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**TO GEORGE WASHINGTON.**

NEW YORK April 16 1787.

**WASH. MSS.****DEAR SIR,—**

I have been honored with your letter of the 31 March, and find with much pleasure that your views of the reform which ought to be pursued by the Convention, give a sanction to those which I have entertained. Temporising applications will dishonor the Councils which propose them, and may foment the internal malignity of the disease, at the same time that they produce an ostensible palliation of it. Radical attempts although unsuccessful will at least justify the authors of them.

Having been lately led to revolve the subject which is to undergo the discussion of the Convention, and formed *some* outlines of a new system, I take the liberty of submitting them without apology to your eye.

Conceiving that an individual independence of the States is utterly irreconcilable with their aggregate sovereignty, and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities wherever they can be subordinately useful.

I would propose as the ground-work that a change be made in the principle of representation. According to the present form of the Union in which the intervention of the States is in all great cases necessary to effectuate the measures of Congress, an equality of suffrage, does not destroy the inequality of importance in the several members. No one will deny that Virginia and Mass<sup>ts</sup>. have more weight and influence both within & without Congress than Delaware or Rho. Island. Under a system which would operate in many essential points without the intervention of the State Legislatures, the case would be materially altered. A vote in the national Councils from Delaware, would then have the same effect and value as one from the largest State in the Union. I am ready to believe that such a change would not be attended with much difficulty. A majority of the States, and those of greatest influence, will regard it as favorable to them. To the Northern States it will be recommended by their present populousness; to the Southern by their expected advantage in this respect. The lesser States must in every event yield to the predominant will. But the consideration which particularly urges a

change in the representation is that it will obviate the principal objections of the larger States to the necessary concessions of power.

I would propose next that in addition to the present federal powers, the national Government should be armed with positive and compleat authority in all cases which require uniformity; such as the regulation of trade, including the right of taxing both exports & imports, the fixing the terms and forms of naturalization, &c &c.

Over and above this positive power, a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded & defeated. The States will continue to invade the National jurisdiction, to violate treaties and the law of nations & to harass each other with rival and spiteful measures dictated by mistaken views of interest. Another happy effect of this prerogative would be its controul on the internal vicissitudes of State policy, and the aggressions of interested majorities on the rights of minorities and of individuals. The great desideratum which has not yet been found for Republican Governments seems to be some disinterested & dispassionate umpire in disputes between different passions & interests in the State. The majority who alone have the right of decision, have frequently an interest, real or supposed in abusing it. In Monarchies the sovereign is more neutral to the interests and views of different parties; but, unfortunately he too often forms interests of his own repugnant to those of the whole. Might not the national prerogative here suggested be found sufficiently disinterested for the decision of local questions of policy, whilst it would itself be sufficiently restrained from the pursuit of interests adverse to those of the whole Society. There has not been any moment since the peace at which the representatives of the Union would have given an assent to paper money or any other measure of a kindred nature.

The national supremacy ought also to be extended as I conceive to the Judiciary departments. If those who are to expound & apply the laws, are connected by their interests & their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local constitution, and that an appeal should lie to some

National tribunals in all cases to which foreigners or inhabitants of other States may be parties. The admiralty jurisdiction seems to fall entirely within the purview of the national Government.

The National supremacy in the Executive departments is liable to some difficulty, unless the officers administering them could be made appointable by the supreme Government. The Militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence.

A Government composed of such extensive powers should be well organized and balanced. The legislative department might be divided into two branches; one of them chosen every NA years by the people at large, or by the Legislatures; the other to consist of fewer members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the laws might be most conveniently exercised by this branch. As a further check, a council of revision including the great ministerial officers might be superadded.

A National Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed.

An article should be inserted expressly guarantying the tranquillity of the States against internal as well as external dangers.

In like manner the right of coercion should be expressly declared. With the resources of Commerce in hand, the National administration might always find means of exerting it either by sea or land; But the difficulty & awkwardness of operating by force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the General and particular authorities, as to answer this purpose or perhaps some defined objects of taxation might be submitted along with commerce, to the general authority.

To give a new System its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the *existing Constitutions* of the States will be unavoidable.

The inclosed address to the States on the subject of the Treaty of peace has been agreed to by Congress, & forwarded to the several Executives. We foresee the irritation which it will excite in many of our Countrymen; but could not withhold our approbation of the measure. Both the resolutions and the address, passed without a dissenting voice.

