

1 military arm in support of the civil magistrate, it can the better dispense with the employment of a
2 different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To
3 render an army unnecessary, will be a more certain method of preventing its existence than a thousand
4 prohibitions upon paper.

5 In order to cast an odium upon the power of calling forth the militia to execute the laws of the
6 Union, it has been remarked that there is nowhere any provision in the proposed Constitution for
7 calling out the POSSE COMITATUS, to assist the magistrate in the execution of his duty, whence it
8 has been inferred, that military force was intended to be his only auxiliary. There is a striking
9 incoherence in the objections which have appeared, and sometimes even from the same quarter, not
10 much calculated to inspire a very favorable opinion of the sincerity or fair dealing of their authors. The
11 same persons who tell us in one breath, that the powers of the federal government will be despotic and
12 unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE
13 COMITATUS. The latter, fortunately, is as much short of the truth as the former exceeds it. It would
14 be as absurd to doubt, that a right to pass all laws NECESSARY AND PROPER to execute its declared
15 powers, would include that of requiring the assistance of the citizens to the officers who may be
16 intrusted with the execution of those laws, as it would be to believe, that a right to enact laws necessary
17 and proper for the imposition and collection of taxes would involve that of varying the rules of descent
18 and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it. It
19 being therefore evident that the supposition of a want of power to require the aid of the POSSE
20 COMITATUS is entirely destitute of color, it will follow, that the conclusion which has been drawn
21 from it, in its application to the authority of the federal government over the militia, is as uncandid as
22 it is illogical. What reason could there be to infer, that force was intended to be the sole instrument of
23 authority, merely because there is a power to make use of it when necessary? What shall we think of
24 the motives which could induce men of sense to reason in this manner? How shall we prevent a conflict
25 between charity and conviction?

26 By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend
27 danger from the militia itself, in the hands of the federal government. It is observed that select corps
28 may be formed, composed of the young and ardent, who may be rendered subservient to the views of
29 arbitrary power. What plan for the regulation of the militia may be pursued by the national
30 government, is impossible to be foreseen. But so far from viewing the matter in the same light with

1 those who object to select corps as dangerous, were the Constitution ratified, and were I to deliver my
2 sentiments to a member of the federal legislature from this State on the subject of a militia
3 establishment, I should hold to him, in substance, the following discourse:

4 "The project of disciplining all the militia of the United States is as futile as it would be injurious,
5 if it were capable of being carried into execution. A tolerable expertness in military movements is a
6 business that requires time and practice. It is not a day, or even a week, that will suffice for the
7 attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to
8 be under arms for the purpose of going through military exercises and evolutions, as often as might be
9 necessary to acquire the degree of perfection which would entitle them to the character of a well-
10 regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss.
11 It would form an annual deduction from the productive labor of the country, to an amount which,
12 calculating upon the present numbers of the people, would not fall far short of the whole expense of
13 the civil establishments of all the States. To attempt a thing which would abridge the mass of labor
14 and industry to so considerable an extent, would be unwise: and the experiment, if made, could not
15 succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect
16 to the people at large, than to have them properly armed and equipped; and in order to see that this
17 be not neglected, it will be necessary to assemble them once or twice in the course of a year.

18 "But though the scheme of disciplining the whole nation must be abandoned as mischievous or
19 impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as
20 possible, be adopted for the proper establishment of the militia. The attention of the government
21 ought particularly to be directed to the formation of a select corps of moderate extent, upon such
22 principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be
23 possible to have an excellent body of well-trained militia, ready to take the field whenever the defense
24 of the State shall require it. This will not only lessen the call for military establishments, but if
25 circumstances should at any time oblige the government to form an army of any magnitude that army
26 can never be formidable to the liberties of the people while there is a large body of citizens, little, if at
27 all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and
28 those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing
29 army, and the best possible security against it, if it should exist."

1 Thus differently from the adversaries of the proposed Constitution should I reason on the same
2 subject, deducing arguments of safety from the very sources which they represent as fraught with
3 danger and perdition. But how the national legislature may reason on the point, is a thing which
4 neither they nor I can foresee.

