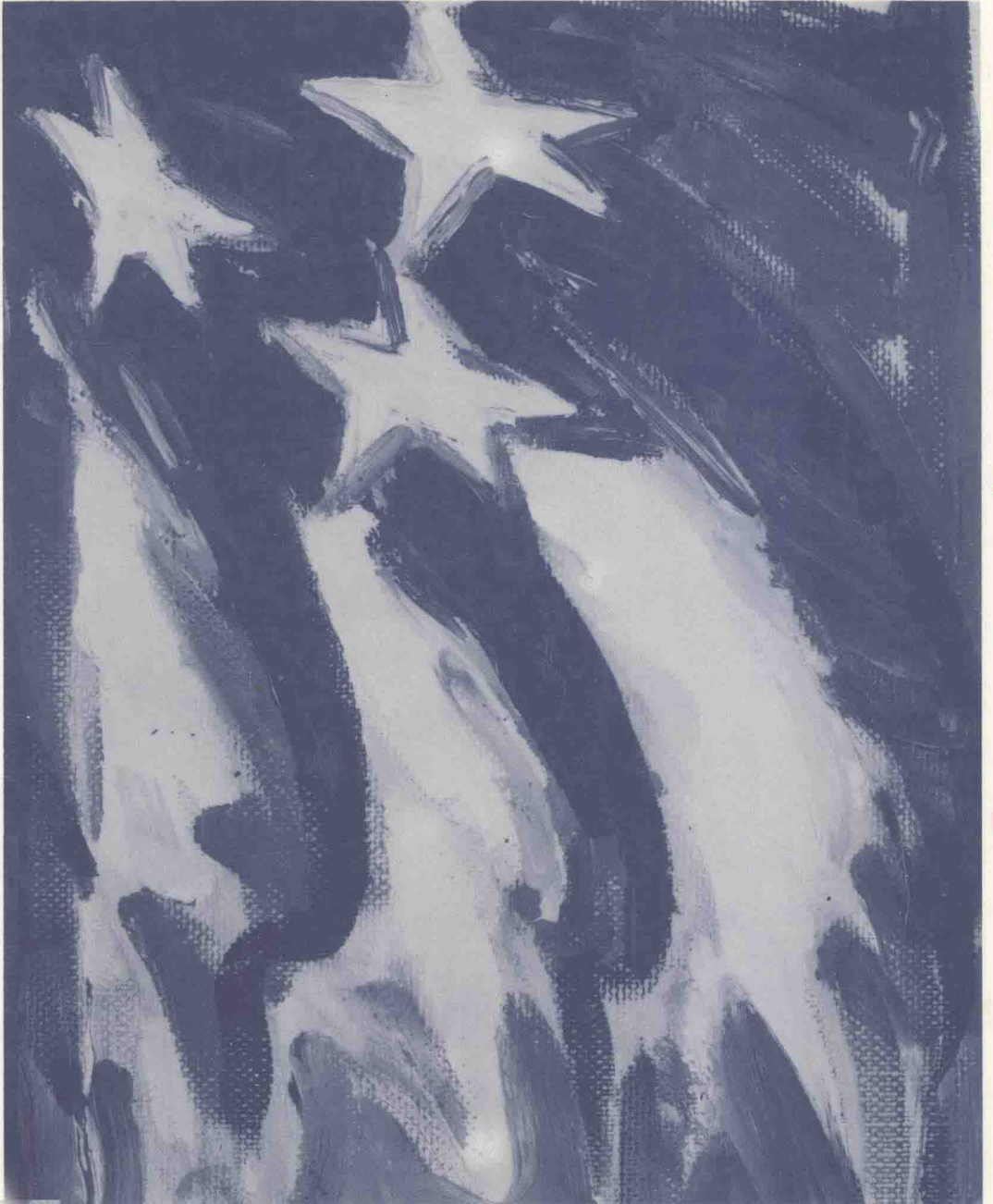


Readings for American Government



Theodore J. Lowi, Benjamin Ginsberg and Alice Hearst

3rd Brief

Readings for

American Government Freedom and Power

Brief Third Edition

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Preface

The readings contained in this volume are intended to enrich students' comprehension of the structure and operation of American government by providing a number of materials—articles, essays, and court cases—that illustrate the key concepts presented in the parallel chapter of the textbook. A headnote introducing each reading explains its significance and its precise relationship to the major concept presented in the core text.