Congress continue to be thin, and of course do little business of importance. The settlement of the public accounts,—the disposition of the public lands, and arrangements with Spain, are subjects which claim their particular attention. As a step towards the first, the treasury board are charged with the task of reporting a plan by which the final decision on the claims of the States will be handed over from Congress to a select sett of men bound by the oaths, and cloathed with the powers of Chancellors. As to the Second article, Congress have it themselves under consideration. Between 6 & 700 thousand acres have been surveyed and are ready for sale. The mode of sale however will probably be a source of different opinions; as will the mode of disposing of the unsurveyed residue. The Eastern gentlemen remain attached to the scheme of townships. Many others are equally strenuous for indiscriminate locations. The States which have lands of their own for sale are *suspected* of not being hearty in bringing the federal lands to market. The business with Spain is becoming extremely delicate, and the information from the Western settlements truly alarming.

A motion was made some days ago for an adjournment of Congress for a short period, and an appointment of Philad<sup>a</sup>. for their reassembling. The eccentricity of this place as well with regard to E. and West as to N. & South has I find been for a considerable time a thorn in the minds of many of the Southern members. Suspicion too has charged some important votes on the weight thrown by the present position of Congress into the Eastern Scale, and predicts that the Eastern members will never concur in any substantial provision or movement for a proper permanent seat for the National Government whilst they remain so much gratified in its temporary residence. These seem to have been the operative motives with those on one side who were not locally interested in the removal. On the other side the motives are obvious. Those of real weight were drawn from the apparent caprice with which Congress might be reproached, and particularly from the peculiarity of the existing moment. I own that I think so much regard due to these considerations, that notwithstanding the powerful ones on the other side, I should have assented with great repugnance to the motion, and would even have voted against it if any

probability had existed that by waiting for a proper time, a proper measure might not be lost for a very long time. The plan which I sh<sup>d</sup>. have judged most eligible would have been to fix on the removal whenever a vote could be obtained but so as that it should not take effect until the commencement of the ensuing federal year. And if an immediate removal had been resolved on, I had intended to propose such a change in the plan. No final question was taken in the case. Some preliminary questions shewed that six States were in favor of the motion. Rhode Island the 7<sup>th</sup>. was at first on the same side, and Mr. Varnum, one of the delegates continues so. His colleague was overcome by the solicitations of his Eastern brethren. As neither Maryland nor South Carolina were on the floor, it seems pretty evident that N. York has a very precarious tenure of the advantages derived from the abode of Congress.

We understand that the discontents in Mass<sup>ts</sup>, which lately produced an appeal to the sword, are now producing a trial of strength in the field of electioneering. The Governor will be displaced. The Senate is said to be already of a popular complexion, and it is expected that the other branch will be still more so. Paper money it is surmised will be the engine to be played off ag<sup>ts</sup>. creditors both public and private. As the event of the elections however is not yet decided, this information must be too much blended with conjecture to be regarded as a matter of certainty.

I do not learn that the proposed Act relating to Vermont has yet gone through all the stages of legislation here; nor can I say whether it will finally pass or not. In truth, it having not been a subject of conversation for some time, I am unable to say what has been done or is likely to be done with it. With the sincerest affection & the highest esteem I have the honor to be, Dear Sir your devoted Serv<sup>t</sup>.



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## The James Madison Papers

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### Item 1 of 1

#### The James Madison Papers

**The Writings of James Madison. Edited by Gaillard Hunt.**  
**James Madison, May 7, 1787. Vices of the Political System of the U. States.**

#### IMAGES

MAD. MSS.

Observations by J. M. (A copy taken by permission by Danl. Carroll & sent to Chs. Carroll of Carrollton.)

April, 1787.

Vices of the Political system of the U. States. 1. Failure of the States to comply with the Constitutional requisitions.

1. This evil has been so fully experienced both during the war and since the peace, results so naturally from the number and independent authority of the States and has been so uniformly exemplified in every similar Confederacy, that it may be considered as not less radically and permanently inherent in than it is fatal to the object of the present system.

2. Encroachments by the States on the federal authority.

2. Examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and treaties of Georgia with the Indians. The unlicensed compacts between Virginia and Maryland, and between Penna. & N. Jersey--the troops raised and to be kept up by Masses.

