

1 FEDERALIST No. 21. Other Defects of the Present  
2 Confederation

3 For the Independent Journal. Wednesday, December 12,  
4 1787

5 HAMILTON

6 To the People of the State of New York:

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

13 The next most palpable defect of the subsisting Confederation, is the total want of a SANCTION  
14 to its laws. The United States, as now composed, have no powers to exact obedience, or punish  
15 disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of  
16 privileges, or by any other constitutional mode. There is no express delegation of authority to them to  
17 use force against delinquent members; and if such a right should be ascribed to the federal head, as  
18 resulting from the nature of the social compact between the States, it must be by inference and  
19 construction, in the face of that part of the second article, by which it is declared, "that each State shall  
20 retain every power, jurisdiction, and right, not EXPRESSLY delegated to the United States in  
21 Congress assembled." There is, doubtless, a striking absurdity in supposing that a right of this kind  
22 does not exist, but we are reduced to the dilemma either of embracing that supposition, preposterous  
23 as it may seem, or of contravening or explaining away a provision, which has been of late a repeated  
24 theme of the eulogies of those who oppose the new Constitution; and the want of which, in that plan,  
25 has been the subject of much plausible animadversion, and severe criticism. If we are unwilling to  
26 impair the force of this applauded provision, we shall be obliged to conclude, that the United States  
27 afford the extraordinary spectacle of a government destitute even of the shadow of constitutional power  
28 to enforce the execution of its own laws. It will appear, from the specimens which have been cited,

1 that the American Confederacy, in this particular, stands discriminated from every other institution  
2 of a similar kind, and exhibits a new and unexampled phenomenon in the political world.

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

9 Without a guaranty the assistance to be derived from the Union in repelling those domestic dangers  
10 which may sometimes threaten the existence of the State constitutions, must be renounced.  
11 Usurpation may rear its crest in each State, and trample upon the liberties of the people, while the  
12 national government could legally do nothing more than behold its encroachments with indignation  
13 and regret. A successful faction may erect a tyranny on the ruins of order and law, while no succor  
14 could constitutionally be afforded by the Union to the friends and supporters of the government. The  
15 tempestuous situation from which Massachusetts has scarcely emerged, evinces that dangers of this  
16 kind are not merely speculative. Who can determine what might have been the issue of her late  
17 convulsions, if the malcontents had been headed by a Caesar or by a Cromwell? Who can predict what  
18 effect a despotism, established in Massachusetts, would have upon the liberties of New Hampshire or  
19 Rhode Island, of Connecticut or New York?

20 The inordinate pride of State importance has suggested to some minds an objection to the principle  
21 of a guaranty in the federal government, as involving an officious interference in the domestic concerns  
22 of the members. A scruple of this kind would deprive us of one of the principal advantages to be  
23 expected from union, and can only flow from a misapprehension of the nature of the provision itself.  
24 It could be no impediment to reforms of the State constitution by a majority of the people in a legal  
25 and peaceable mode. This right would remain undiminished. The guaranty could only operate against  
26 changes to be effected by violence. Towards the preventions of calamities of this kind, too many checks  
27 cannot be provided. The peace of society and the stability of government depend absolutely on the  
28 efficacy of the precautions adopted on this head. Where the whole power of the government is in the  
29 hands of the people, there is the less pretense for the use of violent remedies in partial or occasional

1 distempers of the State. The natural cure for an ill-administration, in a popular or representative  
2 constitution, is a change of men. A guaranty by the national authority would be as much levelled  
3 against the usurpations of rulers as against the ferments and outrages of faction and sedition in the  
4 community.

