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## Federal Farmer: *An Additional Number of Letters to the Republican*, New York, 2 May 1788

### LETTER XVII.

JANUARY 23, 1788.

DEAR SIR, I believe the people of the United States are full in the opinion, that a free and mild government can be preserved in their extensive territories, only under the substantial forms of a federal republic. As several of the ablest advocates for the system proposed, have acknowledged this (and I hope the confessions they have published will be preserved and remembered) I shall not take up time to establish this point. A question then arises, how far that system partakes of a federal republic—I observed in a former letter, that it appears to be the first important step to a consolidation of the states; that its strong tendency is to that point.

But what do we mean by a federal republic? and what by a consolidated government? To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain enumerated cases, under certain restrictions; this head may be a single assembly, like the present congress, or the Amphictionic council; or it may consist of a legislature, with one or more branches; of an executive, and of a judiciary. To form a consolidated, or one entire government, there must be no state, or local governments, but all things, persons and property, must be subject to the laws of one legislature alone; to one executive, and one judiciary. Each state government, as the government of New Jersey, &c. is a consolidated, or one entire government, as it respects the counties, towns, citizens and property within the limits of the state.—The state governments are the basis, the pillar on which the federal head is placed, and the whole together, when formed on elective principles, constitute a federal republic. A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal head rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body; but in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact: Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils. A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union power to manage general concerns: The quantity of power the union must possess is one thing, the mode of

exercising the powers given, is quite a different consideration; and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic; that is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, &c. operate immediately upon the persons and property of individuals, and not on states, extend to organizing the militia, &c. the government, as to its administration, as to making and executing laws, is not federal, but consolidated. To illustrate my idea—the union makes a requisition, and assigns to each state its quota of men or monies wanted; each state, by its own laws and officers, in its own way, furnishes its quota: here the state governments stand between the union and individuals; the laws of the union operate only on states, as such, and federally: Here nothing can be done without the meetings of the state legislatures—but in the other case the union, though the state legislatures should not meet for years together, proceeds immediately, by its own laws and officers, to levy and collect monies of individuals, to enlist men, form armies, &c. here the laws of the union operate immediately on the body of the people, on persons and property; in the same manner the laws of one entire consolidated government operate.—These two modes are very distinct, and in their operation and consequences have directly opposite tendencies: The first makes the existence of the state governments indispensable, and throws all the detail business of levying and collecting the taxes, &c. into the hands of those governments, and into the hands, of course, of many thousand officers solely created by, and dependent on the state. The last entirely excludes the agency of the respective states, and throws the whole business of levying and collecting taxes, &c. into the hands of many thousand officers solely created by, and dependent upon the union, and makes the existence of the state government of no consequence in the case. It is true, congress in raising any given sum in direct taxes, must by the constitution, raise so much of it in one state, and so much in another, by a fixed rule, which most of the states some time since agreed to: But this does not effect the principle in question, it only secures each state against any arbitrary proportions. The federal mode is perfectly safe and eligible, founded in the true spirit of a confederated republic there could be no possible exception to it, did we not find by experience, that the states will sometimes neglect to comply with the reasonable requisitions of the union. It being according to the fundamental principles of federal republics, to raise men and monies by requisitions, and for the states individually to organize and train the militia, I conceive, there can be no reason whatever for departing from them, except this, that the states sometimes neglect to comply with reasonable requisitions, and that it is dangerous to attempt to compel a delinquent state by force, as it may often produce a war. We ought, therefore, to enquire attentively, how extensive the evils to be guarded against are, and cautiously limit the remedies to the extent of the evils. I am not about to defend the confederation, or to charge the proposed constitution with imperfections not in it; but we ought to examine facts, and strip them of the false colourings often given them by incautious observations, by unthinking or designing men. We ought to premise, that laws for raising men and monies, even in consolidated governments, are not often punctually complied with. Historians, except in extraordinary cases, but very seldom take notice of the detail collection of taxes; but these facts we have fully proved, and well attested; that the most energetic governments have relinquished taxes frequently, which were of many years standing. These facts amply prove, that taxes assessed, have remained many years uncollected. I agree there have been instances in the republics of Greece, Holland, &c. in the

course of several centuries, of states neglecting to pay their quotas of requisitions; but it is a circumstance certainly deserving of attention, whether these nations which have depended on requisitions principally for their defence, have not raised men and monies nearly as punctually as entire governments, which have taxed directly; whether we have not found the latter as often distressed for the want of troops and monies, as the former. It has been said, that the Amphictionic council, and the Germanic head, have not possessed sufficient powers to controul the members of the republic in a proper manner. Is this, if true, to be imputed to requisitions? Is it not principally to be imputed to the unequal powers of those members, connected with this important circumstance, that each member possessed power to league itself with foreign powers, and powerful neighbours, without the consent of the head. After all, has not the Germanic body a government as good as its neighbours in general? and did not the Grecian republic remain united several centuries, and form the theatre of human greatness? No government in Europe has commanded monies more plentifully than the government of Holland. As to the United States, the separate states lay taxes directly, and the union calls for taxes by way of requisitions; and is it a fact, that more monies are due in proportion on requisitions in the United States, than on the state taxes directly laid?—It is but about ten years since congress begun to make requisitions, and in that time, the monies, &c. required, and the bounties given for men required of the states, have amounted, specie value, to about 36 millions dollars, about 24 millions of dollars of which have been actually paid; and a very considerable part of the 12 millions not paid, remains so not so much from the neglect of the states, as from the sudden changes in paper money, &c. which in a great measure rendered payments of no service, and which often induced the union indirectly to relinquish one demand, by making another in a different form. Before we totally condemn requisitions, we ought to consider what immense bounties the states gave, and what prodigious exertions they made in the war, in order to comply with the requisitions of congress; and if since the peace they have been delinquent, ought we not carefully to enquire, whether that delinquency is to be imputed solely to the nature of requisitions? ought it not in part to be imputed to two other causes? I mean first, an opinion, that has extensively prevailed, that the requisitions for domestic interest have not been founded on just principles; and secondly, the circumstance, that the government itself, by proposing imposts, &c. has departed virtually from the constitutional system; which proposed changes, like all changes proposed in government, produce an inattention and negligence in the execution of the government in being.

