committed to individual autonomy. Autonomy or first class citizenship is often dependent upon access to the law, which means access to a lawyer. Thus if the lawyer facilitates any action that is not 'unlawful'[2] the lawyer does a 'social good'. Therefore neither the lawyer's personal morality nor the guidelines spelled out in a professional code of ethics should interfere with the client's autonomy. In fact such interference would constitute a conflict of interest between the lawyer's desire to impose his moral standards on the client and the client's right to access to information unobstructed by such 'improper' hurdles.

The 'equality' and 'diversity' arguments.

Lawyer's do not share equal moral values. Equality of access to the law dictates that a client not be subjected to the obstacle of one particular lawyer's moral values that other lawyers may not possess. Clients have diverse moral views. Therefore diversity requires allowing each client to do right and wrong in accordance with his own moral views.

The legal profession says it is concerned that the inequality of levels of morality or ethics in the legal profession would serve to create an unequal delivery of legal services. Thus the client receiving

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[1] We must remember that Professor Pepper is not necessarily advocating this position. In light of the professor's current amoral standards he may have viewed his own role as that of 'the devil's advocate', required to put the best face on an indefensible situation. The fact that his essay won the contest with arguments that are utterly without merit, merely confirms that there are no better arguments.

[2] The definition of 'unlawful' is then made flexible enough to include the justification for providing advise that may result in killing innocent people. This is done by indicating and even emphasizing to the client on an 'amoral' basis that a risk analysis on the cost of damages for the unlawful death of potential victims versus the cost of compliance with the law can result in substantial bottom line profits.

services from an ethical lawyer will have a lesser and not equal access to the law as compared to the client seeing a less ethical lawyer. So the less ethical the adviser, the better off the client.

Therefore, since clients cannot be certain that the lawyer they are seeing is the least moral in his profession,[3] the profession's view is that it will create a 'level playing field' by making sure that all its members advise their clients as if they themselves had no morals, i.e. 'amorally'. That means advice from a crooked lawyer will be the same as advice from any lawyer following his profession's 'amoral ethical' guidelines.

Rebuttals to the moral 'justification' of the legal profession's abandonment of ethics.

In general- the false argument of allegedly promoting a 'social good'.The moral justification for the lawyer's 'amoral' role is allegedly premised on promoting the 'social good' of providing a client with the highest possible level of autonomy, equality and diversity. That argument is a false sophistical argument classified by Aristotle as 'secundum quid'. Which is defined as: according to its truth as holding only under special provisos, 'applying a general proposition as a premise without attention to the tacit restrictions and qualifications that govern and invalidate its application in the matter at issue'[4]

What that means is that although the promotion of certain values is generally regarded as a 'social good', the promotion of these values in this way is not a social good. Because in this case the promotion of these values is used to simultaneously promote a recognized evil which is the facilitation of the client's evil intent. The fallacy of the argument is founded on the fact that the alleged 'good' is greatly outweighed by the concurrent evil.

Virtually every crime or heinous act can be presented as arguably promoting a 'social good'. For example: (1) Reducing crime is a 'social good'. Therefore every gangland murder by one gang of another gang's members is a reduction of the criminals left alive and therefore a reduction of crime and a 'social good'. (2) Getting people off welfare is a 'social good'. Therefore a career criminal who avoids welfare through crime is in at least in one respect performing a 'social good'. (3) Reducing government costs is a 'social good'. The cost to the State of keeping prisoners in prison is over $20,000/year. Every prisoner who escapes saves the State the cost of his keep and is thereby performing a 'social good'.

The argument that promoting and facilitating evil by providing access to specialized information on an immoral or 'amoral' basis is a promotion of the social goods of autonomy, equality and diversity is in the same category of false arguments as the above examples. Because no value is desirable when it is used or aids in the facilitation of evil or undesirable ends.

It is also true that values generally regarded as good in themselves may result in highly undesirable consequences. For example our society has no desire to provide 'autonomy' to crooks by making them independent of the police. Or provide 'equality' to crooks by allowing them to 'share equally' with working members of society in the fruits of their labor. Or in the name of 'diversity' to allow unlimited immigration from those areas 'less represented' in our society. Therefore invoking the promotion of a 'noble' value as the achieving of a 'social good' is not necessarily true. Let us now examine the specifics of the legal profession's arguments.

The conflict of interest argument.

This argument asserts that a lawyer's concern with his ethics may place him in conflict with the 'immoral' intentions of his client. This is the least persuasive argument of all. Lawyers are known world wide for their general lack of ethics. The members of the American legal profession lead the world in the absence of ethics. Therefore to suggest that lawyers will regard their own morality as inhibiting anyone else's is a proposition devoid of logic.

What is logical to conclude is that it is the unscrupulous lawyer who will make the most money in a corrupt legal profession.[5] A lawyer preventing his client from acting by withholding legal advice he deems unethical will simply lose his client to his less ethical colleagues. Thus he will make no money at

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[3] The difference between the 'least moral lawyer overall' and the 'least moral lawyer in giving advice' is too fine a distinction for most clients. It is also true that the very best indication of a lawyer's readiness to give the 'least moral' advice is that he is a crook himself!

[4] *Encyclopedia Britannica*, (page 280, Vol 23 15th ed. 1988), Logic. The History and Kinds of, The critique of forms of reasoning, correct and defective arguments.

[5] As will in the short term, the members of any other group who compete with each other. It is the long term adverse effect on the unscrupulous, when conduct enforcement is feared and occurring, that keeps them from pursuing this policy at the time. When, as in the case of the legal profession there is not only no enforcement but official encouragement, unscrupulous behavior and profitability soars.

all! Whereas the unethical lawyer who counsels his client in an unethical/amoral manner has two major money making advantages.

First he can bill his client for his 'information/advice'[6] Then the more unethical and improper the information/advice used by the client, the greater trouble the client is either likely to get into, or seek to avoid and the greater the potential risks and rewards to the client! That is a win/win situation for the lawyer. For in either case the client will have great need for his legal services. It is also well known that the clients well served by the most unscrupulous lawyers are the least likely to argue over routine over billing. These are clients who cannot afford to get into arguments with their own lawyer! For the lawyer knows too much about their business and they need him too much.

