

1 **FEDERALIST No. 37. Concerning the Difficulties of the Convention**
2 **in Devising a Proper Form of Government.**

3 **From the Daily Advertiser. Friday, January 11, 1788.**

4 MADISON

5 To the People of the State of New York:

6 IN REVIEWING the defects of the existing Confederation, and showing that they cannot be
7 supplied by a government of less energy than that before the public, several of the most important
8 principles of the latter fell of course under consideration. But as the ultimate object of these papers
9 is to determine clearly and fully the merits of this Constitution, and the expediency of adopting it,
10 our plan cannot be complete without taking a more critical and thorough survey of the work of the
11 convention, without examining it on all its sides, comparing it in all its parts, and calculating its
12 probable effects. That this remaining task may be executed under impressions conducive to a just
13 and fair result, some reflections must in this place be indulged, which candor previously suggests.

14 It is a misfortune, inseparable from human affairs, that public measures are rarely investigated
15 with that spirit of moderation which is essential to a just estimate of their real tendency to advance
16 or obstruct the public good; and that this spirit is more apt to be diminished than promoted, by
17 those occasions which require an unusual exercise of it. To those who have been led by experience
18 to attend to this consideration, it could not appear surprising, that the act of the convention,
19 which recommends so many important changes and innovations, which may be viewed in so many
20 lights and relations, and which touches the springs of so many passions and interests, should find
21 or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and
22 accurate judgment of its merits. In some, it has been too evident from their own publications, that
23 they have scanned the proposed Constitution, not only with a predisposition to censure, but with
24 a predetermination to condemn; as the language held by others betrays an opposite
25 predetermination or bias, which must render their opinions also of little moment in the question.
26 In placing, however, these different characters on a level, with respect to the weight of their
27 opinions, I wish not to insinuate that there may not be a material difference in the purity of their

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

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

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

20 The novelty of the undertaking immediately strikes us. It has been shown in the course of these
21 papers, that the existing Confederation is founded on principles which are fallacious; that we must
22 consequently change this first foundation, and with it the superstructure resting upon it. It has
23 been shown, that the other confederacies which could be consulted as precedents have been
24 vitiated by the same erroneous principles, and can therefore furnish no other light than that of
25 beacons, which give warning of the course to be shunned, without pointing out that which ought
26 to be pursued. The most that the convention could do in such a situation, was to avoid the errors
27 suggested by the past experience of other countries, as well as of our own; and to provide a
28 convenient mode of rectifying their own errors, as future experiences may unfold them.

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

25 How far the convention may have succeeded in this part of their work, will better appear on a
26 more accurate view of it. From the cursory view here taken, it must clearly appear to have been an
27 arduous part.

28 Not less arduous must have been the task of marking the proper line of partition between the
29 authority of the general and that of the State governments. Every man will be sensible of this

1 difficulty, in proportion as he has been accustomed to contemplate and discriminate objects
2 extensive and complicated in their nature. The faculties of the mind itself have never yet been
3 distinguished and defined, with satisfactory precision, by all the efforts of the most acute and
4 metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination,
5 are found to be separated by such delicate shades and minute gradations that their boundaries have
6 eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and
7 controversy. The boundaries between the great kingdom of nature, and, still more, between the
8 various provinces, and lesser portions, into which they are subdivided, afford another illustration
9 of the same important truth. The most sagacious and laborious naturalists have never yet
10 succeeded in tracing with certainty the line which separates the district of vegetable life from the
11 neighboring region of unorganized matter, or which marks the termination of the former and the
12 commencement of the animal empire. A still greater obscurity lies in the distinctive characters by
13 which the objects in each of these great departments of nature have been arranged and assorted.

14 When we pass from the works of nature, in which all the delineations are perfectly accurate, and
15 appear to be otherwise only from the imperfection of the eye which surveys them, to the
16 institutions of man, in which the obscurity arises as well from the object itself as from the organ by
17 which it is contemplated, we must perceive the necessity of moderating still further our
18 expectations and hopes from the efforts of human sagacity. Experience has instructed us that no
19 skill in the science of government has yet been able to discriminate and define, with sufficient
20 certainty, its three great provinces the legislative, executive, and judiciary; or even the privileges
21 and powers of the different legislative branches. Questions daily occur in the course of practice,
22 which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in
23 political science.

24 The experience of ages, with the continued and combined labors of the most enlightened
25 legislatures and jurists, has been equally unsuccessful in delineating the several objects and limits
26 of different codes of laws and different tribunals of justice. The precise extent of the common law,
27 and the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local
28 laws and customs, remains still to be clearly and finally established in Great Britain, where
29 accuracy in such subjects has been more industriously pursued than in any other part of the world.