I am not for depending wholly on requisitions; but I mention these few facts to shew they are not so totally futile as many pretend. For the truth of many of these facts I appeal to the public records; and for the truth of the others, I appeal to many republican characters, who are best informed in the affairs of the United States. Since the peace, and till the convention reported, the wisest men in the United States generally supposed, that certain limited funds would answer the purposes of the union: and though the states are by no means in so good a condition as I wish they were, yet, I think, I may very safely affirm, they are in a better condition than they would be had congress always possessed the powers of taxation now contended for. The fact is admitted, that our federal government does not possess sufficient powers to give life and vigor to the political system; and that we experience disappointments, and several inconveniencies; but we ought carefully to distinguish those which are merely the consequences of a severe and tedious war, from those which arise from defects in the federal system. There has been an entire revo-

lution in the United States within thirteen years, and the least we can compute the waste of labour and property at, during that period, by the war, is three hundred million of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it;—but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures, &c. and thereby laying the foundation of good government, and of individual and political happiness, than any people ever did in a like time; we must judge from a view of the country and facts, and not from foreign newspapers, or our own, which are printed chiefly in the commercial towns, where imprudent living, imprudent importations, and many unexpected disappointments, have produced a despondency, and a disposition to view every thing on the dark side. Some of the evils we feel, all will agree, ought to be imputed to the defective administration of the governments. From these and various considerations, I am very clearly of opinion, that the evils we sustain, merely on account of the defects of the confederation, are but as a feather in the balance against a mountain, compared with those which would, infallibly, be the result of the loss of general liberty, and that happiness men enjoy under a frugal, free, and mild government.

Heretofore we do not seem to have seen danger any where, but in giving power to congress, and now no where but in congress wanting powers; and, without examining the extent of the evils to be remedied, by one step, we are for giving up to congress almost all powers of any importance without limitation. The defects of the confederation are extravagantly magnified, and every species of pain we feel imputed to them: and hence it is inferred, there must be a total change of the principles, as well as forms of government: and in the main point, touching the federal powers, we rest all on a logical inference, totally inconsistent with experience and sound political reasoning.

It is said, that as the federal head must make peace and war, and provide for the common defence, it ought to possess all powers necessary to that end: that powers unlimited, as to the purse and sword, to raise men and monies, and form the militia, are necessary to that end; and, therefore, the federal head ought to possess them. This reasoning is far more specious than solid: it is necessary that these powers so exist in the body politic, as to be called into exercise whenever necessary for the public safety; but it is by no means true, that the man, or congress of men, whose duty it more immediately is to provide for the common defence, ought to possess them without limitation. But clear it is, that if such men, or congress, be not in a situation to hold them without danger to liberty, he or they ought not to possess them. It has long been thought to be a well founded position, that the purse and sword ought not to be placed in the same hands in a free government. Our wise ancestors have carefully separated them—placed the sword in the hands of their king, even under considerable limitations, and the purse in the hands of the commons alone: yet the king makes peace and war, and it is his duty to provide for the common defence of the nation. This authority at least goes thus far—that a nation, well versed in the science of government, does not conceive it to be necessary or expedient for the man entrusted with the common defence and general tranquility, to possess unlimitedly the powers in question, or even in any considerable degree. Could he, whose duty it is to defend the public, possess in