The autonomy argument.

The problem of control of access to the law which lawyers tell us they are seeking to correct was unconstitutionally created by lawyers themselves, for their own profit. It is true that some degree of similar control by other professions exists in other fields. But no other profession comes close to the degree of oppressive control that lawyers have acquired. Therefore if they have any real desire to allow greater access to the legal system the best way to do so is for them to give up the unconstitutional monopolistic control they now possess.

All other 'accesses' to specialized services needed by Society such as medical, dental, pharmaceutical, accounting, architectural, engineering, electrical, plumbing, air conditioning, etc., are also limited. Yet most, if not all of these goods and/or service suppliers, have ethical codes to which they generally adhere. No-one has suggested that the need felt by consumers to 'freely access' services provided by other professionals is a good reason to throw out all ethical standards. If the legal profession truly believed this argument why has it not called for the need for the adoption of 'amoral' ethics for even a single other supplier of services?

Living in a civilized Society involves making some personal sacrifices for the general good. The best way for each of us to act in the best interests of the whole society is on the basis of strong ethical standards. That which we may give up as individuals in the short term is more than made up by the advantages that accrue to us all collectively, when we all live by moral standards. All professional groups (except lawyers) seem to understand that.[7]

The equality argument

The same arguments that invalidate the 'autonomy' argument are valid here. No other profession regards potential differences in the morals of its members as a problem in the delivery of goods or services. Even if it did, the emphasis should be on establishing and maintaining the highest possible values, not the lowest. Suggesting the removal of all moral values from everyone to achieve equality makes no sense whatever. That worse than useless 'solution' hurts society immeasurably. It takes from the client far more on a collective basis than he can hope to gain on an individual basis. It also tends to 'legitimize' corruption and immorality. It destroys the souls of the practitioners and primarily benefits the worst scoundrels in the profession. It certainly does not help the public that the profession is sworn to serve.

The diversity argument.

'Diversity' is served we are told, by ensuring that that the 'diverse' levels of potential immorality of clients are not inhibited in their expression by the obstacle of a lawyer's moral standards. This misuse of the word 'diversity' is appalling. No public good is served by facilitating the evil intentions of immoral clients by calling that facilitation an effort to create as many 'diverse' possibilities for action as a client's absence of morality may desire to implement.

Consequences of legal profession's 'ethics' spreading to other professions.

Let us examine the impact on Society if the 'amoral'/immoral ethical role of lawyers spreads to other professions. In principle the same arguments asserted by the legal profession can be made by many other professions as justification for them to abandon their ethics. If that happened, doctors for example, might become obligated to provide medical information on a so called 'amoral' basis to patients wishing to harm themselves or others. Accountants would be obligated to provide specialized information

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[6] Judging from the income levels and current indictments of some drug lord defense lawyers in the Miami area, the more unethical the advice asked for and received, the higher the fee to the lawyer.

[7] Although it must be said that so long as they maintain their unconstitutional control of all government this statement is true for all of society except them!

to clients wishing to evade taxes. Architects would be obligated to provide information necessary to avoid building inspections. As a result people would die, taxes would be evaded and buildings might collapse.

If non-lawyers tried that sort of behavior there is little doubt that the law would characterize such action as 'aiding and abetting'. The definition of which in Black's Law Dictionary is: Help, assist, facilitate, encourage, counsel or incite the commission of a crime. It comprehends all assistance rendered by words, acts, encouragement, support, actual or constructive, to render assistance if necessary.

When a lawyer explains to a client that he must look at the law as flexible and only in terms of its consequences and not as an obligation to obey , it is reasonable for the client to perceive that advice as: helping, assisting, encouraging, and supporting (at least morally), as well as facilitating the object of the client, including breaking the law as written, even when that means the commission of a crime. Furthermore the 'amoral/immoral' lawyer stands ready to render assistance if necessary to hide the truth from authorities on the basis of basis of the 'lawyer/client' privilege. How the legal profession can perceive that as anything other than 'aiding and abetting' must be regarded as a continuing tribute to its infinite capacity for self deceit.

Abandonment of ethical standards: Conspiracy or not?

The following is a recurring question that arises regarding these issues: Is what happened the result of a conspiracy or just the natural evolution of unbridled power? The evidence does not support any conclusions with certainty. There are almost one million lawyers in this Nation, most of whom had little to do with consciously adopting a 'policy of abandonment of ethics'. However the law regards results that occur from action that are the same as results that would result from a conspiracy as a constructive conspiracy. To that extent the results suffered by the Nation make the action taken by the legal profession a constructive conspiracy.

The law defines a conspiracy as: An agreement between two or more persons for accomplishing an unlawful end, or a lawful end by unlawful means.[8] It is certain that at least two people agreed to accomplish the end intended . Was the end 'unlawful', or was it a 'lawful end by unlawful means'? If put to a jury of non lawyers there is little doubt that both the means and the ends would be deemed unlawful. That would make it a conspiracy under the law. However as long as the legal profession unconstitutionally controls all government it will probably prevent that question from ever reaching a jury.

PUBLIUS II
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[8] See Black's Law Dictionary, West Publishing, Revised Fourth Edition (1968).

The Federalist: The state of the Union under a failed Constitution

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The abandonment of ethics by the American legal profession through the adoption of the 'Lawyer's Amoral Ethical Role'. The resulting material decline in the Nation's moral standards. (Part 3 of 4)[1]

Federalist 104 described the abandonment of ethics by the legal profession and their attempts to morally justify the unjustifiable. Federalist 105 provided the rebuttal to the alleged moral justification. We now need to turn our attention to the consequences of the adoption of the so-called 'Lawyer's Amoral Ethical Role'[2] on our Society. These consequences are the material undermining of both the Rule of Law and of the moral standards of the Nation.

The Rule of Law and a just Society. The four pillars of a just society.

Decent societies strive to be just and righteous. There are four pillars that constitute the supports for the foundation of a righteous society. These are: Government, the Church, the School and the Family.[3] Of these Government in general and the Judiciary branch in particular are expected to lead by example in righteousness, fairness and justice. The 'Church' does so by invoking its moral authority and the power of the word of the Lord to encourage, or sometimes frighten people, into staying on the straight and narrow. The School does so by teaching moral codes and honor systems in class. The Family does so by teaching the same at home.