5 The principle of regulating the contributions of the States to the common treasury by QUOTAS is  
6 another fundamental error in the Confederation. Its repugnancy to an adequate supply of the national  
7 exigencies has been already pointed out, and has sufficiently appeared from the trial which has been  
8 made of it. I speak of it now solely with a view to equality among the States. Those who have been  
9 accustomed to contemplate the circumstances which produce and constitute national wealth, must be  
10 satisfied that there is no common standard or barometer by which the degrees of it can be ascertained.  
11 Neither the value of lands, nor the numbers of the people, which have been successively proposed as  
12 the rule of State contributions, has any pretension to being a just representative. If we compare the  
13 wealth of the United Netherlands with that of Russia or Germany, or even of France, and if we at the  
14 same time compare the total value of the lands and the aggregate population of that contracted district  
15 with the total value of the lands and the aggregate population of the immense regions of either of the  
16 three last-mentioned countries, we shall at once discover that there is no comparison between the  
17 proportion of either of these two objects and that of the relative wealth of those nations. If the like  
18 parallel were to be run between several of the American States, it would furnish a like result. Let  
19 Virginia be contrasted with North Carolina, Pennsylvania with Connecticut, or Maryland with New  
20 Jersey, and we shall be convinced that the respective abilities of those States, in relation to revenue,  
21 bear little or no analogy to their comparative stock in lands or to their comparative population. The  
22 position may be equally illustrated by a similar process between the counties of the same State. No  
23 man who is acquainted with the State of New York will doubt that the active wealth of King's County  
24 bears a much greater proportion to that of Montgomery than it would appear to be if we should take  
25 either the total value of the lands or the total number of the people as a criterion!

26 The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate, the nature  
27 of the productions, the nature of the government, the genius of the citizens, the degree of information  
28 they possess, the state of commerce, of arts, of industry, these circumstances and many more, too  
29 complex, minute, or adventitious to admit of a particular specification, occasion differences hardly  
30 conceivable in the relative opulence and riches of different countries. The consequence clearly is that

1 there can be no common measure of national wealth, and, of course, no general or stationary rule by  
2 which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the  
3 contributions of the members of a confederacy by any such rule, cannot fail to be productive of glaring  
4 inequality and extreme oppression.

5 This inequality would of itself be sufficient in America to work the eventual destruction of the  
6 Union, if any mode of enforcing a compliance with its requisitions could be devised. The suffering  
7 States would not long consent to remain associated upon a principle which distributes the public  
8 burdens with so unequal a hand, and which was calculated to impoverish and oppress the citizens of  
9 some States, while those of others would scarcely be conscious of the small proportion of the weight  
10 they were required to sustain. This, however, is an evil inseparable from the principle of quotas and  
11 requisitions.

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

24 It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a  
25 security against excess. They prescribe their own limit; which cannot be exceeded without defeating  
26 the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as  
27 just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are  
28 too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not  
29 so great as when they are confined within proper and moderate bounds. This forms a complete barrier

1 against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of  
2 the power of imposing them.

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

15 PUBLIUS

1                                   **FEDERALIST No. 22. The Same Subject Continued**  
2                                   **(Other Defects of the Present Confederation)**

3                                   **From the New York Packet. Friday, December 14, 1787.**

4           HAMILTON

5           To the People of the State of New York:

6           IN ADDITION to the defects already enumerated in the existing federal system, there are others  
7 of not less importance, which concur in rendering it altogether unfit for the administration of the  
8 affairs of the Union.

9           The want of a power to regulate commerce is by all parties allowed to be of the number. The utility  
10 of such a power has been anticipated under the first head of our inquiries; and for this reason, as well  
11 as from the universal conviction entertained upon the subject, little need be added in this place. It is  
12 indeed evident, on the most superficial view, that there is no object, either as it respects the interests  
13 of trade or finance, that more strongly demands a federal superintendence. The want of it has already  
14 operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions  
15 of dissatisfaction between the States. No nation acquainted with the nature of our political association  
16 would be unwise enough to enter into stipulations with the United States, by which they conceded  
17 privileges of any importance to them, while they were apprised that the engagements on the part of  
18 the Union might at any moment be violated by its members, and while they found from experience  
19 that they might enjoy every advantage they desired in our markets, without granting us any return but  
20 such as their momentary convenience might suggest. It is not, therefore, to be wondered at that Mr.  
21 Jenkinson, in ushering into the House of Commons a bill for regulating the temporary intercourse  
22 between the two countries, should preface its introduction by a declaration that similar provisions in  
23 former bills had been found to answer every purpose to the commerce of Great Britain, and that it  
24 would be prudent to persist in the plan until it should appear whether the American government was  
25 likely or not to acquire greater consistency.(1)

26           Several States have endeavored, by separate prohibitions, restrictions, and exclusions, to influence  
27 the conduct of that kingdom in this particular, but the want of concert, arising from the want of a  
28 general authority and from clashing and dissimilar views in the State, has hitherto frustrated every

1 experiment of the kind, and will continue to do so as long as the same obstacles to a uniformity of  
2 measures continue to exist.