himself independently, all the means of doing it consistent with the public good, it might be convenient: but the people of England know that their liberties and happiness would be in infinitely greater danger from the king's unlimited possession of these powers, than from all external enemies and internal commotions to which they might be exposed: therefore, though they have made it his duty to guard the empire, yet they have wisely placed in other hands, the hands of their representatives, the power to deal out and controul the means. In Holland their high mightinesses must provide for the common defence, but for the means they depend, in a considerable degree, upon requisitions made on the state or local assemblies. Reason and facts evince, that however convenient it might be for an executive magistrate, or federal head, more immediately charged with the national defence and safety, solely, directly, and independently to possess all the means; yet such magistrate, or head, never ought to possess them, if thereby the public liberties shall be endangered. The powers in question never have been, by nations wise and free, deposited, nor can they ever be, with safety, any where, but in the principal members of the national system:—where these form one entire government, as in Great-Britain, they are separated and lodged in the principal members of it. But in a federal republic, there is quite a different organization; the people form this kind of government, generally, because their territories are too extensive to admit of their assembling in one legislature, or of executing the laws on free principles under one entire government. They convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head for general purposes. It is the essential characteristic of a confederated republic, that this head be dependant on, and kept within limited bounds by, the local governments; and it is because, in these alone, in fact, the people can be substantially assembled or represented. It is, therefore, we very universally see, in this kind of government, the congressional powers placed in a few hands, and accordingly limited, and specifically enumerated: and the local assemblies strong and well guarded, and composed of numerous members. Wise men will always place the controuling power where the people are substantially collected by their representatives. By the proposed system, the federal head will possess, without limitation, almost every species of power that can, in its exercise, tend to change the government, or to endanger liberty; while in it, I think it has been fully shewn, the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. In a confederated republic, the division of representation, &c. in its nature, requires a correspondent division and deposit of powers, relative to taxes and military concerns: and I think the plan offered stands quite alone, in confounding the principles of governments in themselves totally distinct. I wish not to exculpate the states for their improper neglects in not paying their quotas of requisitions; but, in applying the remedy, we must be governed by reason and facts. It will not be denied, that the people have a right to change the government when the majority chuse it, if not restrained by some existing compact—that they have a right to displace their rulers, and consequently to determine when their measures are reasonable or not—and that they have a right, at any time, to put a stop to those measures they may deem prejudicial to them, by such forms and negatives as they may see fit to provide. From all these, and many other well founded considerations, I need not mention, a question arises, what powers shall there be delegated to the federal head, to insure safety, as well as energy, in the government? I think there is a safe and proper medium pointed out by experience, by reason, and facts. When we have organized the government, we ought to give power to the union, so far

only as experience and present circumstances shall direct, with a reasonable regard to time to come. Should future circumstances, contrary to our expectations, require that further powers be transferred to the union, we can do it far more easily, than get back those we may now imprudently give. The system proposed is untried: candid advocates and opposers admit, that it is, in a degree, a mere experiment, and that its organization is weak and imperfect; surely then, the safe ground is cautiously to vest power in it, and when we are sure we have given enough for ordinary exigencies, to be extremely careful how we delegate powers, which, in common cases, must necessarily be useless or abused, and of very uncertain effect in uncommon ones.

By giving the union power to regulate commerce, and to levy and collect taxes by imposts, we give it an extensive authority, and permanent productive funds, I believe quite as adequate to the present demands of the union, as excises and direct taxes can be made to the present demands of the separate states. The state governments are now about four times as expensive as that of the union; and their several state debts added together, are nearly as large as that of the union—Our impost duties since the peace have been almost as productive as the other sources of taxation, and when under one general system of regulations, the probability is, that those duties will be very considerably increased: Indeed the representation proposed will hardly justify giving to congress unlimited powers to raise taxes by imposts, in addition to the other powers the union must necessarily have. It is said, that if congress possess only authority to raise taxes by imposts, trade probably will be overburdened with taxes, and the taxes of the union be found inadequate to any uncommon exigencies: To this we may observe, that trade generally finds its own level, and will naturally and necessarily heave off any undue burdens laid upon it: further, if congress alone possess the impost, and also unlimited power to raise monies by excises and direct taxes, there must be much more danger that two taxing powers, the union and states, will carry excises and direct taxes to an unreasonable extent, especially as these have not the natural boundaries taxes on trade have. However, it is not my object to propose to exclude congress from raising monies by internal taxes, as by duties, excises, and direct taxes; but my opinion is, that congress, especially in its proposed organization, ought not to raise monies by internal taxes, except in strict conformity to the federal plan; that is, by the agency of the state governments in all cases, except where a state shall neglect, for an unreasonable time, to pay its quota of a requisition; and never where so many of the state legislatures as represent a majority of the people, shall formally determine an excise law or requisition is improper, in their next session after the same be laid before them. We ought always to recollect that the evil to be guarded against is found by our own experience, and the experience of others, to be mere neglect in the states to pay their quotas; and power in the union to levy and collect the neglecting states' quotas with interest, is fully adequate to the evil. By this federal plan, with this exception mentioned, we secure the means of collecting the taxes by the usual process of law, and avoid the evil of attempting to compel or coerce a state; and we avoid also a circumstance, which never yet could be, and I am fully confident never can be, admitted in a free federal republic; I mean a permanent and continued system of tax laws of the union, executed in the bowels of the states by many thousand officers, dependent as to the assessing and collecting federal taxes, solely upon the union. On every principle then, we ought to provide, that the union render an exact account of all monies raised by imposts and other taxes; and that whenever monies shall be wanted for the purposes of the union, beyond the proceeds of the impost duties, requisitions shall be made on the states for the

monies so wanted; and that the power of laying and collecting shall never be exercised, except in cases where a state shall neglect, a given time, to pay its quota. This mode seems to be strongly pointed out by the reason of the case, and spirit of the government; and I believe, there is no instance to be found in a federal republic, where the congressional powers ever extended generally to collecting monies by direct taxes or excises. Creating all these restrictions, still the powers of the union in matters of taxation, will be too unlimited; further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security: the strength of the government, and the confidence of the people, must be collected principally in the local assemblies; every part or branch of the federal head must be feeble, and unsafely trusted with large powers. A government possessed of more power than its constituent parts will justify, will not only probably abuse it, but be unequal to bear its own burden; it may as soon be destroyed by the pressure of power, as languish and perish for want of it.