The path of virtue and righteousness is a straight and narrow uphill road that is full of rocks and pitfalls. The road to hell is a downhill slippery slope, wide, comfortable and paved with good intentions. It runs parallel and ever beckoning to the path of virtue. The nature of man makes it easy to shift from virtue to sin, from the hard uphill road to the easy downhill slide. At the present time it is obvious that the legal profession has not chosen to travel the hard road.

The principle of the Rule of Law

The Bible tells us that God gave Moses the Ten Commandments as the Rule of Law to be obeyed by the people of Israel, not as laws to be subjected to self-serving 'interpretation'. From that day until the days of the advent of the American legal profession's new concept of the 'lawyer's amoral ethical role', the law has been regarded as the law, made to be obeyed. Laws are not suggestions, advisory opinions, or guides to facilitate calculations of the cost effectiveness of non-compliance. Obedience and respect by all of laws as written is the meaning of the Rule of Law.

To be sure man's laws are not perfect. They represent the opinion of the enactors not knowledge. Laws can never provide the kind of certainty that science provides. In a democracy it is hoped that laws reflect justice and the majority views of the people. However not all laws are good. Sometimes good men promote civil disobedience to protest bad laws. Sometimes they succeed in changing bad laws.[4] However the general principle for democratic civilized societies is that the Rule of Law is the cornerstone of their system of justice and their civilizations.

There is no room in civilized societies for members of the Judiciary to consistently counsel clients to question compliance with laws from a personal advantage and cost analysis point of view. That

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[1] This Paper and Federalists 104, 105, and 107, shcould be read as a single unit.

[2] The Lawyer's Amoral Ethical Role is merely the most visible and dramatically egregious result of the tryannical control by lawyers of all government. This official 'Role' exacerbated an existing bad situation by supplying 'moral justification' for the facilitation of evil to those left with some moral standards.

[3] The word: 'Church' is used here generically as a term for any organized religion.

[4] Those who practice civil disobedience are usually prepared to face the civil and criminal penalities that the then current law provides.

practice has always been known to prevail with gangsters, criminals, moral imbeciles, and other moral and social misfits, but never with members of the legal profession of any civilized society before this one.

The consequences of the 'Lawyer's Amoral Ethical Role' on the Rule of Law and moral conduct.

The first and most dramatic consequence of the so called 'Lawyer's amoral Ethical Role' is the material undermining of the Rule of Law and of ethical conduct in Society. That result came about, whether intentionally or not, by the material undermining of the ability of all four pillars of the Rule of Law to promote ethical behavior.[5] Let us examine how this was done.

(1) The Judiciary.

The Judiciary is the heart and soul of the problem. It is primarily responsible for the decline of morals and the Rule of Law, in large part as a result of the evolution of the 'Lawyer's Amoral Ethical Role'. For the following reasons:

It has become the main proponent for facilitating and/or counseling disobedience to the Rule of Law as a direct result of the evolution of the so-called Lawyer's Amoral Ethical Role. And as a further consequence:

It has failed to act against the unconstitutional control by lawyers of all government.

It has acquiesced in the creating of so-called Unified State Bars which are bodies elected by nobody making laws that affect everybody.

It has permitted lawyers to control their own discipline and rules in direct contradiction of the general principle that none shall be judge in their own cause.

It has been responsible for the dramatic and continuing decline in the provision of legal services to the people without acting to effectively resolve that problem.

It has profited dramatically from its activities out of all proportion to the services it renders.

It has allowed its members to exercise tyrannical power over all through the use, among other things, of the power of frivolous lawsuits and the power to abuse procedural rules.

It has allowed the profession to become an enormous financial and emotional burden to the Nation. The cost of that burden in dollars alone is so high that its removal would suffice to wipe out the National debt, now over five trillions dollars, over a 5-year period.

(2) The Church.

The power and authority of the 'Church' has been materially undermined by the legal profession on the basis of the constitutional principle of 'separation of church and state'. The principle is sound but the envelope has been pushed to extremes. To the point where the ACLU (American Civil Liberties Union) has challenged the right of a judge to display the Ten Commandments in his courtroom.[6]

The founding fathers believed in God and invoked rights that they asserted came to man directly from God. To many in the Nation the separation of Church and State was not intended to go as far as the Judiciary has seen fit to push it. One may agree or disagree with that position. However the fact remains that the authority of the Church and therefore the Church's ability to effectively influence 'moral' behavior has been dramatically reduced as a result.

The Church[7] has increasingly become the target of lawsuits intended to try and attach responsibility to it regardless of fault. That kind of activity undermines the ability of the Church to recruit good people to serve and to do the work for which it exists. The result is that the Church's ability to influence behavior in a positive way has been materially reduced by the actions of the Judiciary.

(3) The Schools

The authority of the schools to run their institutions in the best interests of their students in particular and Society in general has been materially undermined by the legal profession. In an excess of

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[5] This occurred as an evolution over time, not as a dramatic change. That is why, like the frog which quickly jumps out of hot water into which it is dropped, but allows itselt to be boiled to death if the water temperature is increased very slowly. The American people are being destroyed by the gradually perceptible ethical decline of the legal profession from a level similiar to that of their international colleagues to the present level of 'amoral/immoral' leaders of the world.

[6] A legal challenge to such a display was reported recently. The matter has not yet been resolved.

[7] Like everyone else in society.

zeal propelled in part by the new ‘amoral’ role, the legal profession and the Judiciary have succeeded in doing the following:

Materially undermining the ability of public schools to discipline unruly students, often resulting in classes where it becomes very difficult for any students to learn properly.

Materially undermining the ability of public schools to control the introduction of weapons on to school premises, resulting in teachers as well as students being injured or sometimes killed, as well as often resulting in a prevailing atmosphere of fear not conducive to learning.

Materially increasing the costs of running public schools by enforcing alleged constitutional ‘student rights’. As a result the cost of compliance with ‘laws’ prompted by a fear of potential lawsuits resulting from failure to do so, consumes a substantial part of school budgets.[8]

Materially increasing the dangers to life and limb from ‘juvenile’ criminals by establishing a system that gives so called ‘juveniles’ virtual immunity under the law.