1 The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, etc., is not
2 less a source of frequent and intricate discussions, sufficiently denoting the indeterminate limits by
3 which they are respectively circumscribed. All new laws, though penned with the greatest technical
4 skill, and passed on the fullest and most mature deliberation, are considered as more or less
5 obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular
6 discussions and adjudications. Besides the obscurity arising from the complexity of objects, and
7 the imperfection of the human faculties, the medium through which the conceptions of men are
8 conveyed to each other adds a fresh embarrassment. The use of words is to express ideas.
9 Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they
10 should be expressed by words distinctly and exclusively appropriate to them. But no language is so
11 copious as to supply words and phrases for every complex idea, or so correct as not to include
12 many equivocally denoting different ideas. Hence it must happen that however accurately objects
13 may be discriminated in themselves, and however accurately the discrimination may be considered,
14 the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is
15 delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity
16 and novelty of the objects defined. When the Almighty himself condescends to address mankind in
17 their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the
18 cloudy medium through which it is communicated.

19 Here, then, are three sources of vague and incorrect definitions: indistinctness of the object,
20 imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these
21 must produce a certain degree of obscurity. The convention, in delineating the boundary between
22 the federal and State jurisdictions, must have experienced the full effect of them all.

23 To the difficulties already mentioned may be added the interfering pretensions of the larger and
24 smaller States. We cannot err in supposing that the former would contend for a participation in
25 the government, fully proportioned to their superior wealth and importance; and that the latter
26 would not be less tenacious of the equality at present enjoyed by them. We may well suppose that
27 neither side would entirely yield to the other, and consequently that the struggle could be
28 terminated only by compromise. It is extremely probable, also, that after the ratio of
29 representation had been adjusted, this very compromise must have produced a fresh struggle

1 between the same parties, to give such a turn to the organization of the government, and to the
2 distribution of its powers, as would increase the importance of the branches, in forming which
3 they had respectively obtained the greatest share of influence. There are features in the
4 Constitution which warrant each of these suppositions; and as far as either of them is well
5 founded, it shows that the convention must have been compelled to sacrifice theoretical propriety
6 to the force of extraneous considerations.

7 Nor could it have been the large and small States only, which would marshal themselves in
8 opposition to each other on various points. Other combinations, resulting from a difference of
9 local position and policy, must have created additional difficulties. As every State may be divided
10 into different districts, and its citizens into different classes, which give birth to contending
11 interests and local jealousies, so the different parts of the United States are distinguished from each
12 other by a variety of circumstances, which produce a like effect on a larger scale. And although this
13 variety of interests, for reasons sufficiently explained in a former paper, may have a salutary
14 influence on the administration of the government when formed, yet every one must be sensible of
15 the contrary influence, which must have been experienced in the task of forming it.

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

25 We had occasion, in a former paper, to take notice of the repeated trials which have been
26 unsuccessfully made in the United Netherlands for reforming the baneful and notorious vices of
27 their constitution. The history of almost all the great councils and consultations held among
28 mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and
29 adjusting their respective interests, is a history of factions, contentions, and disappointments, and

1 may be classed among the most dark and degraded pictures which display the infirmities and
2 depravities of the human character. If, in a few scattered instances, a brighter aspect is presented,
3 they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the
4 gloom of the adverse prospect to which they are contrasted. In revolving the causes from which
5 these exceptions result, and applying them to the particular instances before us, we are necessarily
6 led to two important conclusions. The first is, that the convention must have enjoyed, in a very
7 singular degree, an exemption from the pestilential influence of party animosities the disease most
8 incident to deliberative bodies, and most apt to contaminate their proceedings. The second
9 conclusion is that all the deputations composing the convention were satisfactorily accommodated
10 by the final act, or were induced to accede to it by a deep conviction of the necessity of sacrificing
11 private opinions and partial interests to the public good, and by a despair of seeing this necessity
12 diminished by delays or by new experiments.

1 **FEDERALIST No. 38. The Same Subject Continued, and the**
2 **Incoherence of the Objections to the New Plan Exposed.**

3 **From The Independent Journal. Saturday, January 12, 1788.**

4 MADISON

5 To the People of the State of New York:

6 IT IS not a little remarkable that in every case reported by ancient history, in which government
7 has been established with deliberation and consent, the task of framing it has not been committed
8 to an assembly of men, but has been performed by some individual citizen of preeminent wisdom
9 and approved integrity.

10 Minos, we learn, was the primitive founder of the government of Crete, as Zaleucus was of that of
11 the Locrians. Theseus first, and after him Draco and Solon, instituted the government of Athens.
12 Lycurgus was the lawgiver of Sparta. The foundation of the original government of Rome was laid
13 by Romulus, and the work completed by two of his elective successors, Numa and Tullius
14 Hostilius. On the abolition of royalty the consular administration was substituted by Brutus, who
15 stepped forward with a project for such a reform, which, he alleged, had been prepared by Tullius
16 Hostilius, and to which his address obtained the assent and ratification of the senate and people.
17 This remark is applicable to confederate governments also. Amphictyon, we are told, was the
18 author of that which bore his name. The Achaean league received its first birth from Achaeus, and
19 its second from Aratus.