5 There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia,
6 that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere
7 trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instil prejudices at any
8 price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our
9 fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What
10 shadow of danger can there be from men who are daily mingling with the rest of their countrymen
11 and who participate with them in the same feelings, sentiments, habits and interests? What reasonable
12 cause of apprehension can be inferred from a power in the Union to prescribe regulations for the
13 militia, and to command its services when necessary, while the particular States are to have the **SOLE**
14 **AND EXCLUSIVE APPOINTMENT OF THE OFFICERS?** If it were possible seriously to indulge
15 a jealousy of the militia upon any conceivable establishment under the federal government, the
16 circumstance of the officers being in the appointment of the States ought at once to extinguish it.
17 There can be no doubt that this circumstance will always secure to them a preponderating influence
18 over the militia.

19 In reading many of the publications against the Constitution, a man is apt to imagine that he is
20 perusing some ill-written tale or romance, which instead of natural and agreeable images, exhibits to
21 the mind nothing but frightful and distorted shapes—

22 "Gorgons, hydras, and chimeras dire";

23 discoloring and disfiguring whatever it represents, and transforming everything it touches into a
24 monster.

25 A sample of this is to be observed in the exaggerated and improbable suggestions which have taken
26 place respecting the power of calling for the services of the militia. That of New Hampshire is to be
27 marched to Georgia, of Georgia to New Hampshire, of New York to Kentucky, and of Kentucky to
28 Lake Champlain. Nay, the debts due to the French and Dutch are to be paid in militiamen instead of

1 louis d'ors and ducats. At one moment there is to be a large army to lay prostrate the liberties of the
2 people; at another moment the militia of Virginia are to be dragged from their homes five or six
3 hundred miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to
4 be transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians.
5 Do the persons who rave at this rate imagine that their art or their eloquence can impose any conceits
6 or absurdities upon the people of America for infallible truths?

7 If there should be an army to be made use of as the engine of despotism, what need of the militia?
8 If there should be no army, whither would the militia, irritated by being called upon to undertake a
9 distant and hopeless expedition, for the purpose of riveting the chains of slavery upon a part of their
10 countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as
11 so wicked a project, to crush them in their imagined intrenchments of power, and to make them an
12 example of the just vengeance of an abused and incensed people? Is this the way in which usurpers
13 stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation
14 of the very instruments of their intended usurpations? Do they usually commence their career by
15 wanton and disgustful acts of power, calculated to answer no end, but to draw upon themselves
16 universal hatred and execration? Are suppositions of this sort the sober admonitions of discerning
17 patriots to a discerning people? Or are they the inflammatory ravings of incendiaries or distempered
18 enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable
19 ambition, it is impossible to believe that they would employ such preposterous means to accomplish
20 their designs.

21 In times of insurrection, or invasion, it would be natural and proper that the militia of a neighboring
22 State should be marched into another, to resist a common enemy, or to guard the republic against the
23 violence of faction or sedition. This was frequently the case, in respect to the first object, in the course
24 of the late war; and this mutual succor is, indeed, a principal end of our political association. If the
25 power of affording it be placed under the direction of the Union, there will be no danger of a supine
26 and listless inattention to the dangers of a neighbor, till its near approach had superadded the
27 incitements of self-preservation to the too feeble impulses of duty and sympathy.

28 PUBLIUS

1 **FEDERALIST No. 30. Concerning the General Power of Taxation**

2 **From the New York Packet. Friday, December 28, 1787.**

3 HAMILTON

4 To the People of the State of New York:

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

14 Money is, with propriety, considered as the vital principle of the body politic; as that which sustains
15 its life and motion, and enables it to perform its most essential functions. A complete power, therefore,
16 to procure a regular and adequate supply of it, as far as the resources of the community will permit,
17 may be regarded as an indispensable ingredient in every constitution. From a deficiency in this
18 particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a
19 substitute for a more eligible mode of supplying the public wants, or the government must sink into
20 a fatal atrophy, and, in a short course of time, perish.

21 In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the
22 lives and fortunes of his subjects, has no right to impose a new tax. The consequence is that he permits
23 the bashaws or governors of provinces to pillage the people without mercy; and, in turn, squeezes out
24 of them the sums of which he stands in need, to satisfy his own exigencies and those of the state. In
25 America, from a like cause, the government of the Union has gradually dwindled into a state of decay,
26 approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries
27 would be promoted by competent authorities in the proper hands, to provide the revenues which the
28 necessities of the public might require?