3 The interfering and unneighborly regulations of some States, contrary to the true spirit of the  
4 Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to  
5 be feared that examples of this nature, if not restrained by a national control, would be multiplied and  
6 extended till they became not less serious sources of animosity and discord than injurious impediments  
7 to the intercourse between the different parts of the Confederacy. "The commerce of the German  
8 empire(2) is in continual trammels from the multiplicity of the duties which the several princes and  
9 states exact upon the merchandises passing through their territories, by means of which the fine streams  
10 and navigable rivers with which Germany is so happily watered are rendered almost useless." Though  
11 the genius of the people of this country might never permit this description to be strictly applicable to  
12 us, yet we may reasonably expect, from the gradual conflicts of State regulations, that the citizens of  
13 each would at length come to be considered and treated by the others in no better light than that of  
14 foreigners and aliens.

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

27 This method of raising troops is not more unfriendly to economy and vigor than it is to an equal  
28 distribution of the burden. The States near the seat of war, influenced by motives of self-preservation,  
29 made efforts to furnish their quotas, which even exceeded their abilities; while those at a distance from

1 danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate  
2 pressure of this inequality was not in this case, as in that of the contributions of money, alleviated by  
3 the hope of a final liquidation. The States which did not pay their proportions of money might at least  
4 be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies  
5 of men. We shall not, however, see much reason to regret the want of this hope, when we consider  
6 how little prospect there is, that the most delinquent States will ever be able to make compensation  
7 for their pecuniary failures. The system of quotas and requisitions, whether it be applied to men or  
8 money, is, in every view, a system of imbecility in the Union, and of inequality and injustice among  
9 the members.

10 The right of equal suffrage among the States is another exceptionable part of the Confederation.  
11 Every idea of proportion and every rule of fair representation conspire to condemn a principle, which  
12 gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or  
13 New York; and to Delaware an equal voice in the national deliberations with Pennsylvania, or Virginia,  
14 or North Carolina. Its operation contradicts the fundamental maxim of republican government, which  
15 requires that the sense of the majority should prevail. Sophistry may reply, that sovereigns are equal,  
16 and that a majority of the votes of the States will be a majority of confederated America. But this kind  
17 of logical legerdemain will never counteract the plain suggestions of justice and common-sense. It may  
18 happen that this majority of States is a small minority of the people of America;(3) and two thirds of  
19 the people of America could not long be persuaded, upon the credit of artificial distinctions and  
20 syllogistic subtleties, to submit their interests to the management and disposal of one third. The larger  
21 States would after a while revolt from the idea of receiving the law from the smaller. To acquiesce in  
22 such a privation of their due importance in the political scale, would be not merely to be insensible to  
23 the love of power, but even to sacrifice the desire of equality. It is neither rational to expect the first,  
24 nor just to require the last. The smaller States, considering how peculiarly their safety and welfare  
25 depend on union, ought readily to renounce a pretension which, if not relinquished, would prove fatal  
26 to its duration.

27 It may be objected to this, that not seven but nine States, or two thirds of the whole number, must  
28 consent to the most important resolutions; and it may be thence inferred that nine States would always  
29 comprehend a majority of the Union. But this does not obviate the impropriety of an equal vote  
30 between States of the most unequal dimensions and populousness; nor is the inference accurate in



1 point of fact; for we can enumerate nine States which contain less than a majority of the people;(4)  
2 and it is constitutionally possible that these nine may give the vote. Besides, there are matters of  
3 considerable moment determinable by a bare majority; and there are others, concerning which doubts  
4 have been entertained, which, if interpreted in favor of the sufficiency of a vote of seven States, would  
5 extend its operation to interests of the first magnitude. In addition to this, it is to be observed that  
6 there is a probability of an increase in the number of States, and no provision for a proportional  
7 augmentation of the ratio of votes.