20 What degree of agency these reputed lawgivers might have in their respective establishments, or
21 how far they might be clothed with the legitimate authority of the people, cannot in every instance
22 be ascertained. In some, however, the proceeding was strictly regular. Draco appears to have been
23 intrusted by the people of Athens with indefinite powers to reform its government and laws. And
24 Solon, according to Plutarch, was in a manner compelled, by the universal suffrage of his fellow-
25 citizens, to take upon him the sole and absolute power of new-modeling the constitution. The
26 proceedings under Lycurgus were less regular; but as far as the advocates for a regular reform could

1 prevail, they all turned their eyes towards the single efforts of that celebrated patriot and sage,
2 instead of seeking to bring about a revolution by the intervention of a deliberative body of citizens.

3 Whence could it have proceeded, that a people, jealous as the Greeks were of their liberty, should
4 so far abandon the rules of caution as to place their destiny in the hands of a single citizen?

5 Whence could it have proceeded, that the Athenians, a people who would not suffer an army to be
6 commanded by fewer than ten generals, and who required no other proof of danger to their
7 liberties than the illustrious merit of a fellow-citizen, should consider one illustrious citizen as a
8 more eligible depository of the fortunes of themselves and their posterity, than a select body of
9 citizens, from whose common deliberations more wisdom, as well as more safety, might have been
10 expected? These questions cannot be fully answered, without supposing that the fears of discord
11 and disunion among a number of counsellors exceeded the apprehension of treachery or incapacity
12 in a single individual. History informs us, likewise, of the difficulties with which these celebrated
13 reformers had to contend, as well as the expedients which they were obliged to employ in order to
14 carry their reforms into effect. Solon, who seems to have indulged a more temporizing policy,
15 confessed that he had not given to his countrymen the government best suited to their happiness,
16 but most tolerable to their prejudices. And Lycurgus, more true to his object, was under the
17 necessity of mixing a portion of violence with the authority of superstition, and of securing his
18 final success by a voluntary renunciation, first of his country, and then of his life. If these lessons
19 teach us, on one hand, to admire the improvement made by America on the ancient mode of
20 preparing and establishing regular plans of government, they serve not less, on the other, to
21 admonish us of the hazards and difficulties incident to such experiments, and of the great
22 imprudence of unnecessarily multiplying them.

23 Is it an unreasonable conjecture, that the errors which may be contained in the plan of the
24 convention are such as have resulted rather from the defect of antecedent experience on this
25 complicated and difficult subject, than from a want of accuracy or care in the investigation of it;
26 and, consequently such as will not be ascertained until an actual trial shall have pointed them out?
27 This conjecture is rendered probable, not only by many considerations of a general nature, but by
28 the particular case of the Articles of Confederation. It is observable that among the numerous
29 objections and amendments suggested by the several States, when these articles were submitted for

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

13 A patient who finds his disorder daily growing worse, and that an efficacious remedy can no longer
14 be delayed without extreme danger, after coolly revolving his situation, and the characters of
15 different physicians, selects and calls in such of them as he judges most capable of administering
16 relief, and best entitled to his confidence. The physicians attend; the case of the patient is carefully
17 examined; a consultation is held; they are unanimously agreed that the symptoms are critical, but
18 that the case, with proper and timely relief, is so far from being desperate, that it may be made to
19 issue in an improvement of his constitution. They are equally unanimous in prescribing the
20 remedy, by which this happy effect is to be produced. The prescription is no sooner made known,
21 however, than a number of persons interpose, and, without denying the reality or danger of the
22 disorder, assure the patient that the prescription will be poison to his constitution, and forbid him,
23 under pain of certain death, to make use of it. Might not the patient reasonably demand, before he
24 ventured to follow this advice, that the authors of it should at least agree among themselves on
25 some other remedy to be substituted? And if he found them differing as much from one another as
26 from his first counsellors, would he not act prudently in trying the experiment unanimously
27 recommended by the latter, rather than be hearkening to those who could neither deny the
28 necessity of a speedy remedy, nor agree in proposing one?