The readings include classic pieces such as selections from major Federalist and Antifederalist writings and de Tocqueville's *Democracy in America*, contemporary essays from important newspapers and magazines, excerpts from major Supreme Court cases and selected federal statutes. By reprinting classic works in American government, we hope to acquaint students with some of the most profound thinking and writing on politics—thereby reinforcing the theoretical issues raised in the text. The contemporary essays are designed to provide students with lively and current illustrations of the phenomena and institutions discussed in the text; the court cases are selected for their importance in establishing the legal and institutional framework of American government. In every instance, we strongly urge students to read the headnote introducing each reading to gain an understanding of the significance of each piece and its relationship to the text, and to use the questions following each set of readings as an aid in studying the materials in both the reader and the text.

New to this edition are the “Debating the Issues: Opposing Views” essays appearing in each chapter. The essays center on the topics introduced in the “Debating the Issues” boxes in the corresponding chapter in the text. Offering opposing views, the essays will help students think critically about important issues in American politics.

In preparing the third edition of this reader, we benefitted from the comments of a number of reviewers: Lydia Andrade, San Jose State University; Peri Arnold, University of Notre Dame; Cal Jillson, University of Colorado; Wayne MacIntosh, University of Maryland; Evan MacKenzie, Albright College; and Mark Silverstein, Boston University. Their insights helped guide us in selecting updated materials and making the reader more responsive to the needs of students using it.

We encourage students to review and ponder the readings and cases in conjunction with the text, and utilize them as a learning tool. We are confident that these materials will assist students in learning more about issues of freedom and power in American government.

Theodore Lowi
Benjamin Ginsberg
Alice Hearst

July 1993

Contents

Preface vii

Readings

Chapter 1 Freedom and Power

Debating the Issues—Freedom and Power: The Enduring Debate 1

Alexander Hamilton, *The Federalist No. 23* 2

Alexander Hamilton, *The Federalist No. 30* 5

The Antifederalist: Brutus 8

Raymond D. Gastil, “What Kind of Democracy?” 13

Chapter 2 Constructing a Government: The Founding and the Constitution

The Economist, “If You Sincerely Want to be a United States” 19

David Lauter, “We the People: The American Constitution After 200 Years: Celebrating the Nation’s Charter as Problem and Solution” 26

Debating the Issues—The Constitution: Property versus Pragmatism

Alexander Hamilton, *The Federalist No. 15* 32

Patrick Henry, Speech at Virginia Ratifying Convention 36

Chapter 3 The Constitutional Framework: Federalism and the Separation of Powers

James Madison, *The Federalist No. 46* 40

Alice M. Rivlin, “A New Vision of American Federalism” 44

Debating the Issues—Is the Separation of Powers Obsolete?

Adam Clymer, “Politics Fuels Debate on Budget Power” 53

Michael Kinsley, “The Case for a Big Power Swap” 56

Chapter 4 The Constitution and the Individual: The Bill of Rights, Civil Liberties, and Civil Rights

Barron v. Baltimore (1833) 59

W. John Moore, “Sizing Up the Court’s ‘Gang of Three’ ” 61

Brown v. Board of Education (1954) 64

Debating the Issues—Affirmative Action

Evan J. Kemp, Jr., “Rights and Quotas, Theory and Practice” 67

Paul Starr, "Race and Reparations: A New Road to Healing Black America" 69

Chapter 5 Congress: The First Branch

James Madison, *The Federalist No. 57* 74

James Madison, *The Federalist No. 62* 77

Eric Felten, "Little Princes: The Petty Despotism of Congressional Staff" 80

Debating the Issues—Congressional Term Limits: Remedy or Snake Oil?

Bill Frenzel and Thomas E. Mann, "Term Limits for Congress: Arguments Pro and Con" 88

Chapter 6 The President and the Executive Branch

Alexander Hamilton, *The Federalist No. 70* 100

Debating the Issues—Presidential Power: Broad or Narrow?

Steven Stark, "The First Modern Presidency: Bill Clinton" 103

George Will, "Rhetorical Presidency" 108

Woodrow Wilson, "The Study of Administration" 111

Stephen Barr, "The Promise to Transform Government" 118

Chapter 7 The Federal Courts: Least Dangerous Branch or Imperial Judiciary?

Marbury v. Madison (1803) 122

Debating the Issues—Interpreting the Constitution and Original Intent

Fred Barbash, "With Brennan, The Old Order's Power Endured" 127

David G. Savage, "The Rehnquist Court" 131

Joan Biskupic, "Scalia Sees No Justice in Trying to Judge Intent of Congress on a Law" 139

Chapter 8 Public Opinion and the Media

Benjamin Ginsberg, "How Polling Transforms Public Opinion" 143

Richard Morin, "Numbers From Nowhere: The Hoax of the Call-In 'Polls'" 149

David Shaw, "Distrustful Public Views Media as 'Them—Not Us'" 153

Debating the Issues—The Media: How Influential Are They?

David Shaw, “Media Set Agenda But Often Misjudge Public’s Interest” 160

Richard Harwood, “Media Wilt: The Waning Power of the Press” 166

Chapter 9 Elections

Congressional Record: March 9, 1971 168

Debating the Issues—Do Elections and Voting Matter?