Materially undermining the ability of public schools to teach and enforce proper language and respect between students and others, by sanctioning in the name of ‘freedom of speech’ the right of individuals arrested to address the worst profanities to the arresting officers.

Materially undermining the ability of public schools to establish adequate educational standards for their students by suing the schools for failing to meet any standards set.

Materially undermining the ability of the public Schools to exercise sufficient control over their students to enforce moral codes and properly instruct students to respect the law.

(4) The family

The family where it is still strong and united continues to be the main promoter of ‘moral’ behavior. But it does not exist in a vacuum. The entire Society, infected with the immoral role that lawyers play every day, assaults it. The authority of the Church which once gave great moral direction and support to the family has been dramatically weakened by the legal profession. The public Schools have been similarly weakened. So the battle continues, but it is being lost not won.

The Lawyer’s ‘amoral’ ethical role has successfully undermined the Rule of Law and moral conduct in the land. It has done so directly by officially adopting an attitude that encourages disobedience of the law. It has also done so by undermining directly and indirectly the three other main sources of respect for moral principles and the Rule of Law: The Church, The Schools and the Family.

The result in practice of the Lawyer’s Amoral Ethical Role.

How does this new role change what goes on every day in the practice of law and how does it affect the Nation? Let us see what happens to the client.

Effect on the client Let us imagine almost one million lawyers trained to view the law as ‘flexible’, changeable, interpretable in however far fetched way in the best interests of the client, and at worst viewed as a guide to the cost of non compliance. If each lawyer transmits this message to a single client a day, over a period of one year the message has been transmitted to over two hundred million people. Many clients will discuss the message with partners, friends, family and others. So the message is repeated loudly, clearly and often to the whole Nation in a very short time. Let us examine the result on the client’s behavior pattern.

The client learns that he can never trust the written word, let alone the spoken word.

The client learns that his own lawyer will help facilitate that which he thought was ‘wrong’. Therefore if the ‘lawyer goes along’ it can’t ‘really be all that wrong’.

The client learns that his competition will be listening to similar advice. Therefore if he decides to act ‘ethically’ he may be accepting a potentially fatal competitive disadvantage.

The client learns that his own lawyer has adopted this new idea called ‘amoral’ ethics. He perceives that this idea seems to be bringing his lawyer a lot of money. Perhaps he may decide to go along himself with the same ‘amoral’ ethics in his own business.

The client perhaps learns that all government is in the hands of lawyers or at least that lawyers are very well represented in government. He understands that the same ‘amoral’ lawyer counseling him

[8] Access to private schools is controlled by contract not by the 'entitlement' right of all to public schools. As a result it is known that private schools that do not have to comply with the same set of rules that public schools do, provide far better educational results at a lower cost.

now may run for and achieve public office. He then realizes that those in public office who are lawyers are probably as 'amorally corrupt' as his own lawyer! Perhaps he decides that they are all therefore crooks and stops bothering to vote at all.

The client begins to recognize that if it is 'all right' to listen to and follow advice on how to be dishonest and get away with it at the cheapest dollar cost, then the 'best lawyer' is the least honest. His criterion for choosing a lawyer changes from the candidate who is most competent to the lawyer with the highest disregard for ethics and the law.

The client learns that the best lawyer in this country is the one best able to show him how to violate the law with impunity.

Effect on the lawyer. Lawyers start out as honest as other people. Some make the transition to outright dishonesty very comfortably. They either have very weak moral compasses or suffer from extreme cognitive dissonance. What happens to the others?

Some cannot live with the moral problem. They 'run from the law' and leave the profession.

Some can live with the moral problem but not without some level of discomfort. That discomfort often manifests itself in depression, alcoholism and drug abuse.
What other effects occur?

One cannot spend all day facilitating evil and return home to the role of a 'moral person'. That is because the 'habit' of facilitating evil blurs moral distinctions everywhere. Thus lawyers will not long remain 'moral' men, even if it were possible to separate the actor's 'moral' personal life from his 'amoral/immoral professional' life.

The 'amoral' approach also blurs the distinction between advising and participating in illegal activities. Thus many lawyers become de facto accomplices of their client's evil intentions. This would seem particularly true in the field of drugs. Newspapers have reported stories of drug lawyers 'standing by' for enormous 'retainer fees' to provide immediate assistance on occasions when drugs are being illegally shipped into the USA. The fees are deemed 'earned' even if the criminal act succeeds without attracting the attention of the authorities. To most people that sounds like a partnership between the lawyer and the drug lords.

Conclusion

The French say that which is not moving forward is moving backwards. No Nation stands still in its attempts to seek justice and righteousness for all. It moves forward or slides backward. The slippery slope to hell creates increased momentum for evil with the passage of time. Hitler's path to genocide began with the Nuremberg laws in 1933. It took 8 to 10 years for his momentum to reach its genocidal zenith. The legal profession's so-called 'amoral ethical role' is often a 'facilitation of evil' by the profession's own admission. It is immoral and an affront to civilized societies. It has undermined the ability of all four pillars of our 'just society' to do their job. Its evil momentum is increasing and it will destroy the Nation if it is not stopped.

PUBLIUS II
(Ronald Bibace)

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The Federalist: The state of the Union under a failed Constitution

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The abandonment of ethics by the American legal profession through the adoption of the 'Lawyer's Amoral Ethical Role'. The resulting material decline in the Nation's moral standards.

(Part 4 of 4)[1]

We have seen how the American Legal Profession's 'ethics' evolved from the ethics of righteousness and virtue to the current abandonment of ethics, euphemistically described as the 'Lawyer's Amoral Ethical Role'. Knowledge about the 'official acknowledgment' of this new 'Role' is not widespread, nor does the media report in outrage about it. The reason is that concealing the reality of the abandonment of ethics is a deliberate policy which helps the profession maintain its tyrannical control over the Nation. One of the purposes of these papers is to show the Nation just how that is done.