There are two ways further of raising checks, and guarding against undue combinations and influence in a federal system. The first is, in levying taxes, raising and keeping up armies, in building navies, in forming plans for the militia, and in appropriating monies for the support of the military, to require the attendance of a large proportion of the federal representatives, as two-thirds or three-fourths of them; and in passing laws, in these important cases, to require the consent of two-thirds or three-fourths of the members present. The second is, by requiring that certain important laws of the federal head, as a requisition or a law for raising monies by excise shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. Whether it would be advisable to adopt both, or either of these checks, I will not undertake to determine. We have seen them both exist in confederated republics. The first exists substantially in the confederation, and will exist in some measure in the plan proposed, as in chusing a president by the house, in expelling members; in the senate, in making treaties, and in deciding on impeachments, and in the whole in altering the constitution. The last exists in the United Netherlands, but in a much greater extent. The first is founded on this principle, that these important measures may, sometimes, be adopted by a bare quorum of members, perhaps, from a few states, and that a bare majority of the federal representatives may frequently be of the aristocracy, or some particular interests, connections, or parties in the community, and governed by motives, views, and inclinations not compatible with the general interest. — The last is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore, they ought to have ultimately a constitutional controul over such interesting measures.

I have often heard it observed, that our people are well informed, and will not submit to oppressive governments; that the state governments will be their ready advocates, and possess their confidence, mix with them, and enter into all their wants and feelings. This is all true; but of what avail will these circumstances be, if the state governments, thus allowed to be the guardians of the people, possess no kind of power by the forms of the social compact, to stop, in their passage, the laws of congress injurious to the people. State governments must stand and see the law take place; they may complain and petition—so may individuals; the members of them, in extreme cases, may resist, on the principles of self-defence—so may the people and individuals.

It has been observed, that the people, in extensive territories, have more power, compared with that of their rulers, than in small states. Is not directly the opposite true? The people in a small state can unite and act in concert, and with vigour; but in large territories, the men who govern find it more easy to unite, while people cannot; while they cannot collect the opinions of each part, while they move to different points, and one part is often played off against the other.

It has been asserted, that the confederate head of a republic at best, is in general weak and dependent;—that the people will attach themselves to, and support their local governments, in all disputes with the union. Admit the fact: is it any way to remove the inconvenience by accumulating powers upon a weak organization? The fact is, that the detail administration of affairs, in this mixed republic, depends principally on the local governments; and the people would be wretched without them: and a great proportion of social happiness depends on the internal administration of justice, and on internal police. The splendor of the monarch, and the power of the government are one thing. The happiness of the subject depends on very different causes: but it is to the latter, that the best men, the greatest ornaments of human nature, have most carefully attended: it is to the former tyrants and oppressors have always aimed.

#### LETTER XVIII.

JANUARY 25, 1788.

DEAR SIR, I am persuaded, a federal head never was formed, that possessed half the powers which it could carry into full effect, altogether independently of the state or local governments, as the one, the convention has proposed, will possess. Should the state legislatures never meet, except merely for chusing federal senators and appointing electors, once in four and six years, the federal head may go on for ages to make all laws relative to the following subjects, and by its own courts, officers, and provisions, carry them into full effect, and to any extent it may deem for the general welfare; that is, for *raising taxes*, borrowing and coining monies, and for applying them—for forming and governing *armies* and *navies*, and for directing their operations—for regulating commerce with foreign nations, and among the several states, and with the Indian tribes—for regulating *bankruptcies*, weights and measures, post-offices and post-roads, and captures on land and water—for establishing a uniform rule of naturalization, and for promoting the progress of science and useful arts—for defining and punishing piracies and felonies committed on the high seas, the offences of counterfeiting the securities and current coin of the United States, and offences against the law of nations, and for regulating all maritime concerns—for *organizing*, *arming* and *disciplining* the militia (the respective states training them, and appointing the officers)—for *calling them forth* when wanted, and for governing them when in the service of the union—for the *sole and exclusive government* of a federal city or town, not exceeding ten miles square, and of places ceded for forts, magazines, arsenals, dock-yards, and other needful buildings—for granting letters of marque and reprisal, and making war—for regulating the *times*, *places*, and *manner of holding elections* for senators and representatives—for making and concluding all treaties, and carrying them into execution—for judicially deciding all questions arising on the constitution, laws, and treaties of the union, in law and equity, and questions arising on state laws also, where ambassadors, other public ministers, and consuls, where the United States, individual states, or a state, where *citizens of different states*, and where foreign states, or a *foreign*

*subject*, are parties or party—for impeaching and trying federal officers—for deciding on elections, and for expelling members, &c. All these enumerated powers we must examine and contemplate in all their extent and various branches, and then reflect, that the federal head will have full power to make all laws whatever respecting them; and for carrying into full effect all powers vested in the union, in any department, or officers of it, by the constitution, in order to see the full extent of the federal powers, which will be supreme, and exercised by that head at pleasure, conforming to the few limitations mentioned in the constitution. Indeed, I conceive, it is impossible to see them in their full extent at present: we see vast undefined powers lodged in a weak organization, but cannot, by the enquiries of months and years, clearly discern them in all their numerous branches. These powers in feeble hands, must be tempting objects for ambition and a love of power and fame.