8 But this is not all: what at first sight may seem a remedy, is, in reality, a poison. To give a minority  
9 a negative upon the majority (which is always the case where more than a majority is requisite to a  
10 decision), is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress,  
11 from the nonattendance of a few States, have been frequently in the situation of a Polish diet, where a  
12 single VOTE has been sufficient to put a stop to all their movements. A sixtieth part of the Union,  
13 which is about the proportion of Delaware and Rhode Island, has several times been able to oppose  
14 an entire bar to its operations. This is one of those refinements which, in practice, has an effect the  
15 reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of  
16 something approaching towards it, has been founded upon a supposition that it would contribute to  
17 security. But its real operation is to embarrass the administration, to destroy the energy of the  
18 government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or  
19 corrupt junto, to the regular deliberations and decisions of a respectable majority. In those emergencies  
20 of a nation, in which the goodness or badness, the weakness or strength of its government, is of the  
21 greatest importance, there is commonly a necessity for action. The public business must, in some way  
22 or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the  
23 best mode of conducting it, the majority, in order that something may be done, must conform to the  
24 views of the minority; and thus the sense of the smaller number will overrule that of the greater, and  
25 give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue;  
26 contemptible compromises of the public good. And yet, in such a system, it is even happy when such  
27 compromises can take place: for upon some occasions things will not admit of accommodation; and  
28 then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the  
29 impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of  
30 inaction. Its situation must always savor of weakness, sometimes border upon anarchy.

1 It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption,  
2 as well as to domestic faction, than that which permits the sense of the majority to decide; though the  
3 contrary of this has been presumed. The mistake has proceeded from not attending with due care to  
4 the mischiefs that may be occasioned by obstructing the progress of government at certain critical  
5 seasons. When the concurrence of a large number is required by the Constitution to the doing of any  
6 national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely TO BE  
7 DONE, but we forget how much good may be prevented, and how much ill may be produced, by the  
8 power of hindering the doing what may be necessary, and of keeping affairs in the same unfavorable  
9 posture in which they may happen to stand at particular periods.

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

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

1 In republics, persons elevated from the mass of the community, by the suffrages of their fellow-  
2 citizens, to stations of great pre-eminence and power, may find compensations for betraying their trust,  
3 which, to any but minds animated and guided by superior virtue, may appear to exceed the proportion  
4 of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is that  
5 history furnishes us with so many mortifying examples of the prevalency of foreign corruption in  
6 republican governments. How much this contributed to the ruin of the ancient commonwealths has  
7 been already delineated. It is well known that the deputies of the United Provinces have, in various  
8 instances, been purchased by the emissaries of the neighboring kingdoms. The Earl of Chesterfield (if  
9 my memory serves me right), in a letter to his court, intimates that his success in an important  
10 negotiation must depend on his obtaining a major's commission for one of those deputies. And in  
11 Sweden the parties were alternately bought by France and England in so barefaced and notorious a  
12 manner that it excited universal disgust in the nation, and was a principal cause that the most limited  
13 monarch in Europe, in a single day, without tumult, violence, or opposition, became one of the most  
14 absolute and uncontrolled.

15 A circumstance which crowns the defects of the Confederation remains yet to be mentioned, the  
16 want of a judiciary power. Laws are a dead letter without courts to expound and define their true  
17 meaning and operation. The treaties of the United States, to have any force at all, must be considered  
18 as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws,  
19 be ascertained by judicial determinations. To produce uniformity in these determinations, they ought  
20 to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be  
21 instituted under the same authority which forms the treaties themselves. These ingredients are both  
22 indispensable. If there is in each State a court of final jurisdiction, there may be as many different final  
23 determinations on the same point as there are courts. There are endless diversities in the opinions of  
24 men. We often see not only different courts but the judges of the same court differing from each other.  
25 To avoid the confusion which would unavoidably result from the contradictory decisions of a number  
26 of independent judicatories, all nations have found it necessary to establish one court paramount to  
27 the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a  
28 uniform rule of civil justice.

29 This is the more necessary where the frame of the government is so compounded that the laws of  
30 the whole are in danger of being contravened by the laws of the parts. In this case, if the particular

1 tribunals are invested with a right of ultimate jurisdiction, besides the contradictions to be expected  
2 from difference of opinion, there will be much to fear from the bias of local views and prejudices, and  
3 from the interference of local regulations. As often as such an interference was to happen, there would  
4 be reason to apprehend that the provisions of the particular laws might be preferred to those of the  
5 general laws; for nothing is more natural to men in office than to look with peculiar deference towards  
6 that authority to which they owe their official existence.