1 The present Confederation, feeble as it is intended to repose in the United States, an unlimited
2 power of providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle,
3 it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles
4 which compose that compact (as has already been stated), are authorized to ascertain and call for any
5 sums of money necessary, in their judgment, to the service of the United States; and their requisitions,
6 if conformable to the rule of apportionment, are in every constitutional sense obligatory upon the
7 States. These have no right to question the propriety of the demand; no discretion beyond that of
8 devising the ways and means of furnishing the sums demanded. But though this be strictly and truly
9 the case; though the assumption of such a right would be an infringement of the articles of Union;
10 though it may seldom or never have been avowedly claimed, yet in practice it has been constantly
11 exercised, and would continue to be so, as long as the revenues of the Confederacy should remain
12 dependent on the intermediate agency of its members. What the consequences of this system have
13 been, is within the knowledge of every man the least conversant in our public affairs, and has been
14 amply unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce
15 us to a situation, which affords ample cause both of mortification to ourselves, and of triumph to our
16 enemies.

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

24 The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they
25 qualify their admission by a distinction between what they call INTERNAL and EXTERNAL
26 taxation. The former they would reserve to the State governments; the latter, which they explain into
27 commercial imposts, or rather duties on imported articles, they declare themselves willing to concede
28 to the federal head. This distinction, however, would violate the maxim of good sense and sound
29 policy, which dictates that every POWER ought to be in proportion to its OBJECT; and would still
30 leave the general government in a kind of tutelage to the State governments, inconsistent with every

1 idea of vigor or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to
2 the present and future exigencies of the Union? Taking into the account the existing debt, foreign and
3 domestic, upon any plan of extinguishment which a man moderately impressed with the importance
4 of public justice and public credit could approve, in addition to the establishments which all parties
5 will acknowledge to be necessary, we could not reasonably flatter ourselves, that this resource alone,
6 upon the most improved scale, would even suffice for its present necessities. Its future necessities admit
7 not of calculation or limitation; and upon the principle, more than once adverted to, the power of
8 making provision for them as they arise ought to be equally unconfined. I believe it may be regarded
9 as a position warranted by the history of mankind, that, IN THE USUAL PROGRESS OF THINGS,
10 THE NECESSITIES OF A NATION, IN EVERY STAGE OF ITS EXISTENCE, WILL BE
11 FOUND AT LEAST EQUAL TO ITS RESOURCES.

12 To say that deficiencies may be provided for by requisitions upon the States, is on the one hand to
13 acknowledge that this system cannot be depended upon, and on the other hand to depend upon it for
14 every thing beyond a certain limit. Those who have carefully attended to its vices and deformities as
15 they have been exhibited by experience or delineated in the course of these papers, must feel invincible
16 repugnancy to trusting the national interests in any degree to its operation. Its inevitable tendency,
17 whenever it is brought into activity, must be to enfeeble the Union, and sow the seeds of discord and
18 contention between the federal head and its members, and between the members themselves. Can it
19 be expected that the deficiencies would be better supplied in this mode than the total wants of the
20 Union have heretofore been supplied in the same mode? It ought to be recollected that if less will be
21 required from the States, they will have proportionably less means to answer the demand. If the
22 opinions of those who contend for the distinction which has been mentioned were to be received as
23 evidence of truth, one would be led to conclude that there was some known point in the economy of
24 national affairs at which it would be safe to stop and to say: Thus far the ends of public happiness will
25 be promoted by supplying the wants of government, and all beyond this is unworthy of our care or
26 anxiety. How is it possible that a government half supplied and always necessitous, can fulfill the
27 purposes of its institution, can provide for the security, advance the prosperity, or support the
28 reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit,
29 confidence at home or respectability abroad? How can its administration be any thing else than a
30 succession of expedients temporizing, impotent, disgraceful? How will it be able to avoid a frequent

1 sacrifice of its engagements to immediate necessity? How can it undertake or execute any liberal or
2 enlarged plans of public good?