Robin Toner, “Year of Political Changes: Voters Impose Discipline on the Candidates as Perot Finds a New Way of Campaigning” 171

Midge Decter, “Year of Living Dangerously” 173

Harold Meyerson, “The Election: Impending Realignment” 176

Chapter 10 Political Parties

Alexis de Tocqueville, “Parties in the United States” 183

Debating the Issues—Party Politics in America: Are Three Parties Better than Two?

Alan M. Dershowitz and Charles Fried, “Don’t Waste Your Vote on Perot” 186

Theodore J. Lowi, “The Party Crasher” 188

Robert Sullivan, “Army of the Faithful” 192

Chapter 11 Groups and Interests

Alexis de Tocqueville, “Political Association in the United States” 202

Dick Kirschten, “Not Black-and-White” 205

Debating the Issues—PACs and Politics

Thomas Hale Boggs, Jr., “All Interests Are Special” 210

Christopher Drew and Michael Tackett, “More and More, Lobbyists Call Shots in D.C.” 212

Chapter 12 Politics and Government: The Problem with the Process

Thomas Jefferson, “A Letter to James Madison” 218

David S. Broder and Michael Weisskopf, “Return to Gridlock: Clinton Confronts a Resistant Capital” 220

Debating the Issues—Is America Declining?

Paul Taylor, “For Disconnected Americans, Citizenship Fades” 224

Robert J. Samuelson, “The Luckiest Accident” 227



Chapter 13 Introduction to Public Policy

Homestead Act of 1862 230

Clean Air Act of 1972 233

Debating the Issues—Regulation: Governmental Scalpel or Blunt Instrument?

Charles Krauthammer, “Family Leave Flimflam” 239

Pat Schroeder, “Affordable Family Leave” 241

Irving Kristol, “A Conservative Welfare State” 242

Mimi Abramovitz and Martha Davis, “ ‘Wedfare’—or Welfare?”
246

Chapter 14 Foreign Policy and World Politics

Tomaz Mastnak, “Is the Nation-State Really Obsolete?” 249

Debating the Issues—American Foreign Policy: Self-Interest or Idealism?

Charles Krauthammer, “What’s Wrong with the Pentagon Paper?”
254

David J. Scheffer, “Not the World’s Policeman” 256

Thomas L. Friedman, “Friends Like Russia Make Diplomacy a Mess”
258

Chapter 15 The State of the Union

Alexis de Tocqueville, “What Sort of Despotism Democratic Nations
Have to Fear” 261

CHAPTER 1

Freedom and Power

Debating the Issues: Opposing Views

FREEDOM AND POWER: THE ENDURING DEBATE

See text pp. 10–11

As the text notes, all governments must have, at the very least, the power to enforce public order and to collect public revenues. In the debates preceding the ratification of the United States Constitution, which creates the framework for the operation of the national government, the scope of these powers was directly at issue as the Federalists and Antifederalists battled over whether to create a strong central government or retain the confederated structure under which the country had operated since the Revolution. The arguments were advanced against the backdrop of state sovereignty: under the Articles of Confederation, states maintained their own militias and controlled the means by which revenues were generated for public purposes. Alexander Hamilton, a leading Federalist, argued that this structure left the federal government “in a kind of tutelage to the State governments,” sapped of the energy and creativity required to sustain a union.

The following excerpts present the Federalist and Antifederalist positions on the potential gains and problems that would result from the emergence of a strong national government. The two Federalist papers authored by Hamilton argue in favor of creating a strong central government with power to raise an army and the revenues necessary to perform public functions.

The author of the third selection is not known for certain: the Antifederalist writer styled himself “Brutus” and was responding to Hamilton’s arguments in Federalist No. 23. The Antifederalist writer warns against the aggregation of power in the national government that is certain to result from the delegation of such authority from the states to the national government.

The principle argument is over which level of government, state or national, should exercise military and fiscal power. Antifederalists warned that the remoteness of the national government would lead to abuses of power, and the only way to prevent this was to keep power with the states and close to the people who had consented to be governed.

Alexander Hamilton *The Federalist No. 23**

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

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

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

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense. . . .

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

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions

*Alexander Hamilton, *The Federalist No. 23*, ed. Clinton Rossiter (New York: NAL, 1961).

are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the “common defense and general welfare.” It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

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

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

Who so likely to make suitable provisions for the public defense as that body to which the guardianship of the public safety is confided; which, as the center of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the States, can alone establish uniformity and concert in the plans and measures by which the common safety is to be secured? Is there

not a manifest inconsistency in devolving upon the federal government the care of the general defense and leaving in the State governments the *effective* powers by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention would have given a better impression of their candor if they had confined themselves to showing that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust to it the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative. . . . I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken if anything of weight has yet been advanced of this tendency; and I flatter myself that the observations which have been made in the course of these papers have served to place the reverse of that position in as clear a light as any matter still in the womb of time and experience is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never

preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution as the standard of our political creed we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading the entire limits of the present Confederacy.

