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Vices of the Political
system of the U. States

1. Failure of the
States to comply with the
constitutional requisitions.

Observations by J. M. (a copy taken by permission
by David Carroll sent to Ch^s
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3. 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 ~~the present System~~ 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 Pen^s & N. Jersey - the troops
raised and to be kept up by Mass^{ts}.

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 those irregularities must necessarily produce frequent violations of the law of nations in other respects.

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

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

A. There are alarming symptoms, and may be daily apprehended as we are admonished by daily experience. See the law of Virginia re-writing 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, closure of Courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As ~~at the time~~, the citizens of any State aggregate taken stand more or less in the relation of creditors or debtors, to the citizens of any 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 regulation of the value and alloy of coin was properly delegated to the federal authority, the monopolistic policy of it equally requires a control 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 tranquility at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and ~~suspending~~ 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 legit retaliating regulations, not less expensive & 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 ~~increased~~ for national purposes; for canals and other ^{works} of general utility, which may at present be defeated by the perverseness of particular States whose concurrence ~~is~~ necessary.

6. want of general Guar-
antee to the States of their
Constitutions & Laws against
internal violence. ¹⁷⁷³

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 take join the standard of sedition than ~~of~~ that of the established Government. 3. Where slavery exists the republican Theory becomes still ^{more} fallacious.

J. 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 ~~superfluous~~
coercion is to that of government. The federal system ^{being} destitute
of both, wants the great vital principles of a Political Constitution. Un-
der the form of such a Constitution, it is in fact nothing more than
a treaty of alliance and of commerce and of alliance, between ~~several~~
independent and sovereign States. From what cause could so fatal an
omission have happened in the articles of Confederation? from a mis-
take confidence in the ~~expediency~~ of ~~them~~, that the justice, the good
faith, the honor, the sound policy, of the several legislatures 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 ~~members~~ ^{compilers}, as much as the inexperi-
ence ^{of the crisis} ~~apologizes for~~ ^{their} ~~terms~~ ^{which has since elaps'd}. It has
the double effect, of increasing the light and tempering the warmth,
^{with which the union may be viewed} ~~for the duration of the war~~. It is no longer doubted that a
unanimous and punctual obedience of 13 independent bodies, to the acts
of the federal Government, ought not be calculated on. Even during the
war, when external danger supplied in some degree the effect 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

a partiality which will be fostered by the courtesies 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 pre-
vent the compliance of any, although it should be ~~and~~ the latent disposition of all.
Here are pretenses which will never fail to ~~persuade~~ ^{cause} ~~justify~~ render federal measures
abortive. If the laws of the States, were merely ~~now~~ ^{suspect} mandatory to their citizens, or if
they were to be rejected by County authorities, what security, what probability
would exist, that they would be carried into execution? Is the security or probabi-
lity greater in favor of the acts of Congs. which depending for their execution on
the State ~~legislature~~ ^{legislatures}, are the nominally authoritative, in fact incom-
mandatory org.

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 ~~any~~ posterior date to the ^{former} law,
it will be at least questionable whether the latter must not prevail; and
as the question must be decided by ~~the~~ 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 sove-
reign 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} ~~as it appears to me~~ ^{and} ~~the original~~ ^{compact} ~~confederation~~
doctrine, that a breach of any of the articles of the ~~League~~ ^{confederation}.
done by any of the parties to it, absolves the other parties from their
respective obligations, and gives them a right if they choose to exert
it, of dissolving the union altogether.

g. multiplicity of laws
in the several States.

g. In developing the evils which vitiate the political system of
the U.S. it is proper to include those which are found within ~~and~~
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 of our situation may well be ranked
the multiplicity of laws from which no State is exempt. As far as
laws are necessary ^{for} ~~of~~ ^{the} ~~law~~, to mark with precision the duties
of those who are to obey them, and to take from those who are to ad-
minister them a discretion, which might be abused, their number ^{is} ~~is~~
^{the}

laws exceed ~~number~~

the peace of liberty. As far as the ~~law~~ ^{laws exceed number} This ~~law~~ ^{is a nuisance of the pestilent kind} ~~law~~ ^{denotes} ~~law~~ ^{several} ~~law~~ ^{and review of the} ~~law~~ ^{several} ~~law~~ ^{will show that every necessary and useful part of the least voluminous of them might be comprised into one tenth of the compafs, and at the same time be rendered tenfold 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~~ denotes a vicious legislation. We ~~are~~ ^{merely} 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 ~~nuisance~~ not only to our citizens but to foreigners also.