1 Such a patient and in such a situation is America at this moment. She has been sensible of her
2 malady. She has obtained a regular and unanimous advice from men of her own deliberate choice.
3 And she is warned by others against following this advice under pain of the most fatal
4 consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of
5 some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their
6 objections to the remedy proposed, or in the proper one to be substituted? Let them speak for
7 themselves. This one tells us that the proposed Constitution ought to be rejected, because it is not
8 a confederation of the States, but a government over individuals. Another admits that it ought to
9 be a government over individuals to a certain extent, but by no means to the extent proposed. A
10 third does not object to the government over individuals, or to the extent proposed, but to the
11 want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends
12 that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved
13 to the States in their political capacity. A fifth is of opinion that a bill of rights of any sort would
14 be superfluous and misplaced, and that the plan would be unexceptionable but for the fatal power
15 of regulating the times and places of election. An objector in a large State exclaims loudly against
16 the unreasonable equality of representation in the Senate. An objector in a small State is equally
17 loud against the dangerous inequality in the House of Representatives. From this quarter, we are
18 alarmed with the amazing expense, from the number of persons who are to administer the new
19 government. From another quarter, and sometimes from the same quarter, on another occasion,
20 the cry is that the Congress will be but a shadow of a representation, and that the government
21 would be far less objectionable if the number and the expense were doubled. A patriot in a State
22 that does not import or export, discerns insuperable objections against the power of direct
23 taxation. The patriotic adversary in a State of great exports and imports, is not less dissatisfied that
24 the whole burden of taxes may be thrown on consumption. This politician discovers in the
25 Constitution a direct and irresistible tendency to monarchy; that is equally sure it will end in
26 aristocracy. Another is puzzled to say which of these shapes it will ultimately assume, but sees
27 clearly it must be one or other of them; whilst a fourth is not wanting, who with no less
28 confidence affirms that the Constitution is so far from having a bias towards either of these
29 dangers, that the weight on that side will not be sufficient to keep it upright and firm against its
30 opposite propensities. With another class of adversaries to the Constitution the language is that

1 the legislative, executive, and judiciary departments are intermixed in such a manner as to
2 contradict all the ideas of regular government and all the requisite precautions in favor of liberty.
3 Whilst this objection circulates in vague and general expressions, there are but a few who lend
4 their sanction to it. Let each one come forward with his particular explanation, and scarce any two
5 are exactly agreed upon the subject. In the eyes of one the junction of the Senate with the
6 President in the responsible function of appointing to offices, instead of vesting this executive
7 power in the Executive alone, is the vicious part of the organization. To another, the exclusion of
8 the House of Representatives, whose numbers alone could be a due security against corruption and
9 partiality in the exercise of such a power, is equally obnoxious. With another, the admission of the
10 President into any share of a power which ever must be a dangerous engine in the hands of the
11 executive magistrate, is an unpardonable violation of the maxims of republican jealousy. No part of
12 the arrangement, according to some, is more inadmissible than the trial of impeachments by the
13 Senate, which is alternately a member both of the legislative and executive departments, when this
14 power so evidently belonged to the judiciary department. "We concur fully," reply others, "in the
15 objection to this part of the plan, but we can never agree that a reference of impeachments to the
16 judiciary authority would be an amendment of the error. Our principal dislike to the organization
17 arises from the extensive powers already lodged in that department." Even among the zealous
18 patrons of a council of state the most irreconcilable variance is discovered concerning the mode in
19 which it ought to be constituted. The demand of one gentleman is, that the council should consist
20 of a small number to be appointed by the most numerous branch of the legislature. Another would
21 prefer a larger number, and considers it as a fundamental condition that the appointment should
22 be made by the President himself.

23 As it can give no umbrage to the writers against the plan of the federal Constitution, let us
24 suppose, that as they are the most zealous, so they are also the most sagacious, of those who think
25 the late convention were unequal to the task assigned them, and that a wiser and better plan might
26 and ought to be substituted. Let us further suppose that their country should concur, both in this
27 favorable opinion of their merits, and in their unfavorable opinion of the convention; and should
28 accordingly proceed to form them into a second convention, with full powers, and for the express
29 purpose of revising and remoulding the work of the first. Were the experiment to be seriously

1 made, though it required some effort to view it seriously even in fiction, I leave it to be decided by
2 the sample of opinions just exhibited, whether, with all their enmity to their predecessors, they
3 would, in any one point, depart so widely from their example, as in the discord and ferment that
4 would mark their own deliberations; and whether the Constitution, now before the public, would
5 not stand as fair a chance for immortality, as Lycurgus gave to that of Sparta, by making its change
6 to depend on his own return from exile and death, if it were to be immediately adopted, and were
7 to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this
8 new assembly of lawgivers.

9 It is a matter both of wonder and regret, that those who raise so many objections against the new
10 Constitution should never call to mind the defects of that which is to be exchanged for it. It is not
11 necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No
12 man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man
13 would refuse to quit a shattered and tottering habitation for a firm and commodious building,
14 because the latter had not a porch to it, or because some of the rooms might be a little larger or
15 smaller, or the ceilings a little higher or lower than his fancy would have planned them. But
16 waiving illustrations of this sort, is it not manifest that most of the capital objections urged against
17 the new system lie with tenfold weight against the existing Confederation? Is an indefinite power
18 to raise money dangerous in the hands of the federal government? The present Congress can make
19 requisitions to any amount they please, and the States are constitutionally bound to furnish them;
20 they can emit bills of credit as long as they will pay for the paper; they can borrow, both abroad
21 and at home, as long as a shilling will be lent. Is an indefinite power to raise troops dangerous? The
22 Confederation gives to Congress that power also; and they have already begun to make use of it. Is
23 it improper and unsafe to intermix the different powers of government in the same body of men?
24 Congress, a single body of men, are the sole depositary of all the federal powers. Is it particularly
25 dangerous to give the keys of the treasury, and the command of the army, into the same hands?
26 The Confederation places them both in the hands of Congress. Is a bill of rights essential to
27 liberty? The Confederation has no bill of rights. Is it an objection against the new Constitution,
28 that it empowers the Senate, with the concurrence of the Executive, to make treaties which are to
29 be the laws of the land? The existing Congress, without any such control, can make treaties which