Federalist 103 described the various forms of deceit used by the profession on a day to day basis. Let us examine the particular forms used to (1) conceal the truth from the Nation, and (2) 'justify' the truth to itself and those who discover it. To achieve these ends the profession makes use of the following instruments of 'poly' deceit and 'color of law' deceit: (a) False assumptions, (b) Misdirection, (c) False statements (d) False language, (e) False logic, (f) The Big Lie, (g) Deliberate misinterpretation of the law, and (h) Aristotelean false argument.

Misguided believers or intentional deceivers?

As we review the overwhelming evidence of wrongdoing, deceit and tyranny against the legal profession we are again forced to inquire: How can this be? Are we dealing with monsters who are willing to destroy their own Nation for the proverbial 30 pieces of silver, or is it something else?[2] There are only two possibilities. Either the members of the legal profession know exactly what they are doing and are therefore intentional deceivers, or as a function of extreme cognitive dissonance (which is perhaps some 'profession specific' form of amoralia[3] they have lost their ability to distinguish between right and wrong. If so they are misguided believers. The evidence supports both points of view for different groups of lawyers. It appears that those closest to the top of the leadership have become misguided believers. While many of those least in control of the profession's destiny who know the truth have become whether they like it or not, intentional deceivers.[4]

The first level of deceit: Publicly professed morality versus immoral reality.

The professed public morality

Every legitimate profession purports to maintain a commitment to the highest ethical standards. Doctors have a simple motto: First do no harm. The Army established an honor system at West Point which teaches and adheres to the highest possible ethical standards.[5] Other professions establish 'mandatory' rules of ethical conduct for their members. But none publicly state the same high level of need for ethical standards as do the members of the legal profession. In Florida they do this in three

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[1] This Paper and Federalist #104-106, should be read as a single unit.

[2] The evidence is so overwhelming that most people will agree with the conclusions established concerning the wrong doing involved. That is therefore not the issue.

[3] Amoralia is defined in Campbell's Psychiatric Dictionary (ISBN 0-19-510259-2 7th ed.) as a psychiatric disorder resulting in moral imbecility.

[4] When you are aware of the truth it is either that or leave the profession, as in fact may do.

[5] Obviously subject to the limitations of the imperfections of man's nature. The Army code recognized but does not tolerate these imperfections. Punishment is meted out to those who fail to respect the Honor Code.

ways:[6] (1) By The Florida Supreme Court mandate which proscribes ethical standards as a matter of law in the original Supreme Court decision that created the State Bar; (2) By the Oath of admission which requires all lawyers to swear to an oath of office in order to belong to the Bar; and (3) By The Florida Bar Rules enacted and mandated by the Florida Supreme Court to regulate the ethical conduct of lawyers. Let us examine these ways.

(1) The Florida Supreme Court mandate.

On June 7, 1949 in a case entitled Petition of Florida State Bar et al; 40 So. 2d 902, the Florida Supreme Court created the State agency/private agency[7] known as the Florida Bar, granting lawyers monopolistic control of what lawyers call 'the practice of law'.[8] It declared attorneys 'officers of the Court' and declared the Florida Bar 'an arm of the Florida Supreme Court'. Conscious of the criticism that this decision would be perceived as an attempt to enrich its members at the public's expense, it set forth some standards as a matter of law.

These standards require: 'that on the theory the he (the lawyer) is such an important factor in the administration of justice this Court has held that a lawyer's responsibility to the public rises above his responsibility to his client. The very nature of our democratic process imposes on him the responsibility to uphold democratic concepts regardless of how they affect the case at hand.' [40 So. 2d @ 908] (Emphasis added). In the same opinion the Court went on to say that 'If he [the lawyer] does not approach the law as an avenue to perform a fine public service, work hard, live by faith and die poor, he should turn to some other business for food and shelter and raiment.

(2) The oath of admission to the Florida Bar.[9]

The oath is mandatory and non-compliance is allegedly discouraged by the threat of potential disbarment for willful violation. It sets forth a list of sworn affirmations consisting of the highest possible moral goals. Among which the following are of particular interest:

I will support the Constitution of the Unites States and the State of Florida.

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purposes of maintaining causes that are confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will never reject, from any consideration personal to myself, the cause of the defenseless or the oppressed, or delay anyone's cause for lucre or malice. So Help me God.

(3) The Florida Bar Rules.

Chapter 4 of the RULES REGULATING THE FLORIDA BAR IS entitled Rules of Professional conduct. The Bar establishes in 40 pages of small print what it regards as the high moral level of conduct required for lawyers to remain in good standing with the Bar.

The immoral reality

The legal profession has since 1985 already officially acknowledged its 'amoral/immoral ethical role'. We therefore know that all of the above public assertions of high standards are meant for public consumption not actual practice. Let us look at specific situations.

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[6] The specifics of the example come from the State of Florida. In general the same standards apply everywhere in all other States that have 'Unified Bars'.

[7] This State agency raises money by 'taxing' Banks under the IOTA (Interest on trust Accounts) through its alleged powers. It also makes rules for all Floridians. It lobbies the Legislature unconstitutionally to push its agenda favoring lawyers. It acts as both a State agency and a private agency, putting on whatever hat suits it purpose and its ad hoc need.

[8] An expression which defies accurate definition other than the vague circular definition of 'what lawyers do'. Legal scholars have often expressed the opnion that the vagueness of the definition alone renders the 'monopoly' of the 'practice of law' unconstitutional.

[9] The Florida Bar has established a policy of printing the oath in every issue of its monthly Bar Journal magazine. Perhaps it hopes to remind its members that the oath exists since the profession's acknowledged policy is directly contradictory to that oat.

(1) The Florida Supreme Court mandate.

Notwithstanding the law, lawyers seem to regard themselves as owing 100% of their responsibility to their client and zero responsibility to 'society'. Every single lawyer who was questioned by this writer on the issue declared himself both unaware of the law and unwilling to follow it, even after agreeing that it was indeed the law! Lawyers also unanimously stated that they were far more concerned with the potential exposure to a malpractice suit if they obeyed the law, than with any consequences from their own disciplinary authorities if they did not. The record indicates that since the 1949 mandate that created the Florida Bar there has never been a single case adjudicated[10] under Florida law in which anyone was ever prosecuted for regarding his responsibility to his client as exceeding his responsibility to society.