PUBLIUS

Alexander Hamilton *The Federalist No. 30**

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

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

The present Confederation, feeble as it is, intended to repose in the United States an unlimited power of providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle, it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which compose that compact (as has already been stated), are authorized to ascertain and call for any sums of money necessary in their judgment to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are in every constitutional sense obligatory upon the States. These have no right to question the propriety of

*Alexander Hamilton, *The Federalist No. 30*, ed. Clinton Rossiter (New York: NAL, 1961).

the demand; no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of Union; though it may seldom or never have been avowedly claimed, yet in practice it has been constantly exercised and would continue to be so, as long as the revenues of the Confederacy should remain dependent on the intermediate agency of its members. What the consequences of this system have been is within the knowledge of every man the least conversant in our public affairs, and has been abundantly unfolded in different parts of these inquiries. It is this which affords ample cause of mortification to ourselves, and of triumph to our enemies.

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

The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call *internal* and *external* taxation. The former they would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head. This distinction, however, would violate that fundamental maxim of good sense and sound policy, which dictates that every POWER ought to be proportionate to its OBJECT; and would still leave the general government in a kind of tutelage to the State governments, inconsistent with every idea of vigor or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of the Union? Taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves that this resource alone, upon the most improved scale, would even suffice for its present necessities. Its future necessities admit not of calculation or limitation; and upon the principle more than once averted to the power of making provision for them as they arise ought to be equally unconfined. I believe it may be regarded as a position warranted by the history of mankind that, *in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources.*

To say that deficiencies may be provided for by requisitions upon the States is on the one hand to acknowledge that this system cannot be depended upon, and on the other hand to depend upon it for every thing beyond a certain limit. Those who have carefully attended to its vices and deformities as they have been exhibited by experience or delineated in the

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

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

It may perhaps be imagined that from the scantiness of the resources of

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

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

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

PUBLIUS

The Antifederalist: Brutus

In a confederated government, where the powers are divided between the general and the state government, it is essential . . . that the revenues of the country, without which no government can exist, should be divided between them, and so apportioned to each, as to answer their respective exigencies, as far as human wisdom can effect such a division and apportionment. . . .

No such allotment is made in this constitution, but every source of revenue is under the control of Congress; it therefore follows, that if this system is intended to be a complex and not a simple, a confederate and not an entire consolidated government, it contains in it the sure seeds of its own dissolution. One of two things must happen. Either the new constitution will become a mere *nudum pactum*, and all the authority of the rulers under it be cried down, as has happened to the present confederacy. Or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government. To one or the other of these issues, I think, this new government, if it is adopted, will advance with great celerity.

It is said, I know, that such a separation of the sources of revenue, cannot be made without endangering the public safety—"unless (says a writer) it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, etc."¹

The pretended demonstration of this writer will instantly vanish, when it is considered, that the *protection and defense* of the community is not intended to be entrusted *solely* into the hands of the general government, and by his own confession it ought not to be. It is true this system commits to the general government the protection and defense of the community against foreign force and invasion, against piracies and felonies on the high seas, and against insurrection among ourselves. They are also authorized to provide for the administration of justice in certain matters of a general concern, and in some that I think are not so. But it ought to be left to the state governments to provide for the protection and defense of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other. Protection and defense against the murderer, the robber, the thief, the cheat, and the unjust person, is to be derived from the respective state governments. The just way of reasoning therefore on this subject is this, the general government is to provide for the protection and defense of the community against foreign attacks, etc. They therefore ought to have authority sufficient to effect this, so far as is consistent with the providing for our internal protection and defense. The state governments are entrusted with the care of administering justice among its citizens, and the management of other internal concerns; they ought therefore to retain power adequate to that end. The preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government. The happiness of a people depends infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements. And I believe history will furnish but few examples of nations who have duly attended to these, who have been subdued by foreign invaders. If a proper respect and submission to the laws prevailed over all orders of men in our country; and if a spirit of public and private justice, economy, and industry influenced the people, we need not be under any apprehensions but what they would be ready to repel any invasion that might be made on the country. And more than this, I would not wish from them. A defensive war is the only one I think justifiable. I do not make these observations to prove, that a government ought not to be authorised to provide for the protection and defense of a country against external enemies, but to show that this is not the most important, much less the only object of their care.

The European governments are almost all of them framed, and admin-

¹Federalist, No. 23.