1 they themselves have declared, and most of the States have recognized, to be the supreme law of
2 the land. Is the importation of slaves permitted by the new Constitution for twenty years? By the
3 old it is permitted forever.

4 I shall be told, that however dangerous this mixture of powers may be in theory, it is rendered
5 harmless by the dependence of Congress on the State for the means of carrying them into practice;
6 that however large the mass of powers may be, it is in fact a lifeless mass. Then, say I, in the first
7 place, that the Confederation is chargeable with the still greater folly of declaring certain powers in
8 the federal government to be absolutely necessary, and at the same time rendering them absolutely
9 nugatory; and, in the next place, that if the Union is to continue, and no better government be
10 substituted, effective powers must either be granted to, or assumed by, the existing Congress; in
11 either of which events, the contrast just stated will hold good. But this is not all. Out of this
12 lifeless mass has already grown an excrescent power, which tends to realize all the dangers that can
13 be apprehended from a defective construction of the supreme government of the Union. It is now
14 no longer a point of speculation and hope, that the Western territory is a mine of vast wealth to
15 the United States; and although it is not of such a nature as to extricate them from their present
16 distresses, or for some time to come, to yield any regular supplies for the public expenses, yet must
17 it hereafter be able, under proper management, both to effect a gradual discharge of the domestic
18 debt, and to furnish, for a certain period, liberal tributes to the federal treasury. A very large
19 proportion of this fund has been already surrendered by individual States; and it may with reason
20 be expected that the remaining States will not persist in withholding similar proofs of their equity
21 and generosity. We may calculate, therefore, that a rich and fertile country, of an area equal to the
22 inhabited extent of the United States, will soon become a national stock. Congress have assumed
23 the administration of this stock. They have begun to render it productive. Congress have
24 undertaken to do more: they have proceeded to form new States, to erect temporary governments,
25 to appoint officers for them, and to prescribe the conditions on which such States shall be
26 admitted into the Confederacy. All this has been done; and done without the least color of
27 constitutional authority. Yet no blame has been whispered; no alarm has been sounded. A GREAT
28 and INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men,
29 who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to their

1 support for an INDEFINITE PERIOD OF TIME. And yet there are men, who have not only
2 been silent spectators of this prospect, but who are advocates for the system which exhibits it; and,
3 at the same time, urge against the new system the objections which we have heard. Would they not
4 act with more consistency, in urging the establishment of the latter, as no less necessary to guard
5 the Union against the future powers and resources of a body constructed like the existing
6 Congress, than to save it from the dangers threatened by the present impotency of that Assembly?
7 I mean not, by any thing here said, to throw censure on the measures which have been pursued by
8 Congress. I am sensible they could not have done otherwise. The public interest, the necessity of
9 the case, imposed upon them the task of overleaping their constitutional limits. But is not the fact
10 an alarming proof of the danger resulting from a government which does not possess regular
11 powers commensurate to its objects? A dissolution or usurpation is the dreadful dilemma to which
12 it is continually exposed.

13 PUBLIUS

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

22 On comparing the Constitution planned by the convention with the standard here fixed, we
23 perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives,
24 like that of one branch at least of all the State legislatures, is elected immediately by the great body
25 of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its
26 appointment indirectly from the people. The President is indirectly derived from the choice of the
27 people, according to the example in most of the States. Even the judges, with all other officers of
28 the Union, will, as in the several States, be the choice, though a remote choice, of the people
29 themselves, the duration of the appointments is equally conformable to the republican standard,

1 and to the model of State constitutions The House of Representatives is periodically elective, as in
2 all the States; and for the period of two years, as in the State of South Carolina. The Senate is
3 elective, for the period of six years; which is but one year more than the period of the Senate of
4 Maryland, and but two more than that of the Senates of New York and Virginia. The President is
5 to continue in office for the period of four years; as in New York and Delaware, the chief
6 magistrate is elected for three years, and in South Carolina for two years. In the other States the
7 election is annual. In several of the States, however, no constitutional provision is made for the
8 impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out
9 of office. The President of the United States is impeachable at any time during his continuance in
10 office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be,
11 that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal
12 regulation, conformably to the reason of the case and the example of the State constitutions.