3. Violations of the law of nations and of treaties.

3. From the number of Legislatures, the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly not a year has passed without instances of them in some one or other of the States. The Treaty of Peace--the treaty with France--the treaty with Holland have each been violated. [See the complaints to Congress on these subjects.] The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects.

As yet foreign powers have not been rigorous in animadverting on us. This moderation, however cannot be mistaken for a permanent partiality to our faults, or a permanent security agst. those disputes with other nations, which being among the greatest of public calamities, it ought to be least in the power of any part of the community to bring on the whole.

4. Trespasses of the States on the rights of each other.

4. These are alarming symptoms, and may be daily apprehended as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports--of Maryland in favor of vessels belonging to her *own citizens*--of N. York in favor of the same--

Paper money, instalments of debts, occlusion of Courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the Citizens of every State aggregately taken stand more or less in the relation of Creditors or debtors, to the Citizens of every other State, Acts of the debtor State in favor of debtors, affect the Creditor State, in the same manner as they do its own citizens who are relatively creditors towards other citizens. This remark may be extended to foreign nations. If the exclusive

regulation of the value and alloy of coin was properly delegated to the federal authority, the policy of it equally requires a controul on the States in the cases above mentioned. It must have been meant 1. to preserve uniformity in the circulating medium throughout the nation. 2. to prevent those frauds on the citizens of other States, and the subjects of foreign powers, which might disturb the tranquillity at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the federal articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive and vexatious in themselves than they are destructive of the general harmony.

#### 5. Want of concert in matters where common interest requires it.

5. This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue, suffered from this cause? Instances of inferior moment are the want of uniformity in the laws concerning naturalization & literary property; of provision for national seminaries, for grants of incorporation for national purposes, for canals and other works of general utility, wch may at present be defeated by the perverseness of particular States whose concurrence is necessary.

#### 6. Want of Guaranty to the States of their Constitutions & laws against internal violence.

6. The confederation is silent on this point and therefore by the second article the hands of the federal authority are tied. According to Republican Theory, Right and power being both vested in the majority, are held to be synonymous. According to fact and experience a minority may in an appeal to force, be an overmatch for the majority. 1. if the minority happen to include all such as possess the skill and habits of military life, & such as possess the great pecuniary resources, one-third only may conquer the remaining two-thirds. 2. one-third of those who participate in the choice of the rulers, may be rendered a majority by the accession of those whose poverty excludes them from a right of suffrage, and who for obvious reasons will be more likely to join the standard of sedition than that of the established Government. 3. where slavery exists the republican Theory becomes still more fallacious.

#### 7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.

7. A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between independent and Sovereign States. From what cause could so fatal an omission have happened in the articles of Confederation? from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals: a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors. The time which has since elapsed has had the double effect, of increasing the light and tempering the warmth, with which the arduous work may be revised. It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies, to the acts of the federal Government ought not to be calculated on. Even during the war, when external danger supplied in some degree the defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union? In time of peace, we see already what is to be expected. How indeed could it be otherwise? In the first place, Every general act of the Union must necessarily bear unequally hard on some particular member or members of it, secondly the partiality of the members to their own interests and rights, a partiality which will be fostered by the courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence, thirdly a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes & pretexts which will never fail to render federal measures abortive. If the laws of the States were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution? Is the security or probability greater in favor of the acts of Congs. which depending for their execution on the will of the State legislatures, wch. are

tho' nominally authoritative, in fact recommendatory only?

8. Want of ratification by the people of the articles of Confederation.

8. In some of the States the Confederation is recognized by, and forms a part of the Constitution. In others however it has received no other sanction than that of the legislative authority. From this defect two evils result: 1. Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the latter [former] is of posterior date to the former, [latter] it will be at least questionable whether the latter [former] must not prevail; and as the question must be decided by the Tribunals of the State, they will be most likely to lean on the side of the State.

2. As far as the union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the Confederation by any of the parties to it, absolves the other parties from their respective Obligations, and gives them a right if they chuse to exert it, of dissolving the Union altogether.

9. Multiplicity of laws in the several States.

9. In developing the evils which viciate the political system of the U S., it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a complete remedy. Among the evils then of our situation may well be ranked the multiplicity of laws from which no State is exempt. As far as laws are necessary to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion which might be abused, their number is the price of liberty. As far as laws exceed this limit, they are a nuisance; a nuisance of the most pestilent kind. Try the Codes of the several States by this test, and what a luxuriancy of legislation do they present. The short period of independency has filled as many pages as the century which preceded it. Every year, almost every session, adds a new volume. This may be the effect in part, but it can only be in part, of the situation in which the revolution has placed us. A review of the several Codes will shew that every necessary and useful part of the least voluminous of them might be compressed into one tenth of the compass, and at the same time be rendered ten fold as perspicuous.