(2) The Oath of admission to the Florida Bar.

The evidence is clear that in practice the Oath of admission means little or nothing. The Florida Bar exercises an unconstitutional control over the disciplining of lawyers. It consistently stacks the cards against all complainants. It promulgates unconstitutional Rules. It does not even recommend changing those Rules when its own Special Commissions on Rules tells it to. When the Florida Supreme Court does make changes in the Rules, the Florida Bar Staff ignores changes with which it does not agree. That is precisely what the Florida Bar did on the matter of the 1989 Florida Supreme Court order striking the unconstitutional Bar Rule allowing Lawyers to be represented by other lawyers and conduct a mini-trial at probable cause hearings on complaints against them.[11]

In this context about 97% of all complaints are consistently dismissed by the Bar for 'absence of probable cause'. Half the other 3% result in a slap on the wrist. So 1.5% or about one complaint in 70 may result in some appropriate punishment. These numbers are outrageously out of proportion with the result of complaints against all other professions. So much so that the statistical evidence is over ten trillion times more than sufficient in a court of law, to make a case for Florida Bar wrongdoing in the administration of disciplinary procedures. That evidence was presented to the Supreme Court by this writer in 1989. The Court did nothing.

Thus though they swear to do so, the evidence is overwhelming that lawyers:

Do not support either their State or the US Constitutions. If they did they would not be unconstitutionally in control of all government or holding public office outside the judiciary.

Do not refuse to counsel suits and proceedings that are unjust, or refuse to employ unjust defenses. The 'lawyer's amoral ethical role' mandates the opposite action.

Do not employ means 'consistent with truth and honor' or refuse to 'mislead the judge or jury' by artifice or false facts or law' for the purpose of maintaining causes. That too is in conflict with the reality of the 'amoral'/immoral role they have chosen to play.

Do not refuse to reject from 'consideration personal to themselves' the cause of the defenseless or oppressed, or refuse to delay causes for lucre or malice. That is their stock in trade. They have made the access to the law impossible for the vast majority of the Nation by unconstitutionally monopolizing the practice of law on pain of prison, for the sole purpose of financial 'considerations personal to themselves'. They have themselves created enormous populations of 'defenseless and oppressed' who are that way because the profession has shut off their access to justice.

(3)The Florida Bar Rules.

The evidence is also clear that the Florida Bar Rules, like the Oath of Office and the Supreme Court's mandated behavior, do not represent a compelling reason for conforming behavior or a source of sanctions for failure to obey.[12] Bar Rules may even be interpretable as condoning or even sanctioning lies by lawyers in defense of their clients. For example Bar rules call for 'zealous representation' of a client. This writer has not been able to find any specific definition of the words 'zealous representation' or 'zealous advocate'.

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[10] It is extremely unlikely that the issue has ever been raised at all.

[11] The Bar facetously argues that the striking of an unconstitutional Rule only means that the stricken Rule is no longer mandatory and that it still has the right to exercise it on a discretionary basis.

[12] Except for the most utterly egregious behavior. The approximate equivalent in the criminal field would be the refusal by prosecutors to diligently pursue any matters except murder cases supported by overwhelming evidence.

However the words ‘zealous witness’ are defined in Black’s Law Dictionary as: An untechnical term denoting a witness, on the trial of a cause, who manifests a partiality for the side calling him, and an eager readiness to tell anything which he thinks may be of advantage to that side. In lay person’s words: a willing, ready and able liar. The ‘plain meaning’ of the word zealous in the term ‘zealous representation’ is the same as its meaning in the term ‘zealous witness’. Thus the Bar rule requiring this behavior appears to be the quasi-official sanctioning by the Bar of lying and unethical behavior by lawyers.

The legal profession’s use of particular tools of deceit to conceal the truth of their tyranny and to ‘justify’ their unethical behavior.
It is important for the Nation to learn how to recognize the false arguments consistently made by the profession to conceal and maintain its tyrannical control over the people of this land and to ‘justify’ the unethical behavior of its members. Here is an incomplete list of the particular tools of deceit used by the profession for these purposes.

The Big Lie. The consistent false assertions from ‘authoritative sources’, such as the judiciary, the law schools, television programs sponsored by the profession, etc., that the profession is ethical constitutes the big lie. It works best when the people hearing it are not also constantly suffering a reality that enlightens them. The big lie includes within it other tools of deceit such as the false statement, for it is merely the ‘false statement’ repeated continuously.

Secundum quid. That is the Aristotelean false argument identified by the use of an argument generally true but not in the specific case at Bar. All arguments by Professor Pepper to the effect that autonomy, equality and diversity are ‘social goods’ are secundum quid false arguments since the ‘social good’ they may do is outweighed by the evil they certainly do.

False Premise. The argument by Professor Pepper that a ‘conflict of interest’ may exist between a lawyer and his client is based on the false premise that the lawyer may be more ethical than his client. That premise is false in the overwhelming majority of cases.

Non sequitur. The argument that a potential ‘conflict of interest’ between the client’s ethics and the ethics of his lawyer should be resolved by the process of having the lawyer abandon all ethics is a non sequitur, for it does not follow logically. There are many other solutions to this problem (such as withdrawing), that do follow logically but not this one. Both secundum quid and non sequiturs are examples of false logic, another tool of deceit.

Conclusion

Federalists 104, 105, 106,and 107 have demonstrated that the legal profession has formally abandoned all ethical standards but continues to assert it is ethical. The evidence is conclusive that these assertions, as well as the arguments that allegedly support them, are tools of deceit of one kind or another, and that as a result of the policy of abandonment of ethics the legal profession must take most of the responsibility for the material decline of the Nation’s moral standards and the evil consequences that development has inflicted on the Nation.

PUBLIUS II
(Ronald Biba ce)

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April 17, 1998

Constitutional Guardian web site opening page

MENU

A. MISSION STATEMENT

The need and purpose for the mission statement

B. CONSTITUTIONAL GUARDIAN PLEDGE

C. BECOMING A CONSTITUTIONAL GUARDIAN

- Cost: zero in dollars
- Commitment level: Personal choice.