7 The treaties of the United States, under the present Constitution, are liable to the infractions of  
8 thirteen different legislatures, and as many different courts of final jurisdiction, acting under the  
9 authority of those legislatures. The faith, the reputation, the peace of the whole Union, are thus  
10 continually at the mercy of the prejudices, the passions, and the interests of every member of which it  
11 is composed. Is it possible that foreign nations can either respect or confide in such a government? Is  
12 it possible that the people of America will longer consent to trust their honor, their happiness, their  
13 safety, on so precarious a foundation?

14 In this review of the Confederation, I have confined myself to the exhibition of its most material  
15 defects; passing over those imperfections in its details by which even a great part of the power intended  
16 to be conferred upon it has been in a great measure rendered abortive. It must be by this time evident  
17 to all men of reflection, who can divest themselves of the prepossessions of preconceived opinions, that  
18 it is a system so radically vicious and unsound, as to admit not of amendment but by an entire change  
19 in its leading features and characters.

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

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

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

17 PUBLIUS

18 1. This, as nearly as I can recollect, was the sense of his speech on introducing the last bill.

19 2. Encyclopedia, article "Empire."

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

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

1                   **FEDERALIST No. 23. The Necessity of a Government as**  
2                   **Energetic as the One Proposed to the Preservation of the**  
3                   **Union**

4                   **From the New York Packet. Tuesday, December 18, 1787.**

5           HAMILTON

6           To the People of the State of New York:

7           THE necessity of a Constitution, at least equally energetic with the one proposed, to the  
8 preservation of the Union, is the point at the examination of which we are now arrived.

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

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

17           The authorities essential to the common defense are these: to raise armies; to build and equip fleets;  
18 to prescribe rules for the government of both; to direct their operations; to provide for their support.  
19 These powers ought to exist without limitation, BECAUSE IT IS IMPOSSIBLE TO FORESEE OR  
20 DEFINE THE EXTENT AND VARIETY OF NATIONAL EXIGENCIES, OR THE  
21 CORRESPONDENT EXTENT AND VARIETY OF THE MEANS WHICH MAY BE  
22 NECESSARY TO SATISFY THEM. The circumstances that endanger the safety of nations are  
23 infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which  
24 the care of it is committed. This power ought to be coextensive with all the possible combinations of  
25 such circumstances; and ought to be under the direction of the same councils which are appointed to  
26 preside over the common defense.

27           This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence  
28 along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests

1 upon axioms as simple as they are universal; the MEANS ought to be proportioned to the END; the  
2 persons, from whose agency the attainment of any END is expected, ought to possess the MEANS by  
3 which it is to be attained.

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

13 Defective as the present Confederation has been proved to be, this principle appears to have been  
14 fully recognized by the framers of it; though they have not made proper or adequate provision for its  
15 exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the  
16 army and navy; to direct their operations. As their requisitions are made constitutionally binding upon  
17 the States, who are in fact under the most solemn obligations to furnish the supplies required of them,  
18 the intention evidently was that the United States should command whatever resources were by them  
19 judged requisite to the "common defense and general welfare." It was presumed that a sense of their  
20 true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the  
21 punctual performance of the duty of the members to the federal head.

22 The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and  
23 the observations, made under the last head, will, I imagine, have sufficed to convince the impartial  
24 and discerning, that there is an absolute necessity for an entire change in the first principles of the  
25 system; that if we are in earnest about giving the Union energy and duration, we must abandon the  
26 vain project of legislating upon the States in their collective capacities; we must extend the laws of the  
27 federal government to the individual citizens of America; we must discard the fallacious scheme of  
28 quotas and requisitions, as equally impracticable and unjust. The result from all this is that the Union  
29 ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues

1 which will be required for the formation and support of an army and navy, in the customary and  
2 ordinary modes practiced in other governments.