10. mutability of the laws of the States.

10. This evil is intimately connected with the former yet deserves a distinct notice, as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded, before any trial can have been made of their merits, and even before a knowledge of them can have reached the remoter districts within which they were to operate. In the regulations of trade this instability becomes a snare not only to our citizens, but to foreigners also.

11. Injustice of the laws of the States.

11. If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself; but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such governments are the safest Guardians both of public Good and private rights. To what causes is this evil to be ascribed?

These causes lie 1. in the Representative bodies. 2. in the people themselves.

1. Representative appointments are sought from 3 motives. 1. ambition. 2. personal interest. 3. public good. Unhappily the two first are proved by experience to be most prevalent. Hence the candidates who feel them, particularly, the second, are most industrious, and most successful in pursuing their object: and forming often a majority in the legislative Councils, with interested views, contrary to the interest and views of their constituents, join in a perfidious sacrifice of the latter to the former. A succeeding election it might be supposed, would displace the offenders, and repair the mischief. But how easily are base and selfish measures, masked by pretexts of public good and apparent expediency? How frequently will a repetition of the same arts and industry which succeeded in the first instance, again prevail on the unwary to misplace their confidence? How frequently too will the honest but unenlightened representative be the dupe of a



favorite leader, veiling his selfish views under the professions of public good, and varnishing his sophistical arguments with the glowing colours of popular eloquence?

2. A still more fatal if not more frequent cause, lies among the people themselves. All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors--rich or poor--husbandmen, merchants or manufacturers--members of different religious sects--followers of different political leaders--inhabitants of different districts--owners of different kinds of property &c &c. In republican Government the majority however composed, ultimately give the law. Whenever therefore an apparent interest or common passion unites a majority what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals? Three motives only 1. a prudent regard to their own good as involved in the general and permanent good of the community. This consideration although of decisive weight in itself, is found by experience to be too often unheeded. It is too often forgotten, by nations as well as by individuals, that honesty is the best policy. 2dly. respect for character. However strong this motive may be in individuals, it is considered as very insufficient to restrain them from injustice. In a multitude its efficacy is diminished in proportion to the number which is to share the praise or the blame. Besides, as it has reference to public opinion, which within a particular Society, is the opinion of the majority, the standard is fixed by those whose conduct is to be measured by it. The public opinion without the Society will be little respected by the people at large of any Country. Individuals of extended views, and of national pride, may bring the public proceedings to this standard, but the example will never be followed by the multitude. Is it to be imagined that an ordinary citizen or even Assemblyman of R. Island in estimating the policy of paper money, ever considered or cared, in what light the measure would be viewed in France or Holland; or even in Masss or Connecticut? It was a sufficient temptation to both that it was for their interest; it was a sufficient sanction to the latter that it was popular in the State; to the former, that it was so in the neighbourhood. 3dly. will Religion the only remaining motive be a sufficient restraint? It is not pretended to be such on men individually considered. Will its effect be greater on them considered in an aggregate view? quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction, separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state is not infallible, it may become a motive to oppression as well as a restraint from injustice. Place three individuals in a situation wherein the interest of each depends on the voice of the others; and give to two of them an interest opposed to the rights of the third? Will the latter be secure? The prudence of every man would shun the danger. The rules & forms of justice suppose & guard against it. Will two thousand in a like situation be less likely to encroach on the rights of one thousand? The contrary is witnessed by the notorious factions & oppressions which take place in corporate towns limited as the opportunities are, and in little republics when uncontrouled by apprehensions of external danger. If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number. The Society becomes broken into a greater variety of interests, of pursuits of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits.

The great desideratum in Government is such a modification of the sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society. In absolute Monarchies the prince is sufficiently, neutral towards his subjects, but frequently sacrifices

their happiness to his ambition or his avarice. In small Republics, the sovereign will is sufficiently controuled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. As a limited monarchy tempers the evils of an absolute one; so an extensive Republic meliorates the administration of a small Republic.

An auxiliary desideratum for the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters which it contains; such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.