D. UPSIDE/DOWNSIDE OF REMOVAL OF LAWYERS FROM ELECTIVE OFFICE.

E. CONSTITUTIONAL GUARDIAN ACTION PLAN

- Information distribution
- Private advocacy
- Public advocacy
- Group organization
- Assertion of legal rights
- Public endorsement.

F. FEDERALIST PAPERS 86 t0 107 OUTLINE

(see: Feds Outline 86 to 107 July 1, 1997)

G. FEDERALIST PAPERS BY SUBJECT

Cognitive dissonance in the legal profession- Federalist 95

Corruption in the legal profession - Federalists 97, 98, 99, 100 and 101

Deceit by the legal profession - Federalist 103

Defenses by the legal profession - Federalist 87, Federalist 88 and Federalist 89

Ethical abandonment by the legal profession - Federalists 104, 105, 106 and 107

Overview - Federalist 86

Public support - Federalist 96

Treason by some members of the legal profession. - Federalists 92, 93 and 94

Tyrannical instruments of the legal profession - Federalist 102

Tyranny by the legal profession. - Federalists 90 and 91

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H. CONSTITUTIONAL GUARDIANS VERSUS OTHER SOLUTIONS TO JUDICIAL/LEGAL ABUSE AND/OR TYRANNY.

- Overview
- Fully Informed Jury Association
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- ‘Divorce Wars’
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I. LINKS

J. LETTERS FROM RONALD BIBACE

K. LETTERS TO RONALD BIBACE

April 18, 1998

The following is the Constitutional Guardian Mission Statement to be included on the Internet Web Site:

A. Mission Statement

Constitutional Guardians of America is a grass roots movement that was established to create a permanent guard of Americans to guard the Republic from the 'elected guardians themselves'. At this time that requires that the Constitutional Guardians seek to rescue the Republic from the legal profession's unconstitutional tyrannical control. We propose to do so by educating the American people to use the ballot box to remove lawyers from elective office in the legislative and executive branches of Government.

To achieve that end the Constitutional Guardians will use this web site to provide conclusive arguments about the constitutional violations, abuse of power and massive deceit used by the legal profession to achieve its current tyrannical power.

Information will also be provided as to the enormous harm in treasure and kind that this tyrannical control has cost the Nation. Harm that has already adversely materially impacted Social Security, Medicare, Healthcare, the Nation's education programs and Crime, to name only a few key areas.

April 17, 1998

The following is the Constitutional Guardian Pledge to be included on the Internet Web Site

B. Constitutional Guardian Pledge

As a citizen of the United States committed to ensure the fruits of liberty and freedom for myself, my family and the people of America,

I pledge to become a Guardian of the Constitution of the United States of America and a guardian of those the Nation has elected to public office who have sworn to support and defend the Constitution, and to actively seek the removal from public office of those who fail to do so.

April 17, 1998

The following is the information to be included in the opening page MENU of the www.constitutionalguardian.com web site under

C. Becoming a Constitutional Guardian

C-1 **The Process**: All that is required is that each individual review the issues, make a determination that he or she wishes to make a difference and take on the full responsibility of citizenship in a free society. The Pledge can then be made privately as a commitment to oneself to act, or publicly by signing the pledge and mailing a copy to this writer at the address on the HOME PAGE, or email it to bibace@netdor.com

C-2 **The Cost:** Zero in dollars. There is no payment of any kind required at any time in order to become a Constitutional Guardian. Nor will any public commitment to become a Guardian lead to solicitation of funds by this organization. Individual Guardians may make individual decisions to spend their own funds to advance Guardian goals in their own way. The decision as to whether, when, where and how much to spend remains theirs at all times.

C-3 **The Commitment level:** Commitment levels will always be a matter of personal choice for each Guardian. That level will vary in accordance with the desire and concern of each individual Guardian. That commitment can remain at a minimum level, limited to never voting for a lawyer oneself, rise to a maximum level of devoting substantial amounts of one's time, money and energy to saving the Nation from tyrannical oppression, or settle anywhere in between.

April 17, 1998: The following is the information to be included in the opening page MENU of the www.constitutionalguardians.com web site under:

D. Upside/Downside of Removal of Lawyers from Elective Office

D-1 Preamble: The purpose for writing the Federalist Papers (86 to 107) and the establishment of the Constitutional Guardians is the removal of lawyers from elective office in the executive or legislative branches, in order to restore constitutional government, liberty and justice in the land. Persuading the American people that this course is the only right and proper one is dependent on the logical, legal, and constitutional validity of the arguments made, and an analysis of the Upside/Downside potential of the implementation of the idea.

The first task has been accomplished to the overwhelming satisfaction of the vast majority of those who are familiar with the position. Along with the conclusive arguments founded in logic and constitutional law the Federalist Papers (86 to 107) discuss the enormous advantages that are reasonably certain to flow from such action. Some of these advantages, known as the **upside** are:

The Upside

Savings to the Nation in the order of one trillion dollars a year, or 15% of GNP, or over $2.7 Billion a day; restoration of ethical government; restoration of an effective Bill of Rights, (the enforceability of which is now financially unattainable for the vast majority of Americans); divorce without wars; saving Social security and Medicare as part of the trillion dollar a year savings; the reduction of crime and the criminalization of the police; accessibility to the Courts for all; meaningful educational reforms that would eliminate the scourge of illiteracy; tort reform that would favor victims over lawyers, and much else.

We now address the second question: What would the cost to the Nation and/or lawyers be if it turns out that it was error to remove lawyers from public office? That ‘cost’, known as the **downside**, would be:

The Downside

There are 435 Congressmen, 100 Senators, One President and One Vice President, elected to the United States Federal Government. That is a total of 537 elected officials. The States have, on average, less than one third as many elected officials. (Florida, the fourth largest State has less than one third as many). Therefore the total of all elected officials in the Nation can be said to be no more than a total of about 10,000 people. If control of over 50% constitutes absolute control, it would suffice that no more than some 5000 lawyers hold public office for that control to exist. Effective control can be achieved with a strong plurality of as few as say 3000 lawyers.