III. Injustice of the Laws
of States.

11. If the multiplicity and mutability of ~~the~~ 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 the public good and of private rights. To what cause is this evil to be ascribed?

These causes lie 1. in the Representative bodies.

2. in the people themselves.

3. Representative appointments are sought from 3 motives. 1. ambition
2. personal interest. 3. public good. Unhappily the two first appear
by experience to be most prevalent. Hence the candidates who feel them,
particularly the second, are most insidious, and most successful in pur-
suing their object: and forming often a majority in the legislative ban-
ches, with interested views, contrary to the interest, and ~~against~~ 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 ~~redress the inequality~~. But how easily are base and
selfish measures, masked by pretence of public good and apparent ex-
pediency? How ~~frequently~~ will a repetition of the same acts and in-

still give birth to a new dynasty which succeeded in the first instance, again prevail on the un-
willing masses, and so ~~mislead~~ ^{were to misplace their confidence?}
How frequently too will the honest but unenlightened repre-
sentative be the dupe of a favorite leader, veiling his selfish views
under the pretense of public good, and varnishing his sophistical
arguments with the glowing colours of popular eloquence!

2. A more fatal if not more frequent cause lies among the
people themselves. All civilized societies are divided into different in-
terests 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 individu-
als? These motives only 3. a prudent regard to their own good as involved in
the general and permanent good of the community. This consideration, if
~~only~~ although of due 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

honour is the best policy. 2⁵ respect for character. However strong this motive may be in individuals it is ~~is~~ considered as a very insufficient to restrain ~~them~~ from injustice. In ~~publick~~ a multitude its efficacy is diminished in proportion to the number which it 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 ~~importunity~~ 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 that Standard, but the example will never be followed by the multitude. Is it to be imagined that an ordinary citizen of N. Island in ~~sight~~ estimating the policy of paper money, ever consider'd or care'd, what light the measure would be viewed in France or Holland; or even in Mass. or Connec? 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 that State, to the former that it was so in the neighbourhood. 3⁶ will Religion be the only remaining motive here a sufficient restraint? Has't pretended to be such on ~~men~~ individually consider'd. Will its effect be greater on them consider'd in an aggregate view? quite the reverse. The conduct of every popular assembly acting on ^{religious ties,} oath, the strongest ~~resembling affe~~, proves that individual ~~jointly~~ 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 ~~and~~ ~~with~~ by the sympathy of a multitude. But on the same is only a temporary state of religion, and while it last'st ^{Borders} hardly be seen with pleasure at the helm of Government. ~~but~~ as religion in its coolest state, is not infallible, ~~but~~ it may ~~not~~ ~~existify~~ become a motive to opposition as well as a restraint from injustice.

place three individuals in a situation wherein the interest of each depends on the voice of the ~~two~~ others, and give to two of them an interest opposed to ~~that of~~ the third. Will the latter be secure? The prudence of every man ~~will~~ shew the ^{rights} ^{the ruler & forms of justice suppose} guard against it. ~~the power of justice are directed at the principles~~ 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 & opp'ns which take place in corporate towns ~~are limited as the opportunities are, and in little repub-~~ lies when uncontrolled 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 the 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 great variety of parties, of interests, of opinions ~~and~~ 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 govt. contray to the prevailing theory, are in proportion not to the extent, but to the non-existence of their limits.

The great desideratum in government is such a modification ^[governing power] between the society, as will render it sufficiently neutral to the different interests and factions, to control one part from invading the rights of another, and at the same time sufficiently controlled 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 controlled from such a sacrifice of the entire society, but is not sufficiently neutral towards the parts composing it. ^{as administration of the law is the} ^{first}

particular. As a limited monarchy tempers the vices of an absolute
one; & an extensive Republic mitigates the ~~faults~~^{administration} of a small
Republic.

An auxiliary institution 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 ~~more~~ more strongly the pro-
per motives to pursue the end of their appointment, and be most
capable to devise the proper means of attaining it.

Views of the political
situation of the United States

April 1787

12 Importance of the laws
of the states