13 Could any further proof be required of the republican complexion of this system, the most decisive
14 one might be found in its absolute prohibition of titles of nobility, both under the federal and the
15 State governments; and in its express guaranty of the republican form to each of the latter.

16 "But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention
17 to adhere to the republican form. They ought, with equal care, to have preserved the FEDERAL
18 form, which regards the Union as a CONFEDERACY of sovereign states; instead of which, they
19 have framed a NATIONAL government, which regards the Union as a CONSOLIDATION of the
20 States." And it is asked by what authority this bold and radical innovation was undertaken? The
21 handle which has been made of this objection requires that it should be examined with some
22 precision.

23 Without inquiring into the accuracy of the distinction on which the objection is founded, it will
24 be necessary to a just estimate of its force, first, to ascertain the real character of the government in
25 question; secondly, to inquire how far the convention were authorized to propose such a
26 government; and thirdly, how far the duty they owed to their country could supply any defect of
27 regular authority.

1 First. In order to ascertain the real character of the government, it may be considered in relation to
2 the foundation on which it is to be established; to the sources from which its ordinary powers are
3 to be drawn; to the operation of those powers; to the extent of them; and to the authority by
4 which future changes in the government are to be introduced.

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

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

27 The next relation is, to the sources from which the ordinary powers of government are to be
28 derived. The House of Representatives will derive its powers from the people of America; and the
29 people will be represented in the same proportion, and on the same principle, as they are in the

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

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

25 But if the government be national with regard to the OPERATION of its powers, it changes its
26 aspect again when we contemplate it in relation to the EXTENT of its powers. The idea of a
27 national government involves in it, not only an authority over the individual citizens, but an
28 indefinite supremacy over all persons and things, so far as they are objects of lawful government.
29 Among a people consolidated into one nation, this supremacy is completely vested in the national

1 legislature. Among communities united for particular purposes, it is vested partly in the general
2 and partly in the municipal legislatures. In the former case, all local authorities are subordinate to
3 the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local
4 or municipal authorities form distinct and independent portions of the supremacy, no more
5 subject, within their respective spheres, to the general authority, than the general authority is
6 subject to them, within its own sphere. In this relation, then, the proposed government cannot be
7 deemed a NATIONAL one; since its jurisdiction extends to certain enumerated objects only, and
8 leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true
9 that in controversies relating to the boundary between the two jurisdictions, the tribunal which is
10 ultimately to decide, is to be established under the general government. But this does not change
11 the principle of the case. The decision is to be impartially made, according to the rules of the
12 Constitution; and all the usual and most effectual precautions are taken to secure this impartiality.
13 Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the
14 compact; and that it ought to be established under the general rather than under the local
15 governments, or, to speak more properly, that it could be safely established under the first alone, is
16 a position not likely to be combated.

17 If we try the Constitution by its last relation to the authority by which amendments are to be
18 made, we find it neither wholly NATIONAL nor wholly FEDERAL. Were it wholly national, the
19 supreme and ultimate authority would reside in the MAJORITY of the people of the Union; and
20 this authority would be competent at all times, like that of a majority of every national society, to
21 alter or abolish its established government. Were it wholly federal, on the other hand, the
22 concurrence of each State in the Union would be essential to every alteration that would be
23 binding on all. The mode provided by the plan of the convention is not founded on either of these
24 principles. In requiring more than a majority, and principles. In requiring more than a majority,
25 and particularly in computing the proportion by STATES, not by CITIZENS, it departs from the
26 NATIONAL and advances towards the FEDERAL character; in rendering the concurrence of less
27 than the whole number of States sufficient, it loses again the FEDERAL and partakes of the
28 NATIONAL character.

1 The proposed Constitution, therefore, is, in strictness, neither a national nor a federal
2 Constitution, but a composition of both. In its foundation it is federal, not national; in the sources
3 from which the ordinary powers of the government are drawn, it is partly federal and partly
4 national; in the operation of these powers, it is national, not federal; in the extent of them, again,
5 it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is
6 neither wholly federal nor wholly national.

7 PUBLIUS

1 **FEDERALIST No. 40. On the Powers of the Convention to Form a**
2 **Mixed Government Examined and Sustained.**

3 **For the New York Packet. Friday, January 18, 1788.**

4 MADISON

5 To the People of the State of New York:

6 THE SECOND point to be examined is, whether the convention were authorized to frame and
7 propose this mixed Constitution.

8 The powers of the convention ought, in strictness, to be determined by an inspection of the
9 commissions given to the members by their respective constituents. As all of these, however, had
10 reference, either to the recommendation from the meeting at Annapolis, in September, 1786, or to
11 that from Congress, in February, 1787, it will be sufficient to recur to these particular acts.

12 The act from Annapolis recommends the "appointment of commissioners to take into
13 consideration the situation of the United States; to devise SUCH FURTHER PROVISIONS as
14 shall appear to them necessary to render the Constitution of the federal government ADEQUATE
15 TO THE EXIGENCIES OF THE UNION; and to report such an act for that purpose, to the
16 United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the
17 legislature of every State, will effectually provide for the same."