So all that is being called for is the removal from elective office, through the ballot box, of a mere 3000 to 5000 lawyers. They are the only one’s directly affected. They constitute about one third to one half per cent of all lawyers in America. Or about one in 200 lawyers, and only about one in 50,000 Americans. All these lawyers are skilled politicians or they would not have been elected. All have excellent networks and connections. In general all the evidence supports the conclusion that career paths for lawyers who leave public office today is a) more lucrative employment, b) retirement or c) prison. (Even those who go to prison seem to do all right when they get out).

There is therefore absolutely no reason to believe that lawyers who would otherwise be elected to public office are losing out on gainful employment or legitimate income potential. If they have a burning desire ‘to serve their country’ there are many other ways besides being elected to public office that will serve as well.

Whatever skills lawyers bring to the Legislative and Executive Branches they can still bring as advisers not decision makers. Therefore no argument can be made that their particular ‘skills at the law’ would be lost or that lawyers alone are equipped to govern. To assert that is to argue that the other 259, 995,000 people in this land who are non-lawyers are too stupid to either govern on their own or listen to the advice of others. That is nonsense.

Therefore neither the lawyers in question who might otherwise have served in elective office, stand to suffer materially in any way, nor does the Nation. Therefore it is evident that the enormous upside combined with such an insignificant downside should be enough logically to recommend the proposed solution even absent any other legal or constitutional argument. How much more so then when both logical and constitutional arguments favor the action?

April 17, 1998

E. Constitutional Guardian Action Plan

CONSTITUTIONAL GUARDIANS VERSUS OTHER SOLUTIONS TO JUDICIAL/LEGAL ABUSE AND/OR TYRANNY

H-1 Overview.

Correcting problems can be done on a temporary short term basis, or a permanent long term basis. Thus a leaky roof needs an immediate patch to stop the rain temporarily, but requires a proper repair or replacement for the long term. Similarly a person falsely incarcerated and suffering further abuse in prison may seek immediate relief from abuse from the warden , but can only seek permanent relief by his release from the courts.

Most problems can be addressed on a temporary or permanent basis. What is essential first is to identify the true nature of the problem. Then one can bring to bear the appropriate permanent solution.. Without that identification, temporary 'solutions' are often believed to be permanent. Thus prior to the identification of AIDS (Acquired Immune Deficiency Syndrome) as the underlying cause of death (and thus the true nature of the problem) when other diseases seemed to be the apparent cause, no permanent solution could even be contemplated.

All the evidence supports the conclusion that the 'problem' underlying a large number of the Nation's very serious concerns is the 'mother-cancer' of the unconstitutional control by lawyers of all government. That mother-cancer is the political equivalent of the medical HIV virus which destroys the body's immune system. The separation of powers concept is the immune system of the body politic. Destroy that, as the legal profession has succeeded in doing, and 'cancers' of the body politic surface everywhere disguised as something else.

Thus the legal profession's unconstitutional control of government is at the heart of all of the following problems, each of which has given rise to the formation of various groups seeking to remedy their particularly perceived problem. Here are some of these problems and groups:

The inability of many defendants to get justice in our courts gave rise to the organization called the FULLY INFORMED JURY ASSOCIATION or FIJA;

The inability of manufacturers and other to be treated justly by the tort laws gave rise to THE AMERICAN TORT REFORM ASSOCIATION;

the proclivity of some judges to improperly legislate from the bench,

the injustice inflicted daily on divorcing couples and their children;

the inability of individuals to be fairly treated in 'pro se' litigation;

the inadequacy of the justice system in dealing with crime;

the absence of an acceptable quality of public education;

the inability of the people to meaningfully control their own government through non violent means;

the exposure to frivolous lawsuits by all;

the inability doctors to provide the best medical care at fair prices,

the monopolistic and self serving illegal activities of the State Bars, to name only a few of the areas of public concern.

None of the activities of the various groups has produced permanent solutions. Very few have even achieved a modicum of progress on a temporary basis! Nor is it possible that they ever will. The reason is simple. You can't cure cancer by making the patient more comfortable as he is dying. You can't 'cure' tyranny by negotiating with tyrants. We tried that with King George III prior to the Revolution in 1776. It didn't work with that tyrant then and it won't work with the legal profession now. Medicine teaches us that you cure cancer permanently by cutting it all out surgically. History teaches us that you cure tyranny by removing all tyrants. Peacefully if you can and by revolution if you can't!

The same people (lawyers) who make the laws, also interpret and enforce the laws. They do so first and foremost in their own self-interest. If sufficient pressure is brought to bear the lawyers will yield a little ground in one branch of government, only to nullify or recover it later in another. Thus attempting meaningful change that benefits the people not lawyers, through any means previously available, (short of the threat of violence that was needed in the United Kingdom in 1832 to pass the Great Reform Act of 1832), seems doomed either to failure or minor temporary relief. Only the complete removal of lawyers from elected power in the Legislative and Executive branches can hope to achieve the ends of all the concerned groups without bloodshed.

This means, that while all groups will do well to continue in whatever efforts they are making, they must recognize that at best the solutions they may achieve will be both inadequate and temporary. Therefore, in their own best interests, they should also join in the efforts of the Constitutional Guardians of America to remove lawyers from elected office. For that is the only way they can hope to substantially resolve their problems on a permanent basis.

About the Author

Ronald Bibace became aware of the problem in 1985. The views presented here were first developed and articulated by this writer in 1989.

Mr. Bibace has become a constitutional scholar in pursuit of the justice of this cause. Sufficiently so that Professor Albert Blaustein,* a world renowned constitutional lawyer, international consultant, and prolific author of numerous books on the law, having never before heard the proposals articulated here, was persuaded that this writer's views are sound and should prevail in a court of Law, and has said so in writing.

Mr. Bibace is President and co-founder of a national organization dedicated to the restoring of constitutional and representative government. Like James Madison, he loves the law but is not a lawyer. And like Alexander Hamilton, he is an immigrant and a naturalized American citizen.

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* Albert Blaustein (1922-1994) Professor Emeritus, Rutger's University, Constitution Consultant and counsel to Russia, Bolivia, Canada, Poland, Nepal, Uganda, Niger, Peru, Brazil, and many more. Author of more than 25 books, among which "Constitutions of the World" 22 volumes, updated annually.