3 If the circumstances of our country are such as to demand a compound instead of a simple, a  
4 confederate instead of a sole, government, the essential point which will remain to be adjusted will be  
5 to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces  
6 or departments of power; allowing to each the most ample authority for fulfilling the objects  
7 committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets  
8 and armies and revenues necessary to this purpose? The government of the Union must be empowered  
9 to pass all laws, and to make all regulations which have relation to them. The same must be the case  
10 in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is  
11 the administration of justice between the citizens of the same State the proper department of the local  
12 governments? These must possess all the authorities which are connected with this object, and with  
13 every other that may be allotted to their particular cognizance and direction. Not to confer in each  
14 case a degree of power commensurate to the end, would be to violate the most obvious rules of  
15 prudence and propriety, and improvidently to trust the great interests of the nation to hands which  
16 are disabled from managing them with vigor and success.

17 Who is likely to make suitable provisions for the public defense, as that body to which the  
18 guardianship of the public safety is confided; which, as the centre of information, will best understand  
19 the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel  
20 itself most deeply interested in the preservation of every part; which, from the responsibility implied  
21 in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and  
22 which, by the extension of its authority throughout the States, can alone establish uniformity and  
23 concert in the plans and measures by which the common safety is to be secured? Is there not a manifest  
24 inconsistency in devolving upon the federal government the care of the general defense, and leaving  
25 in the State governments the EFFECTIVE powers by which it is to be provided for? Is not a want of  
26 co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue  
27 distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense,  
28 be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in  
29 the course of the revolution which we have just accomplished?



1 Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that  
2 it is both unwise and dangerous to deny the federal government an unconfined authority, as to all  
3 those objects which are intrusted to its management. It will indeed deserve the most vigilant and  
4 careful attention of the people, to see that it be modeled in such a manner as to admit of its being  
5 safely vested with the requisite powers. If any plan which has been, or may be, offered to our  
6 consideration, should not, upon a dispassionate inspection, be found to answer this description, it  
7 ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all  
8 the powers which a free people ought to delegate to any government, would be an unsafe and improper  
9 depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the  
10 coincident powers may safely accompany them. This is the true result of all just reasoning upon the  
11 subject. And the adversaries of the plan promulgated by the convention ought to have confined  
12 themselves to showing, that the internal structure of the proposed government was such as to render  
13 it unworthy of the confidence of the people. They ought not to have wandered into inflammatory  
14 declamations and unmeaning cavils about the extent of the powers. The POWERS are not too  
15 extensive for the OBJECTS of federal administration, or, in other words, for the management of our  
16 NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are  
17 chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other  
18 side, that the difficulty arises from the nature of the thing, and that the extent of the country will not  
19 permit us to form a government in which such ample powers can safely be reposed, it would prove  
20 that we ought to contract our views, and resort to the expedient of separate confederacies, which will  
21 move within more practicable spheres. For the absurdity must continually stare us in the face of  
22 confiding to a government the direction of the most essential national interests, without daring to trust  
23 it to the authorities which are indispensable to their proper and efficient management. Let us not  
24 attempt to reconcile contradictions, but firmly embrace a rational alternative.

25 I trust, however, that the impracticability of one general system cannot be shown. I am greatly  
26 mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the  
27 observations which have been made in the course of these papers have served to place the reverse of  
28 that position in as clear a light as any matter still in the womb of time and experience can be susceptible  
29 of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the  
30 country, is the strongest argument in favor of an energetic government; for any other can certainly

1 never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the  
2 adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to verify  
3 the gloomy doctrines which predict the impracticability of a national system pervading entire limits  
4 of the present Confederacy.

5 PUBLIUS

1 FEDERALIST No. 24. The Powers Necessary to the  
2 Common Defense Further Considered

3 For the Independent Journal. Wednesday, December 19,  
4 1787

5 HAMILTON

6 To the People of the State of New York:

7 TO THE powers proposed to be conferred upon the federal government, in respect to the creation  
8 and direction of the national forces, I have met with but one specific objection, which, if I understand  
9 it right, is this, that proper provision has not been made against the existence of standing armies in  
10 time of peace; an objection which, I shall now endeavor to show, rests on weak and unsubstantial  
11 foundations.

12 It has indeed been brought forward in the most vague and general form, supported only by bold  
13 assertions, without the appearance of argument; without even the sanction of theoretical opinions; in  
14 contradiction to the practice of other free nations, and to the general sense of America, as expressed in  
15 most of the existing constitutions. The propriety of this remark will appear, the moment it is  
16 recollected that the objection under consideration turns upon a supposed necessity of restraining the  
17 LEGISLATIVE authority of the nation, in the article of military establishments; a principle unheard  
18 of, except in one or two of our State constitutions, and rejected in all the rest.