3 Let us attend to what would be the effects of this situation in the very first war in which we should
4 happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost
5 duties answers the purposes of a provision for the public debt and of a peace establishment for the
6 Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the
7 government in such an emergency? Taught by experience that proper dependence could not be placed
8 on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by
9 considerations of national danger, would it not be driven to the expedient of diverting the funds
10 already appropriated from their proper objects to the defense of the State? It is not easy to see how a
11 step of this kind could be avoided; and if it should be taken, it is evident that it would prove the
12 destruction of public credit at the very moment that it was becoming essential to the public safety. To
13 imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In
14 the modern system of war, nations the most wealthy are obliged to have recourse to large loans. A
15 country so little opulent as ours must feel this necessity in a much stronger degree. But who would
16 lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no
17 reliance could be placed on the steadiness of its measures for paying? The loans it might be able to
18 procure would be as limited in their extent as burdensome in their conditions. They would be made
19 upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors, with a
20 sparing hand and at enormous premiums.

21 It may perhaps be imagined that, from the scantiness of the resources of the country, the necessity
22 of diverting the established funds in the case supposed would exist, though the national government
23 should possess an unrestrained power of taxation. But two considerations will serve to quiet all
24 apprehension on this head: one is, that we are sure the resources of the community, in their full extent,
25 will be brought into activity for the benefit of the Union; the other is, that whatever deficiencies there
26 may be, can without difficulty be supplied by loans.

27 The power of creating new funds upon new objects of taxation, by its own authority, would enable
28 the national government to borrow as far as its necessities might require. Foreigners, as well as the
29 citizens of America, could then reasonably repose confidence in its engagements; but to depend upon

1 a government that must itself depend upon thirteen other governments for the means of fulfilling its
2 contracts, when once its situation is clearly understood, would require a degree of credulity not often
3 to be met with in the pecuniary transactions of mankind, and little reconcilable with the usual sharp-
4 sightedness of avarice.

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

11 PUBLIUS

12

1 **FEDERALIST No. 31. The Same Subject Continued**
2 **(Concerning the General Power of Taxation)**
3 **From the New York Packet. Tuesday, January 1, 1788.**

4 HAMILTON

5 To the People of the State of New York:

6 IN DISQUISITIONS of every kind, there are certain primary truths, or first principles, upon which
7 all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all
8 reflection or combination, commands the assent of the mind. Where it produces not this effect, it
9 must proceed either from some defect or disorder in the organs of perception, or from the influence
10 of some strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that "the
11 whole is greater than its part; things equal to the same are equal to one another; two straight lines
12 cannot enclose a space; and all right angles are equal to each other." Of the same nature are these other
13 maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to
14 be proportioned to the end; that every power ought to be commensurate with its object; that there
15 ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation.
16 And there are other truths in the two latter sciences which, if they cannot pretend to rank in the class
17 of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to
18 the natural and unsophisticated dictates of common-sense, that they challenge the assent of a sound
19 and unbiased mind, with a degree of force and conviction almost equally irresistible.

20 The objects of geometrical inquiry are so entirely abstracted from those pursuits which stir up and
21 put in motion the unruly passions of the human heart, that mankind, without difficulty, adopt not
22 only the more simple theorems of the science, but even those abstruse paradoxes which, however they
23 may appear susceptible of demonstration, are at variance with the natural conceptions which the mind,
24 without the aid of philosophy, would be led to entertain upon the subject. The INFINITE
25 DIVISIBILITY of matter, or, in other words, the INFINITE divisibility of a FINITE thing, extending
26 even to the minutest atom, is a point agreed among geometers, though not less incomprehensible
27 to common-sense than any of those mysteries in religion, against which the batteries of infidelity have
28 been so industriously leveled.

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

11 How else could it happen (if we admit the objectors to be sincere in their opposition), that positions
12 so clear as those which manifest the necessity of a general power of taxation in the government of the
13 Union, should have to encounter any adversaries among men of discernment? Though these positions
14 have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as
15 introductory to an examination of what may have been offered by way of objection to them. They are
16 in substance as follows:

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

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

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

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

1 Did not experience evince the contrary, it would be natural to conclude that the propriety of a
2 general power of taxation in the national government might safely be permitted to rest on the evidence
3 of these propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that
4 the antagonists of the proposed Constitution, so far from acquiescing in their justness or truth, seem
5 to make their principal and most zealous effort against this part of the plan. It may therefore be
6 satisfactory to analyze the arguments with which they combat it.