But, say the advocates, they are all necessary for forming an energetic federal government; all necessary in the hands of the union, for the common defence and general welfare. In these great points they appear to me to go from the end to the means, and from the means to the end, perpetually begging the question. I think in the course of these letters, I shall sufficiently prove, that some of these powers need not be lodged in the hands of the union—that others ought to be exercised under better checks, and in part, by the agency of the states—some I have already considered, some in my mind, are not liable to objections, and the others, I shall briefly notice in this closing letter.

The power to controul the military forces of the country, as well as the revenues of it, requires serious attention. Here again, I must premise, that a federal republic is a compound system, made up of constituent parts, each essential to the whole: we must then expect the real friends of such a system will always be very anxious for the security and preservation of each part, and to this end, that each constitutionally possess its natural portion of power and influence—and that it will constantly be an object of concern to them, to see one part armed at all points by the constitution, and in a manner destructive in the end, even of its own existence, and the others left constitutionally defenceless.

The military forces of a free country may be considered under three general descriptions—1. The militia. 2. the navy—and 3. the regular troops—and the whole ought ever to be, and understood to be, in strict subordination to the civil authority; and that regular troops, and select corps, ought not to be kept up without evident necessity. Stipulations in the constitution to this effect, are perhaps, too general to be of much service, except merely to impress on the minds of the people and soldiery, that the military ought ever to be subject to the civil authority, &c. But particular attention, and many more definite stipulations, are highly necessary to render the military safe, and yet useful in a free government; and in a federal republic, where the people meet in distinct assemblies, many stipulations are necessary to keep a part from transgressing, which would be unnecessary checks against the whole met in one legislature, in one entire government.—A militia, when properly formed, are in fact the people themselves, and render regular troops in a great measure unnecessary. The powers to form and arm the militia, to appoint their officers, and to command their services, are very important; nor ought they in a confederated republic to be lodged, solely, in any one member of the government. First, the constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general

usage of the states, all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenceless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided. I am persuaded, I need not multiply words to convince you of the value and solidity of this principle, as it respects general liberty, and the duration of a free and mild government: having this principle well fixed by the constitution, then the federal head may prescribe a general uniform plan, on which the respective states shall form and train the militia, appoint their officers and solely manage them, except when called into the service of the union, and when called into that service, they may be commanded and governed by the union. This arrangement combines energy and safety in it; it places the sword in the hands of the solid interest of the community, and not in the hands of men destitute of property, of principle, or of attachment to the society and government, who often form the select corps of peace or ordinary establishments: by it, the militia are the people, immediately under the management of the state governments, but on a uniform federal plan, and called into the service, command, and government of the union, when necessary for the common defence and general tranquility. But, say gentlemen, the general militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia; that is, as I understand it, particular corps or bodies of young men, and of men who have but little to do at home, particularly armed and disciplined in some measure, at the public expence, and always ready to take the field. These corps, not much unlike regular troops, will ever produce an inattention to the general militia; and the consequence has ever been, and always must be, that the substantial men, having families and property, will generally be without arms, without knowing the use of them, and defenceless; whereas, to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it. As a farther check, it may be proper to add, that the militia of any state shall not remain in the service of the union, beyond a given period, without the express consent of the state legislature.

As to the navy, I do not see that it can have any connection with the local governments. The want of employment for it, and the want of monies in the hands of the union, must be its proper limitation. The laws for building or increasing it, as all the important laws mentioned in a former letter, touching military and money matters, may be checked by requiring the attendance of a large proportion of the representatives, and the consent of a large proportion of those present, to pass them as before mentioned.

By art. 1. sect. 8. “Congress shall have *power to provide for* organizing, arming, and disciplining the militia”: *power to provide for*—does this imply any more than power to prescribe a general uniform plan? And must not the respective states pass laws (but in conformity to the plan) for forming and training the militia.

In the present state of mankind, and of conducting war, the government of every nation must have power to raise and keep up regular troops: the question is, how shall this power be lodged? In an entire government, as in Great-Britain, where the people assemble by their representatives

in one legislature, there is no difficulty, it is of course properly lodged in that legislature: But in a confederated republic, where the organization consists of a federal head, and local governments, there is no one part in which it can be solely, and safely lodged. By art. 1. sect. 8. "congress shall have power to raise and support armies," &c. By art. 1. sect. 10. "no state, without the consent of congress, shall keep troops, or ships of war, in time of peace." It seems fit the union should direct the raising of troops, and the union may do it in two ways; by requisitions on the states, or by direct taxes—the first is most conformable to the federal plan, and safest; and it may be improved, by giving the union power, by its own laws and officers, to raise the states quota that may neglect, and to charge it with the expence; and by giving a fixed quorum of the state legislatures power to disapprove the requisition. There would be less danger in this power to raise troops, could the state governments keep a proper controul over the purse and over the militia; but after all the precautions we can take, without evidently fettering the union too much, we must give a large accumulation of powers to it, in these and other respects. There is one check, which, I think, may be added with great propriety—that is, no land forces shall be kept up, but by legislative acts annually passed by congress, and no appropriation of monies for their support shall be for a longer term than one year. This is the constitutional practice in Great-Britain, and the reasons for such checks in the United States appear to be much stronger. We may also require that these acts be passed by a special majority, as before mentioned. There is another mode still more guarded, and which seems to be founded in the true spirit of a federal system: it seems proper to divide those powers we can with safety, lodge them in no one member of the government alone; yet substantially to preserve their use, and to ensure duration to the government, by modifying the exercise of them—it is to empower congress to raise troops by direct levies, not exceeding a given number, say 2000 in time of peace, and 12,000 in a time of war, and for such further troops as may be wanted, to raise them by requisitions qualified as before mentioned. By the above recited clause no state shall keep troops, &c. in time of peace—this clearly implies, it may do it in time of war: this must be on the principle, that the union cannot defend all parts of the republic, and suggests an idea very repugnant to the general tendency of the system proposed, which is to disarm the state governments: a state in a long war may collect forces sufficient to take the field against the neighbouring states. This clause was copied from the confederation, in which it was of more importance than in the plan proposed, because under this the separate states, probably, will have but small revenues.