19 A stranger to our politics, who was to read our newspapers at the present juncture, without having  
20 previously inspected the plan reported by the convention, would be naturally led to one of two  
21 conclusions: either that it contained a positive injunction, that standing armies should be kept up in  
22 time of peace; or that it vested in the EXECUTIVE the whole power of levying troops, without  
23 subjecting his discretion, in any shape, to the control of the legislature.

24 If he came afterwards to peruse the plan itself, he would be surprised to discover, that neither the  
25 one nor the other was the case; that the whole power of raising armies was lodged in the  
26 LEGISLATURE, not in the EXECUTIVE; that this legislature was to be a popular body, consisting  
27 of the representatives of the people periodically elected; and that instead of the provision he had  
28 supposed in favor of standing armies, there was to be found, in respect to this object, an important

1 qualification even of the legislative discretion, in that clause which forbids the appropriation of money  
2 for the support of an army for any longer period than two years a precaution which, upon a nearer  
3 view of it, will appear to be a great and real security against the keeping up of troops without evident  
4 necessity.

5 Disappointed in his first surmise, the person I have supposed would be apt to pursue his conjectures  
6 a little further. He would naturally say to himself, it is impossible that all this vehement and pathetic  
7 declamation can be without some colorable pretext. It must needs be that this people, so jealous of  
8 their liberties, have, in all the preceding models of the constitutions which they have established,  
9 inserted the most precise and rigid precautions on this point, the omission of which, in the new plan,  
10 has given birth to all this apprehension and clamor.

11 If, under this impression, he proceeded to pass in review the several State constitutions, how great  
12 would be his disappointment to find that TWO ONLY of them(1) contained an interdiction of  
13 standing armies in time of peace; that the other eleven had either observed a profound silence on the  
14 subject, or had in express terms admitted the right of the Legislature to authorize their existence.

15 Still, however he would be persuaded that there must be some plausible foundation for the cry raised  
16 on this head. He would never be able to imagine, while any source of information remained  
17 unexplored, that it was nothing more than an experiment upon the public credulity, dictated either  
18 by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous.  
19 It would probably occur to him, that he would be likely to find the precautions he was in search of in  
20 the primitive compact between the States. Here, at length, he would expect to meet with a solution of  
21 the enigma. No doubt, he would observe to himself, the existing Confederation must contain the most  
22 explicit provisions against military establishments in time of peace; and a departure from this model,  
23 in a favorite point, has occasioned the discontent which appears to influence these political champions.

24 If he should now apply himself to a careful and critical survey of the articles of Confederation, his  
25 astonishment would not only be increased, but would acquire a mixture of indignation, at the  
26 unexpected discovery, that these articles, instead of containing the prohibition he looked for, and  
27 though they had, with jealous circumspection, restricted the authority of the State legislatures in this  
28 particular, had not imposed a single restraint on that of the United States. If he happened to be a man  
29 of quick sensibility, or ardent temper, he could now no longer refrain from regarding these clamors as

1 the dishonest artifices of a sinister and unprincipled opposition to a plan which ought at least to receive  
2 a fair and candid examination from all sincere lovers of their country! How else, he would say, could  
3 the authors of them have been tempted to vent such loud censures upon that plan, about a point in  
4 which it seems to have conformed itself to the general sense of America as declared in its different  
5 forms of government, and in which it has even superadded a new and powerful guard unknown to  
6 any of them? If, on the contrary, he happened to be a man of calm and dispassionate feelings, he would  
7 indulge a sigh for the frailty of human nature, and would lament, that in a matter so interesting to the  
8 happiness of millions, the true merits of the question should be perplexed and entangled by expedients  
9 so unfriendly to an impartial and right determination. Even such a man could hardly forbear  
10 remarking, that a conduct of this kind has too much the appearance of an intention to mislead the  
11 people by alarming their passions, rather than to convince them by arguments addressed to their  
12 understandings.