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

22 This mode of reasoning appears sometimes to turn upon the supposition of usurpation in the
23 national government; at other times it seems to be designed only as a deduction from the constitutional
24 operation of its intended powers. It is only in the latter light that it can be admitted to have any
25 pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal
26 government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all
27 reasoning. Imagination may range at pleasure till it gets bewildered amidst the labyrinths of an
28 enchanted castle, and knows not on which side to turn to extricate itself from the perplexities into
29 which it has so rashly adventured. Whatever may be the limits or modifications of the powers of the
30 Union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy

1 and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here
2 what I have observed in substance in another place, that all observations founded upon the danger of
3 usurpation ought to be referred to the composition and structure of the government, not to the nature
4 or extent of its powers. The State governments, by their original constitutions, are invested with
5 complete sovereignty. In what does our security consist against usurpation from that quarter?
6 Doubtless in the manner of their formation, and in a due dependence of those who are to administer
7 them upon the people. If the proposed construction of the federal government be found, upon an
8 impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all
9 apprehensions on the score of usurpation ought to be discarded.

10 It should not be forgotten that a disposition in the State governments to encroach upon the rights
11 of the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State
12 governments. What side would be likely to prevail in such a conflict, must depend on the means which
13 the contending parties could employ toward insuring success. As in republics strength is always on the
14 side of the people, and as there are weighty reasons to induce a belief that the State governments will
15 commonly possess most influence over them, the natural conclusion is that such contests will be most
16 apt to end to the disadvantage of the Union; and that there is greater probability of encroachments by
17 the members upon the federal head, than by the federal head upon the members. But it is evident that
18 all conjectures of this kind must be extremely vague and fallible: and that it is by far the safest course
19 to lay them altogether aside, and to confine our attention wholly to the nature and extent of the powers
20 as they are delineated in the Constitution. Every thing beyond this must be left to the prudence and
21 firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will
22 always take care to preserve the constitutional equilibrium between the general and the State
23 governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate the
24 objections which have been made to an indefinite power of taxation in the United States.

25 PUBLIUS
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1 **FEDERALIST No. 32. The Same Subject Continued**

2 **(Concerning the General Power of Taxation)**

3 **From The Independent Journal.**

4 **Wednesday, January 2, 1788.**

5 HAMILTON

6 To the People of the State of New York:

7 ALTHOUGH I am of opinion that there would be no real danger of the consequences which seem
8 to be apprehended to the State governments from a power in the Union to control them in the levies
9 of money, because I am persuaded that the sense of the people, the extreme hazard of provoking the
10 resentments of the State governments, and a conviction of the utility and necessity of local
11 administrations for local purposes, would be a complete barrier against the oppressive use of such a
12 power; yet I am willing here to allow, in its full extent, the justness of the reasoning which requires
13 that the individual States should possess an independent and uncontrollable authority to raise their
14 own revenues for the supply of their own wants. And making this concession, I affirm that (with the
15 sole exception of duties on imports and exports) they would, under the plan of the convention, retain
16 that authority in the most absolute and unqualified sense; and that an attempt on the part of the
17 national government to abridge them in the exercise of it, would be a violent assumption of power,
18 unwarranted by any article or clause of its Constitution.

19 An entire consolidation of the States into one complete national sovereignty would imply an entire
20 subordination of the parts; and whatever powers might remain in them, would be altogether
21 dependent on the general will. But as the plan of the convention aims only at a partial union or
22 consolidation, the State governments would clearly retain all the rights of sovereignty which they
23 before had, and which were not, by that act, EXCLUSIVELY delegated to the United States. This
24 exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases:
25 where the Constitution in express terms granted an exclusive authority to the Union; where it granted
26 in one instance an authority to the Union, and in another prohibited the States from exercising the
27 like authority; and where it granted an authority to the Union, to which a similar authority in the
28 States would be absolutely and totally CONTRADICTIONARY and REPUGNANT. I use these terms