By article 1. section 8. congress shall have power to establish uniform laws on the subject of bankruptcies, throughout the United States. It is to be observed, that the separate states have ever been in possession of the power, and in the use of it, of making bankrupt laws, militia laws, and laws in some other cases, respecting which, the new constitution, when adopted, will give the union power to legislate, &c.—but no words are used by the constitution to exclude the jurisdiction of the several states, and whether they will be excluded or not, or whether they and the union will have concurrent jurisdiction or not, must be determined by inference; and from the nature of the subject; if the power, for instance, to make uniform laws on the subject of bankruptcies, is in its nature indivisible, or incapable of being exercised by two legislatures independently, or by one in aid of the other, then the states are excluded, and cannot legislate at all on the subject, even though the union should neglect or find it impracticable to establish uniform bankrupt laws. How far the union will find it practicable to do this, time only can fully determine.

When we consider the extent of the country, and the very different ideas of the different parts in it, respecting credit, and the mode of making men's property liable for paying their debts, we may, I think, with some degree of certainty, conclude that the union never will be able to establish such laws; but if practicable, it does not appear to me, on further reflection, that the union ought to have the power; it does not appear to me to be a power properly incidental to a federal head, and, I believe, no one ever possessed it; it is a power that will immediately and extensively interfere with the internal police of the separate states, especially with their administering justice among their own citizens. By giving this power to the union, we greatly extend the jurisdiction of the federal judiciary, as all questions arising on bankrupt laws, being laws of the union, even between citizens of the same state, may be tried in the federal courts; and I think it may be shewn, that by the help of these laws, actions between citizens of different states, and the laws of the federal city, aided by no overstrained judicial fictions, almost all civil causes may be drawn into those courts. We must be sensible how cautious we ought to be in extending unnecessarily the jurisdiction of those courts for reasons I need not repeat. This article of power too, will considerably increase, in the hands of the union, an accumulation of powers, some of a federal and some of a unfederal nature, too large without it.

The constitution provides, that congress shall have the sole and exclusive government of what is called the federal city, a place not exceeding ten miles square, and of all places ceded for forts, dock-yards, &c. I believe this is a novel kind of provision in a federal republic; it is repugnant to the spirit of such a government, and must be founded in an apprehension of a hostile disposition between the federal head and the state governments; and it is not improbable, that the sudden retreat of congress from Philadelphia, first gave rise to it.<sup>1</sup>—With this apprehension, we provide, the government of the union shall have secluded places, cities, and castles of defence, which no state laws whatever shall invade. When we attentively examine this provision in all its consequences, it opens to view scenes almost without bounds. A federal, or rather a national city, ten miles square, containing a hundred square miles, is about four times as large as London; and for forts, magazines, arsenals, dock-yards, and other needful buildings, congress may possess a number of places or towns in each state. It is true, congress cannot have them unless the state legislatures cede them; but when once ceded, they never can be recovered, and though the general temper of the legislatures may be averse to such cessions, yet many opportunities and advantages may be taken of particular times and circumstances of complying assemblies, and of particular parties, to obtain them. It is not improbable, that some considerable towns or places, in some intemperate moments, or influenced by anti-republican principles, will petition to be ceded for the purposes mentioned in the provision. There are men, and even towns, in the best republics, which are often fond of withdrawing from the government of them, whenever occasion shall present. The case is still stronger; if the provision in question holds out allurements to attempt to withdraw, the people of a state must ever be subject to state as well as federal taxes; but the federal city and places will be subject only to the latter, and to them by no fixed proportion; nor of the taxes raised in them, can the separate states demand any account of congress.—These doors opened for withdrawing from the state governments entirely, may, on other accounts, be very alluring and pleasing to those anti-republican men who prefer a place under the wings of courts.

If a federal town be necessary for the residence of congress and the public officers, it ought to be a small one, and the government of it fixed on republican and common law principles, carefully enumerated and established by the constitution. It is true, the states, when they shall cede places, may stipulate, that the laws and government of congress in them, shall always be formed on such principles; but it is easy to discern, that the stipulations of a state, or of the inhabitants of the place ceded, can be of but little avail against the power and gradual encroachments of the union. The principles ought to be established by the federal constitution, to which all the states are parties; but in no event can there be any need of so large a city and places for forts, &c. totally exempted from the laws and jurisdictions of the state governments. If I understand the constitution, the laws of congress, constitutionally made, will have complete and supreme jurisdiction to all federal purposes, on every inch of ground in the United States, and exclusive jurisdiction on the high seas, and this by the highest authority, the consent of the people. Suppose ten acres at West-Point shall be used as a fort of the union, or a sea port town as a dock-yard, the laws of the union in those places respecting the navy, forces of the union, and all federal objects, must prevail, be noticed by all judges and officers, and executed accordingly: and I can discern no one reason for excluding from these places, the operation of state laws, as to mere state purposes; for instance, for the collection of state taxes in them, recovering debts, deciding questions of property arising within them on state laws, punishing, by state laws, theft, trespasses, and offences committed in them by mere citizens against the state laws.