18 The recommendatory act of Congress is in the words following: "WHEREAS, There is provision in
19 the articles of Confederation and perpetual Union, for making alterations therein, by the assent of
20 a Congress of the United States, and of the legislatures of the several States; and whereas
21 experience hath evinced, that there are defects in the present Confederation; as a mean to remedy
22 which, several of the States, and PARTICULARLY THE STATE OF NEW YORK, by express
23 instructions to their delegates in Congress, have suggested a convention for the purposes expressed
24 in the following resolution; and such convention appearing to be the most probable mean of
25 establishing in these States A FIRM NATIONAL GOVERNMENT:

1 "Resolved, That in the opinion of Congress it is expedient, that on the second Monday of May
2 next a convention of delegates, who shall have been appointed by the several States, be held at
3 Philadelphia, for the sole and express purpose OF REVISING THE ARTICLES OF
4 CONFEDERATION, and reporting to Congress and the several legislatures such ALTERATIONS
5 AND PROVISIONS THEREIN, as shall, when agreed to in Congress, and confirmed by the
6 States, render the federal Constitution ADEQUATE TO THE EXIGENCIES OF
7 GOVERNMENT AND THE PRESERVATION OF THE UNION."

8 From these two acts, it appears, 1st, that the object of the convention was to establish, in these
9 States, A FIRM NATIONAL GOVERNMENT; 2d, that this government was to be such as would
10 be ADEQUATE TO THE EXIGENCIES OF GOVERNMENT and THE PRESERVATION OF
11 THE UNION; 3d, that these purposes were to be effected by ALTERATIONS AND
12 PROVISIONS IN THE ARTICLES OF CONFEDERATION, as it is expressed in the act of
13 Congress, or by SUCH FURTHER PROVISIONS AS SHOULD APPEAR NECESSARY, as it
14 stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to
15 be reported to Congress, and to the States, in order to be agreed to by the former and confirmed
16 by the latter.

17 From a comparison and fair construction of these several modes of expression, is to be deduced the
18 authority under which the convention acted. They were to frame a NATIONAL GOVERNMENT,
19 adequate to the EXIGENCIES OF GOVERNMENT, and OF THE UNION; and to reduce the
20 articles of Confederation into such form as to accomplish these purposes.

21 There are two rules of construction, dictated by plain reason, as well as founded on legal axioms.
22 The one is, that every part of the expression ought, if possible, to be allowed some meaning, and
23 be made to conspire to some common end. The other is, that where the several parts cannot be
24 made to coincide, the less important should give way to the more important part; the means
25 should be sacrificed to the end, rather than the end to the means.

26 Suppose, then, that the expressions defining the authority of the convention were irreconcilably at
27 variance with each other; that a NATIONAL and ADEQUATE GOVERNMENT could not
28 possibly, in the judgment of the convention, be affected by ALTERATIONS and PROVISIONS in

1 the ARTICLES OF CONFEDERATION; which part of the definition ought to have been
2 embraced, and which rejected? Which was the more important, which the less important part?
3 Which the end; which the means? Let the most scrupulous expositors of delegated powers; let the
4 most inveterate objectors against those exercised by the convention, answer these questions. Let
5 them declare, whether it was of most importance to the happiness of the people of America, that
6 the articles of Confederation should be disregarded, and an adequate government be provided, and
7 the Union preserved; or that an adequate government should be omitted, and the articles of
8 Confederation preserved. Let them declare, whether the preservation of these articles was the end,
9 for securing which a reform of the government was to be introduced as the means; or whether the
10 establishment of a government, adequate to the national happiness, was the end at which these
11 articles themselves originally aimed, and to which they ought, as insufficient means, to have been
12 sacrificed.

13 But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that
14 no ALTERATIONS or PROVISIONS in the articles of the confederation could possibly mould
15 them into a national and adequate government; into such a government as has been proposed by
16 the convention?

17 No stress, it is presumed, will, in this case, be laid on the TITLE; a change of that could never be
18 deemed an exercise of ungranted power. ALTERATIONS in the body of the instrument are
19 expressly authorized. NEW PROVISIONS therein are also expressly authorized. Here then is a
20 power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted
21 that this power is infringed, so long as a part of the old articles remain? Those who maintain the
22 affirmative ought at least to mark the boundary between authorized and usurped innovations;
23 between that degree of change which lies within the compass of ALTERATIONS AND
24 FURTHER PROVISIONS, and that which amounts to a TRANSMUTATION of the
25 government. Will it be said that the alterations ought not to have touched the substance of the
26 Confederation? The States would never have appointed a convention with so much solemnity, nor
27 described its objects with so much latitude, if some SUBSTANTIAL reform had not been in
28 contemplation. Will it be said that the FUNDAMENTAL PRINCIPLES of the Confederation
29 were not within the purview of the convention, and ought not to have been varied? I ask, What are

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

1 The truth is, that the great principles of the Constitution proposed by the convention may be
2 considered less as absolutely new, than as the expansion of principles which are found in the
3 articles of Confederation. The misfortune under the latter system has been, that these principles
4 are so feeble and confined as to justify all the charges of inefficiency which have been urged against
5 it, and to require a degree of enlargement which gives to the new system the aspect of an entire
6 transformation of the old.