1 to distinguish this last case from another which might appear to resemble it, but which would, in fact,
2 be essentially different; I mean where the exercise of a concurrent jurisdiction might be productive of
3 occasional interferences in the POLICY of any branch of administration, but would not imply any
4 direct contradiction or repugnancy in point of constitutional authority. These three cases of exclusive
5 jurisdiction in the federal government may be exemplified by the following instances: The last clause
6 but one in the eighth section of the first article provides expressly that Congress shall exercise
7 "EXCLUSIVE LEGISLATION" over the district to be appropriated as the seat of government. This
8 answers to the first case. The first clause of the same section empowers Congress "to lay and collect
9 taxes, duties, imposts and excises"; and the second clause of the tenth section of the same article
10 declares that, "NO STATE SHALL, without the consent of Congress, lay any imposts or duties on
11 imports or exports, except for the purpose of executing its inspection laws." Hence would result an
12 exclusive power in the Union to lay duties on imports and exports, with the particular exception
13 mentioned; but this power is abridged by another clause, which declares that no tax or duty shall be
14 laid on articles exported from any State; in consequence of which qualification, it now only extends to
15 the DUTIES ON IMPORTS. This answers to the second case. The third will be found in that clause
16 which declares that Congress shall have power "to establish a UNIFORM RULE of naturalization
17 throughout the United States." This must necessarily be exclusive; because if each State had power to
18 prescribe a DISTINCT RULE, there could not be a UNIFORM RULE.

19 A case which may perhaps be thought to resemble the latter, but which is in fact widely different,
20 affects the question immediately under consideration. I mean the power of imposing taxes on all
21 articles other than exports and imports. This, I contend, is manifestly a concurrent and coequal
22 authority in the United States and in the individual States. There is plainly no expression in the
23 granting clause which makes that power EXCLUSIVE in the Union. There is no independent clause
24 or sentence which prohibits the States from exercising it. So far is this from being the case, that a plain
25 and conclusive argument to the contrary is to be deduced from the restraint laid upon the States in
26 relation to duties on imports and exports. This restriction implies an admission that, if it were not
27 inserted, the States would possess the power it excludes; and it implies a further admission, that as to
28 all other taxes, the authority of the States remains undiminished. In any other view it would be both
29 unnecessary and dangerous; it would be unnecessary, because if the grant to the Union of the power
30 of laying such duties implied the exclusion of the States, or even their subordination in this particular,

1 there could be no need of such a restriction; it would be dangerous, because the introduction of it
2 leads directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors
3 be just, could not have been intended; I mean that the States, in all cases to which the restriction did
4 not apply, would have a concurrent power of taxation with the Union. The restriction in question
5 amounts to what lawyers call a NEGATIVE PREGNANT that is, a NEGATION of one thing, and
6 an AFFIRMANCE of another; a negation of the authority of the States to impose taxes on imports
7 and exports, and an affirmance of their authority to impose them on all other articles. It would be
8 mere sophistry to argue that it was meant to exclude them ABSOLUTELY from the imposition of
9 taxes of the former kind, and to leave them at liberty to lay others SUBJECT TO THE CONTROL
10 of the national legislature. The restraining or prohibitory clause only says, that they shall not,
11 WITHOUT THE CONSENT OF CONGRESS, lay such duties; and if we are to understand this in
12 the sense last mentioned, the Constitution would then be made to introduce a formal provision for
13 the sake of a very absurd conclusion; which is, that the States, WITH THE CONSENT of the national
14 legislature, might tax imports and exports; and that they might tax every other article, UNLESS
15 CONTROLLED by the same body. If this was the intention, why not leave it, in the first instance,
16 to what is alleged to be the natural operation of the original clause, conferring a general power of
17 taxation upon the Union? It is evident that this could not have been the intention, and that it will not
18 bear a construction of the kind.

19 As to a supposition of repugnancy between the power of taxation in the States and in the Union, it
20 cannot be supported in that sense which would be requisite to work an exclusion of the States. It is,
21 indeed, possible that a tax might be laid on a particular article by a State which might render it
22 INEXPEDIENT that thus a further tax should be laid on the same article by the Union; but it would
23 not imply a constitutional inability to impose a further tax. The quantity of the imposition, the
24 expediency or in expediency of an increase on either side, would be mutually questions of prudence;
25 but there would be involved no direct contradiction of power. The particular policy of the national
26 and of the State systems of finance might now and then not exactly coincide, and might require
27 reciprocal forbearances. It is not, however a mere possibility of inconvenience in the exercise of powers,
28 but an immediate constitutional repugnancy that can by implication alienate and extinguish a pre-
29 existing right of sovereignty.