The city, and all the places in which the union shall have this exclusive jurisdiction, will be immediately under one entire government, that of the federal head; and be no part of any state, and consequently no part of the United States. The inhabitants of the federal city and places, will be as much exempt from the laws and controul of the state governments, as the people of Canada or Nova Scotia will be. Neither the laws of the states respecting taxes, the militia, crimes or property, will extend to them; nor is there a single stipulation in the constitution, that the inhabitants of this city, and these places, shall be governed by laws founded on principles of freedom. All questions, civil and criminal, arising on the laws of these places, which must be the laws of congress, must be decided in the federal courts; and also, all questions that may, by such judicial fictions as these courts may consider reasonable, be supposed to arise within this city, or any of these places, may be brought into these courts; and by a very common legal fiction, any personal contract may be supposed to have been made in any place. A contract made in Georgia may be supposed to have been made in the federal city, in Pennsylvania; the courts will admit the fiction, and not in these cases, make it a serious question, where it was in fact made. Every suit in which an inhabitant of a federal district may be a party, of course may be instituted in the federal courts—also, every suit in which it may be alledged, and not denied, that a party in it is an inhabitant of such a district—also, every suit to which a foreign state or subject, the union, a state, citizens of different states, in fact, or by reasonable legal fictions, may be a party or parties: And thus, by means of bankrupt laws, federal districts, &c. almost all judicial business, I apprehend may be carried into the federal courts, without essentially departing from the usual course of judicial proceedings. The courts in Great Britain have acquired their powers, and extended, very greatly, their jurisdictions by such fictions and suppositions as I have mentioned. The constitution, in these points, certainly involves in it principles, and almost hidden cases, which may unfold, and in time exhibit consequences we hardly think of. The power of naturalization, when

viewed in connection with the judicial powers and cases, is, in my mind, of very doubtful extent. By the constitution itself, the citizens of each state will be naturalized citizens of every state, to the general purposes of instituting suits, claiming the benefits of the laws, &c. And in order to give the federal courts jurisdiction of an action, between citizens of the same state, in common acceptation, may not a court allow the plaintiff to say, he is a citizen of one state, and the defendant a citizen of another, without carrying legal fictions so far, by any means, as they have been carried by the courts of King's Bench and Exchequer, in order to bring causes within their cognizance—Further, the federal city and districts, will be totally distinct from any state, and a citizen of a state will not of course be a subject of any of them; and to avail himself of the privileges and immunities of them, must he not be naturalized by congress in them? and may not congress make any proportion of the citizens of the states naturalized subjects of the federal city and districts, and thereby entitle them to sue or defend, in all cases, in the federal courts? I have my doubts, and many sensible men, I find, have their doubts, on these points; and we ought to observe, they must be settled in the courts of law, by their rules, distinctions, and fictions. To avoid many of these intricacies and difficulties, and to avoid the undue and unnecessary extension of the federal judicial powers, it appears to me, that no federal districts ought to be allowed, and no federal city or town, except perhaps a small town, in which the government shall be republican, but in which congress shall have no jurisdiction over the inhabitants, but in common with the other inhabitants of the states. Can the union want, in such a town, any thing more than a right to the soil on which it may set its buildings, and extensive jurisdiction over the federal buildings, and property, its own members, officers, and servants in it? As to all federal objects, the union will have complete jurisdiction over them, of course any where, and every where. I still think, that no actions ought to be allowed to be brought in the federal courts, between citizens of different states, at least, unless the cause be of very considerable importance: that no action against a state government, by any citizen or foreigner, ought to be allowed, and no action, in which a foreign subject is party, at least, unless it be of very considerable importance, ought to be instituted in the federal courts—I confess, I can see no reason whatever, for a foreigner, or for citizens of different states, carrying sixpenny causes into the federal courts; I think the state courts will be found by experience, to be bottomed on better principles, and to administer justice better than the federal courts.

The difficulties and dangers I have supposed, will result from so large a federal city, and federal districts, from the extension of the federal judicial powers, &c. are not, I conceive, merely possible, but probable. I think, pernicious political consequences will follow from them, and from the federal city especially, for very obvious reasons, a few of which I will mention.

We must observe, that the citizens of a state will be subject to state as well as federal taxes, and the inhabitants of the federal city and districts, only to such taxes as congress may lay—We are not to suppose all our people are attached to free government, and the principles of the common law, but that many thousands of them will prefer a city governed, not on republican principles—This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution, must collect there. This city will not be established for productive labour, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. If hereafter it should ever become a place of trade and industry, in the early periods of its existence, when its laws and government

must receive their fixed tone, it must be a mere court, with its appendages, the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants and dependants on the whole, however brilliant and honourable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild government, which is dear to the laborious part of a free people, we most assuredly deceive ourselves. This early collection will draw to it men from all parts of the country, of a like political description: we see them looking towards the place already.