7 In one particular it is admitted that the convention have departed from the tenor of their
8 commission. Instead of reporting a plan requiring the confirmation OF THE LEGISLATURES
9 OF ALL THE STATES, they have reported a plan which is to be confirmed by the PEOPLE, and
10 may be carried into effect by NINE STATES ONLY. It is worthy of remark that this objection,
11 though the most plausible, has been the least urged in the publications which have swarmed
12 against the convention. The forbearance can only have proceeded from an irresistible conviction of
13 the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a
14 thirteenth; from the example of inflexible opposition given by a MAJORITY of one sixtieth of the
15 people of America to a measure approved and called for by the voice of twelve States, comprising
16 fifty-nine sixtieths of the people an example still fresh in the memory and indignation of every
17 citizen who has felt for the wounded honor and prosperity of his country. As this objection,
18 therefore, has been in a manner waived by those who have criticised the powers of the convention,
19 I dismiss it without further observation.

20 The THIRD point to be inquired into is, how far considerations of duty arising out of the case
21 itself could have supplied any defect of regular authority.

22 In the preceding inquiries the powers of the convention have been analyzed and tried with the
23 same rigor, and by the same rules, as if they had been real and final powers for the establishment of
24 a Constitution for the United States. We have seen in what manner they have borne the trial even
25 on that supposition. It is time now to recollect that the powers were merely advisory and
26 recommendatory; that they were so meant by the States, and so understood by the convention; and
27 that the latter have accordingly planned and proposed a Constitution which is to be of no more
28 consequence than the paper on which it is written, unless it be stamped with the approbation of

1 those to whom it is addressed. This reflection places the subject in a point of view altogether
2 different, and will enable us to judge with propriety of the course taken by the convention.

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

1 government; that committees and congresses were formed for concentrating their efforts and
2 defending their rights; and that CONVENTIONS were ELECTED in THE SEVERAL STATES
3 for establishing the constitutions under which they are now governed; nor could it have been
4 forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere
5 seen, except in those who wished to indulge, under these masks, their secret enmity to the
6 substance contended for. They must have borne in mind, that as the plan to be framed and
7 proposed was to be submitted TO THE PEOPLE THEMSELVES, the disapprobation of this
8 supreme authority would destroy it forever; its approbation blot out antecedent errors and
9 irregularities. It might even have occurred to them, that where a disposition to cavil prevailed,
10 their neglect to execute the degree of power vested in them, and still more their recommendation
11 of any measure whatever, not warranted by their commission, would not less excite animadversion,
12 than a recommendation at once of a measure fully commensurate to the national exigencies.

13 Had the convention, under all these impressions, and in the midst of all these considerations,
14 instead of exercising a manly confidence in their country, by whose confidence they had been so
15 peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its
16 happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing
17 substance to forms, of committing the dearest interests of their country to the uncertainties of
18 delay and the hazard of events, let me ask the man who can raise his mind to one elevated
19 conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have
20 been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on
21 the conduct and character of this assembly? Or if there be a man whose propensity to condemn is
22 susceptible of no control, let me then ask what sentence he has in reserve for the twelve States who
23 USURPED THE POWER of sending deputies to the convention, a body utterly unknown to
24 their constitutions; for Congress, who recommended the appointment of this body, equally
25 unknown to the Confederation; and for the State of New York, in particular, which first urged and
26 then complied with this unauthorized interposition?

27 But that the objectors may be disarmed of every pretext, it shall be granted for a moment that the
28 convention were neither authorized by their commission, nor justified by circumstances in
29 proposing a Constitution for their country: does it follow that the Constitution ought, for that

1 reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good advice
2 even from an enemy, shall we set the ignoble example of refusing such advice even when it is
3 offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much FROM
4 WHOM the advice comes, as whether the advice be GOOD.

5 The sum of what has been here advanced and proved is, that the charge against the convention of
6 exceeding their powers, except in one instance little urged by the objectors, has no foundation to
7 support it; that if they had exceeded their powers, they were not only warranted, but required, as
8 the confidential servants of their country, by the circumstances in which they were placed, to
9 exercise the liberty which they assume; and that finally, if they had violated both their powers and
10 their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be
11 calculated to accomplish the views and happiness of the people of America. How far this character
12 is due to the Constitution, is the subject under investigation.

13 PUBLIUS

14 1. Connecticut and Rhode Island.

15 2. Declaration of Independence.