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

11 PUBLIUS

12

1 What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of
2 MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but
3 NECESSARY and PROPER laws?

4 This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of
5 the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes
6 must be a power to pass all laws NECESSARY and PROPER for the execution of that power; and
7 what does the unfortunate and calumniated provision in question do more than declare the same truth,
8 to wit, that the national legislature, to whom the power of laying and collecting taxes had been
9 previously given, might, in the execution of that power, pass all laws NECESSARY and PROPER to
10 carry it into effect? I have applied these observations thus particularly to the power of taxation, because
11 it is the immediate subject under consideration, and because it is the most important of the authorities
12 proposed to be conferred upon the Union. But the same process will lead to the same result, in relation
13 to all other powers declared in the Constitution. And it is EXPRESSLY to execute these powers that
14 the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all
15 NECESSARY and PROPER laws. If there is any thing exceptionable, it must be sought for in the
16 specific powers upon which this general declaration is predicated. The declaration itself, though it may
17 be chargeable with tautology or redundancy, is at least perfectly harmless.

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

27 But it may be again asked, Who is to judge of the NECESSITY and PROPRIETY of the laws to
28 be passed for executing the powers of the Union? I answer, first, that this question arises as well and
29 as fully upon the simple grant of those powers as upon the declaratory clause; and I answer, in the

1 second place, that the national government, like every other, must judge, in the first instance, of the
2 proper exercise of its powers, and its constituents in the last. If the federal government should overpass
3 the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it
4 is, must appeal to the standard they have formed, and take such measures to redress the injury done
5 to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a
6 constitutional light, must always be determined by the nature of the powers upon which it is founded.
7 Suppose, by some forced constructions of its authority (which, indeed, cannot easily be imagined), the
8 Federal legislature should attempt to vary the law of descent in any State, would it not be evident that,
9 in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the State?
10 Suppose, again, that upon the pretense of an interference with its revenues, it should undertake to
11 abrogate a landtax imposed by the authority of a State; would it not be equally evident that this was
12 an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution
13 plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the
14 credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the
15 plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and
16 simplest truths.

17 But it is said that the laws of the Union are to be the SUPREME LAW of the land. But what
18 inference can be drawn from this, or what would they amount to, if they were not to be supreme? It
19 is evident they would amount to nothing. A LAW, by the very meaning of the term, includes
20 supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from
21 every political association. If individuals enter into a state of society, the laws of that society must be
22 the supreme regulator of their conduct. If a number of political societies enter into a larger political
23 society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution,
24 must necessarily be supreme over those societies, and the individuals of whom they are composed. It
25 would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government,
26 which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow
27 from this doctrine that acts of the large society which are NOT PURSUANT to its constitutional
28 powers, but which are invasions of the residuary authorities of the smaller societies, will become the
29 supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such.
30 Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one

1 we have just before considered, only declares a truth, which flows immediately and necessarily from
2 the institution of a federal government. It will not, I presume, have escaped observation, that it
3 EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION;
4 which I mention merely as an instance of caution in the convention; since that limitation would have
5 been to be understood, though it had not been expressed.

6 Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature,
7 and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection
8 of a tax laid by the authority of the State, (unless upon imports and exports), would not be the supreme
9 law of the land, but a usurpation of power not granted by the Constitution. As far as an improper
10 accumulation of taxes on the same object might tend to render the collection difficult or precarious,
11 this would be a mutual inconvenience, not arising from a superiority or defect of power on either side,
12 but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous
13 to both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this
14 respect which would avoid any material inconvenience. The inference from the whole is, that the
15 individual States would, under the proposed Constitution, retain an independent and uncontrollable
16 authority to raise revenue to any extent of which they may stand in need, by every kind of taxation,
17 except duties on imports and exports. It will be shown in the next paper that this CONCURRENT
18 JURISDICTION in the article of taxation was the only admissible substitute for an entire
19 subordination, in respect to this branch of power, of the State authority to that of the Union.

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