Such a city, or town, containing a hundred square miles, must soon be the great, the visible, and dazzling centre, the mistress of fashions, and the fountain of politics. There may be a free or shackled press in this city, and the streams which may issue from it may overflow the country, and they will be poisonous or pure, as the fountain may be corrupt or not. But not to dwell on a subject that must give pain to the virtuous friends of freedom, I will only add, can a free and enlightened people create a common head so extensive, so prone to corruption and slavery, as this city probably will be, when they have it in their power to form one pure and chaste, frugal and republican.

Under the confederation congress has no power whereby to govern its own officers and servant[s]; a federal town, in which congress might have special jurisdiction, might be expedient; but under the new constitution, without a federal town, congress will have all necessary powers of course over its officers and servants; indeed it will have a complete system of powers to all the federal purposes mentioned in the constitution; so that the reason for a federal town under the confederation, will by no means exist under the constitution.—Even if a trial by jury should be admitted in the federal city, what man, with any state attachments or republican virtue about him, will submit to be tried by a jury of it.

I might observe more particularly upon several other parts of the constitution proposed; but it has been uniformly my object in examining a subject so extensive, and difficult in many parts to be illustrated, to avoid unimportant things, and not to dwell upon points not very material. The rule for apportioning requisitions on the states, having some time since been agreed to by eleven states,<sup>2</sup> I have viewed as settled. The stipulation that congress, after twenty one years may prohibit the importation of slaves, is a point gained, if not so favourable as could be wished for. As monopolies in trade perhaps, can in no case be useful, it might not be amiss to provide expressly against them. I wish the power to repri[e]ve and pardon was more cautiously lodged, and under some limitations. I do not see why congress should be allowed to consent that a person may accept a present, office, or title of a foreign prince, &c. As to the state governments, as well as the federal, are essential parts of the system, why should not the oath taken by the officers be expressly to support the whole? As to debts due to and from the union, I think the constitution intends, on examining art. 4. sect. 8. and art. 6. that they shall stand on the same ground under the constitution as under the confederation. In the article respecting amendments, it is stipulated that no state shall ever be deprived of its equal vote in the senate without its consent; and that alterations may be made by the consent of three-fourths of the states. Stipulations to bind the majority of the people may serve one purpose, to prevent frequent motions for change; but these attempts to bind the majority, generally give occasion for breach of contract. The states all agreed about seven years ago, that the confederation should remain unaltered, unless every state should agree to alterations:<sup>3</sup> but we now see it agreed by the convention, and four states,<sup>4</sup> that the old

confederacy shall be destroyed, and a new one, of nine states, be erected, if nine only shall come in. Had we agreed, that a majority should alter the confederation, a majority's agreeing would have bound the rest: but now we must break the old league, unless all the states agree to alter, or not proceed with adopting the constitution. Whether the adoption by nine states will not produce a nearly equal and dangerous division of the people for and against the constitution—whether the circumstances of the country were such as to justify the hazarding a probability of such a situation, I shall not undertake to determine. I shall leave it to be determined hereafter, whether nine states, under a new federal compact, can claim the benefits of any treaties made with a confederation of thirteen, under a distinct compact and form of existence—whether the new confederacy can recover debts due to the old confederacy, or the arrears of taxes due from the states excluded.

It has been well observed, that our country is extensive, and has no external enemies to press the parts together: that, therefore, their union must depend on strong internal ties. I differ with the gentlemen who make these observations only in this, they hold the ties ought to be strengthened by a considerable degree of internal consolidation; and my object is to form them and strengthen them, on pure federal principles. Whatever may be the fate of many valuable and necessary amendments in the constitution proposed, the ample discussion and respectable opposition it will receive, will have a good effect—they will operate to produce a mild and prudent administration, and to put the wheels of the whole system in motion on proper principles—they will evince, that true republican principles and attachments are still alive and formidable in this country. These, in view, I believe, even men quite disposed to make a bad use of the system, will long hesitate before they will resolve to do it. A majority from a view of our situation, and influenced by many considerations, may acquiesce in the adoption of this constitution; but, it is evident, that a very great majority of the people of the United States think it, in many parts, an unnecessary and unadvisable departure from true republican and federal principles.

1. In June 1783, soldiers of the Pennsylvania Line of the Continental Army demonstrated outside the meeting place of Congress in Philadelphia because Congress had furloughed them without settling their financial accounts. Congress asked the Supreme Executive Council of Pennsylvania to call out the militia, but the Council was reluctant. Congress discussed the matter for several days, and then, for safety's sake, adjourned to Princeton, N.J.

2. In April 1783 Congress proposed an amendment to the Articles of Confederation specifying that requisitions should be raised among the states according to population, not on land as provided for under the Articles. By 1787 every state, except New Hampshire and Rhode Island, had ratified the amendment.

3. The Articles of Confederation, adopted on 1 March 1781, provided that “the union shall be perpetual” and that alterations in them should be made only after the change was agreed to in Congress and “confirmed by the legislatures of every state.”

4. By 25 January 1788, the date of this letter, the Constitution had been ratified by five states—Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut, in that order. Connecticut adopted the Constitution on 9 January.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XVII: Commentaries on the Constitution, Public and Private [5] (Madison, Wis.: Wisconsin Historical Society Press, 1995), 350–71, 376.