

THE FEDERALIST #11

1. Unity about internal and foreign commerce

The importance of the union, in a commercial light, is one of those points, about which there is least room to entertain a difference of opinion, and which has in fact commanded the most general assent of men, who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries, as with each other.

2. "[T]he commercial character of America" disturbing European maritime powers

[T]he commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe.

3. European powers want the states divided in order to prevent an "ACTIVE COMMERCE."

By prohibitory regulations, extending at the same time throughout the states, we may oblige foreign countries to bid against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance, to any manufacturing nation, of the markets of three millions of people...

4. Importance of building a Navy (Geopolitics)

Such a point gained from the British government, and which could not be expected without an equivalent in exemptions and immunities in our markets, would be likely to have a correspondent effect on the conduct of other nations, who would not be inclined to see themselves altogether supplanted in our trade.

5. A vigorous national government

Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an impracticability of success. An active commerce, an extensive navigation, a flourishing marine, would then be the inevitable offspring of moral and physical necessity.

6. Disunion, passive commerce, and commodities

But in a state of disunion, [European powers could] confine us to a **PASSIVE COMMERCE**. We should thus be compelled to **content ourselves with the first price of our commodities**, and to see the profits of our trade snatched from us, to enrich our enemies and persecutors.

7. Unrestrained commerce among the states

An unrestrained intercourse between the states themselves, will advance the trade of each, by an interchange of their respective productions, not only for the supply of reciprocal wants, but for exportation to foreign markets.....Commercial enterprise will have much greater scope, from the diversity in the productions of different states.

8. Alexander Hamilton: A Biography, Forrest McDonald

Having used Smith in his rejection of agrarianism, Hamilton next rejected Smith's own central argument, that economic activity is regulated by natural laws and is most beneficial when government does not interfere with its workings. Insofar as this implied free trade, or the taxation of trade only for purpose of revenue and so moderately as not to interfere with its flow, Hamilton could endorse noninterference as an ideal; but as a statesman and not a theorist he saw that it was unrealistic in practice. The nations on whom the United States depended for markets and manufactures were committed to mercantilism, and if the United States followed a free-trade policy without reciprocation abroad, she would merely increase the disadvantage under which she traded.

9. Baker on international trade and western rule of law

Free trade, Adam Smith recognized, requires limited government and legal protection for property rights and contracts.

Westerners often forget that the Rule of Law is the exception, not the norm, around the world. The late Milton Friedman, in a rare confession of error, recognized the Rule of Law's primacy. Interviewed by the Cato Institute, Friedman said that after the fall of the Berlin Wall, he was often asked, "What do these ex-communist states have to do in order to become market economies?" He responded, "I used to say, 'You can describe that in three words: privatize, privatize, privatize.' But, I was wrong. That wasn't enough."

THE FEDERALIST #15

1. National humiliation

We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character, of an independent people, which we do not experience.

2. The great and radical vice

The great and radical vice, in the construction of the existing confederation, is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist.

Note: Printz v. US (1997)

Brady gun case; Justice Scalia versus Justice Breyer on the nature of US federalism

3. Purpose of leagues and alliances: require sufficient details to leave no discretion

There is nothing absurd or impracticable, in the idea of a league or alliance between independent nations, for certain defined purposes precisely stated in a treaty; regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind, exist among all civilized nations, subject to the usual vicissitudes of peace and war; of observance and non-observance, as the interests or passions of the contracting powers dictate.

4. Compare the US Constitution and the Treaties of the European Union

[W]e must never forget that it is a constitution we are expounding ... a constitution intended to endure for ages to come, and consequently, to be adopted to the various crises of human affairs.

Chief Justice John Marshall, *McCulloch v. Maryland*

Justice Scalia, *A Matter of Interpretation*



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Hamilton speaks of "discretionary superintendence" as the hallmark of the United States' government under the Articles of Confederation. Government under the Constitution, instead, had specific "enumerated powers" such that the states kept some sovereignty, but delegated other parts of it to the Federal Government. This would prevent the States from acting in their own self interest where there were important federal interests. In reading Federalist 15, it seems that Hamilton is more concerned with federal unity than he is with the sovereignty the states retained. I cannot help but see the Constitution as one great imagined compromise where the anti-federalists thought some sovereignty was retained, but ultimately Hamilton's personal thoughts on government eventually win out.

At least, this is how I read Hamilton's arguments. Today, seeing the administrative state, I cannot help but to wish the antifederalists had secured a greater state control over the federal government.

5. Government requires laws

Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws, will in fact amount to nothing more than advice or recommendation. This penalty can only be inflicted by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms.

6. Promises that common interests would be sufficient proved wrong.

Passions require government.

Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint.

Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred

by all accurate observers of conduct of mankind and the inference is founded upon obvious reasons. Regard to reputation, has a less active

influence, when the infamy of a bad action is to be divided among a number, then when it is to fall singularly upon one.

7. Sovereignty and Power

The measures of the union have not been executed; the delinquencies of the states have, step by step, matured themselves to an extreme, which has at length arrested all the wheels of the national government, and brought them to an awful stand.

Congress at this time scarcely possess the means of keeping up the forms of administration, till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified, produced at first only unequal and disproportionate degrees of compliance with the requisitions of the union. The greater deficiencies of some states furnished the pretext of example, and the temptation of interest to the complying, or at least delinquent states.

8. The free-rider problem

Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burthen? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not without hesitation combat. Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins.

THE FEDERALIST #23

1. Energetic government

The necessity of a constitution, at least equally energetic with the one proposed, to the preservation of the union, is the point, at the examination of which we are now arrived. This inquiry will naturally divide itself into three branches. The objects to be provided for by a federal government: the quantity of power necessary to the accomplishment of those objects: the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

2. Unlimited power?

The authorities essential to the care of the common defence, are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation; because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.

Question from live audience

Peter

I'm having difficulty understanding how pluralism applies not only to religion but to civil rights and the connection of those two to Commerce. Could you give further explanation, please?

1. Stronger factions (whether religious, racial, ethnic or economic) oppress weaker factions, if they are able to do so.
2. Increasing economic competition through commerce among the states and the extended commercial republic were understood by at least Madison and Hamilton (although with different emphases) to be tools to break up, multiply, and reduce the relative power of particular factions.
3. Prior to (and even after) the 14th amendment, when the residual sovereignty of the states left them with almost unrestrained police power, this approach was largely effective as to religion, and economics, less so as to ethnicity, and not as to race, at least in the South.

4. Since the passage of the 14th amendment and the civil rights laws of the 1960s, this pluralism has reduced the relative power of factions based on race and ethnicity as well.

5. The impact of national factions.

6. Socialism, as described while not using that term in Federalist 10, seeks to reduce the numerosity of factions.

3. Truths and axioms

This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms, as simple as they are universal . . . the means ought to be proportioned to the end; the persons from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained.

3. Truths and axioms *McCulloch v. Maryland*

"To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable."

"To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur."



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This passage seems to contemplate that there are no conceptual limits to federal power as long as there is a connection—sometimes however tenuous or attenuated—between the means and a legitimate end.

This, I think, has played out in the Supreme Court's expansive view of the Commerce power and the Necessary and Proper power over the past 150 years. It also seems to be the predictable consequence of Hamilton's conceptions of power. Doesn't Hamilton's assertion fatally contradict the broader notion that the federal government will be one of limited and express powers?

Excerpt from #44 (Madison)

If it be asked, what is to be the consequence, in case the congress shall misconstrue this part of the constitution, and exercise powers not warranted by its true meaning? I answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same in short, as if the state legislatures should violate their respective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort, a remedy must be obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers.

4. Powers to carry out responsibilities

Whether there ought to be a federal government intrusted with the care of the common defence, is a question, in the first instance, open to discussion; but the moment it is decided in the affirmative, it will follow, that, that government ought to be clothed with all the powers requisite to the complete execution of its trust.

5. No limitation on the authority to defend the country

[T]hat there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy; that is, in any matter essential to the formation, direction, or support of the NATIONAL FORCES.

6. Full power to support an army and navy

[T]here is an absolute necessity for an entire change in the first principles of the system. That if we are in earnest about giving the union energy and duration, we must abandon the vain project of legislating upon the states in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised in other governments.

7. Power and objects

If the circumstances of our country are such as to demand a compound, instead of a simple . . . a confederate, instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power: allowing to each the most ample authority for fulfilling THOSE which may be committed to its charge. Shall the union be constituted the guardian of the common safety? Are fleets, and armies, and revenues, necessary to this purpose? The government of the union must be empowered to pass all laws, and to make all regulations which have relation to them.

8. The same applicable to commerce

The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same state, the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigour and success.

9. Federal government as the center of information

Who so likely to make suitable provisions for the public defence, as that body to which the guardianship of the public safety is confided?

Which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the **WHOLE,**

8. Careful attention of the people

[T]hat it is both unwise and dangerous to deny the federal government an unconfined authority, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner as to admit of its being safely vested with the requisite powers.

9. The government of a free people

A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the NATIONAL INTERESTS.

Hamilton asserts that we must extend the grasp of the federal government instead of letting it go to states, but I question the extent that Hamilton argues for.

Hamilton claims that the government must be watched so that it does not overexert itself — I believe that we have watched this happen throughout history and we cannot go back.

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