13 But however little this objection may be countenanced, even by precedents among ourselves, it may  
14 be satisfactory to take a nearer view of its intrinsic merits. From a close examination it will appear that  
15 restraints upon the discretion of the legislature in respect to military establishments in time of peace,  
16 would be improper to be imposed, and if imposed, from the necessities of society, would be unlikely  
17 to be observed.

18 Though a wide ocean separates the United States from Europe, yet there are various considerations  
19 that warn us against an excess of confidence or security. On one side of us, and stretching far into our  
20 rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to  
21 meet the British settlements, are colonies and establishments subject to the dominion of Spain. This  
22 situation and the vicinity of the West India Islands, belonging to these two powers create between  
23 them, in respect to their American possessions and in relation to us, a common interest. The savage  
24 tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because  
25 they have most to fear from us, and most to hope from them. The improvements in the art of  
26 navigation have, as to the facility of communication, rendered distant nations, in a great measure,  
27 neighbors. Britain and Spain are among the principal maritime powers of Europe. A future concert of  
28 views between these nations ought not to be regarded as improbable. The increasing remoteness of  
29 consanguinity is every day diminishing the force of the family compact between France and Spain.  
30 And politicians have ever with great reason considered the ties of blood as feeble and precarious links

1 of political connection. These circumstances combined, admonish us not to be too sanguine in  
2 considering ourselves as entirely out of the reach of danger.

3 Previous to the Revolution, and ever since the peace, there has been a constant necessity for keeping  
4 small garrisons on our Western frontier. No person can doubt that these will continue to be  
5 indispensable, if it should only be against the ravages and depredations of the Indians. These garrisons  
6 must either be furnished by occasional detachments from the militia, or by permanent corps in the  
7 pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia  
8 would not long, if at all, submit to be dragged from their occupations and families to perform that  
9 most disagreeable duty in times of profound peace. And if they could be prevailed upon or compelled  
10 to do it, the increased expense of a frequent rotation of service, and the loss of labor and disconcertion  
11 of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would  
12 be as burdensome and injurious to the public as ruinous to private citizens. The latter resource of  
13 permanent corps in the pay of the government amounts to a standing army in time of peace; a small  
14 one, indeed, but not the less real for being small. Here is a simple view of the subject, that shows us at  
15 once the impropriety of a constitutional interdiction of such establishments, and the necessity of  
16 leaving the matter to the discretion and prudence of the legislature.

17 In proportion to our increase in strength, it is probable, nay, it may be said certain, that Britain and  
18 Spain would augment their military establishments in our neighborhood. If we should not be willing  
19 to be exposed, in a naked and defenseless condition, to their insults and encroachments, we should  
20 find it expedient to increase our frontier garrisons in some ratio to the force by which our Western  
21 settlements might be annoyed. There are, and will be, particular posts, the possession of which will  
22 include the command of large districts of territory, and facilitate future invasions of the remainder. It  
23 may be added that some of those posts will be keys to the trade with the Indian nations. Can any man  
24 think it would be wise to leave such posts in a situation to be at any instant seized by one or the other  
25 of two neighboring and formidable powers? To act this part would be to desert all the usual maxims  
26 of prudence and policy.

27 If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavor,  
28 as soon as possible, to have a navy. To this purpose there must be dock-yards and arsenals; and for the  
29 defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea

1 that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that purpose;  
2 but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, be found  
3 an indispensable security against descents for the destruction of the arsenals and dock-yards, and  
4 sometimes of the fleet itself.

5 PUBLIUS

6 1 This statement of the matter is taken from the printed collection of State constitutions.  
7 Pennsylvania and North Carolina are the two which contain the interdiction in these words: "As  
8 standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This  
9 is, in truth, rather a CAUTION than a PROHIBITION. New Hampshire, Massachusetts, Delaware,  
10 and Maryland have, in each of their bills of rights, a clause to this effect: "Standing armies are  
11 dangerous to liberty, and ought not to be raised or kept up WITHOUT THE CONSENT OF THE  
12 LEGISLATURE"; which is a formal admission of the authority of the Legislature. New York has no  
13 bills of rights, and her constitution says not a word about the matter. No bills of rights appear annexed  
14 to the constitutions of the other States, except the foregoing, and their constitutions are equally silent.  
15 I am told, however that one or two States have bills of rights which do not appear in this collection;  
16 but that those also recognize the right of the legislative authority in this respect.