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THE FOUNDERS' CONSTITUTION



# Article 1, Section 8, Clause 1

## Document 27

### James Madison to Andrew Stevenson

27 Nov. 1830 *Letters 4:120--39*

I enclose the letter which particularly complies with the object of yours. The view it takes of the origin and innocence of the phrase "common defence and general welfare" is what was taken in the Federalist and in the report of 1799, and, I believe, wherever else I may have had occasion to speak of the clause containing the terms.

I have omitted a vindication of the true punctuation of the clause, because I now take for certain that the original document, signed by the members of the Convention, is in the Department of State, and that it testifies for itself against the erroneous editions of the text in that particular. Should it appear that the document is not there, or that the error had slipped into it, the materials in my hands to which you refer will amount, I think, to a proof outweighing even that authority. It would seem a little strange, if the original Constitution be in the Department of State, that it has hitherto escaped notice. But it is to be explained, I presume, by the fact that it was not among the papers relating to the Constitution left with General Washington, and there deposited by him; but, having been sent from the Convention to the old Congress, lay among the mass of papers handed over on the expiration of the latter to that Department. On your arrival at Washington, you will be able personally, or by a friend having more leisure, to satisfy yourself on these points. . . .

Dear Sir,--I have received your very friendly favor of the 20th instant, referring to a conversation when I had lately the pleasure of a visit from you, in which you mentioned your belief that the terms "common defence and general welfare," in the eighth section of the first article of the Constitution of the United States, were still regarded by some as conveying to Congress a substantive and indefinite power, and in which I communicated my views of the introduction and occasion of the terms, as precluding that comment of them; and you express a wish that I would repeat those views in the answer to your

letter.

However disinclined to the discussion of such topics, at a time when it is so difficult to separate, in the minds of many, questions purely constitutional from the party polemics of the day, I yield to the precedents which you think I have imposed on myself, and to the consideration that, without relying on my personal recollections, which your partiality over-values, I shall derive my construction of the passage in question from sources of information and evidence known or accessible to all who feel the importance of the subject, and are disposed to give it a patient examination.

In tracing the history and determining the import of the terms "common defence and general welfare," as found in the text of the Constitution, the following lights are furnished by the printed journal of the Convention which formed it:

The terms appear in the general propositions offered May 29, as a basis for the incipient deliberations, the first of which "Resolved, that the articles of the Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare." On the day following, the proposition was exchanged for, "Resolved, that a Union of the States merely Federal will not accomplish the objects proposed by the Articles of the Confederation, namely, common defence, security of liberty, and general welfare."

The inference from the use here made of the terms, and from the proceedings on the subsequent propositions, is, that although common defence and general welfare were objects of the Confederation, they were limited objects, which ought to be enlarged by an enlargement of the particular powers to which they were limited, and to be accomplished by a change in the structure of the Union from a form merely Federal to one partly national; and as these general terms are prefixed in the like relation to the several legislative powers in the new charter as they were in the old, they must be understood to be under like limitations in the new as in the old.

In the course of the proceedings between the 30th of May and the 6th of August, the terms common defence and general welfare, as well as other equivalent terms, must have been dropped; for they do not appear in the draught of a Constitution reported on that day by a committee appointed to prepare one in detail, the clause in which those terms were afterward inserted being in the draught simply, "The Legislature of the United States shall have power to lay and collect taxes, duties, imposts, and excises."

The manner in which the terms became transplanted from the old into the new system of Government, is explained by a course somewhat adventitiously given

to the proceedings of the Convention.

On the 18th of August, among other propositions referred to the committee which had reported the draught, was one "to *secure* the payment of the public debt;" and

On the same day was appointed a committee of eleven members, (one from each State,) "to consider the necessity and expediency of *the debts of the several States* being assumed by the United States."

On the 21st of August, this last committee reported a clause in the words following: "The Legislature of the United States *shall have power* to fulfil the engagements *which have been* entered into by Congress, and to discharge as well the debts of the United States as the debts incurred by the *several States during the late war*, for the *common defence and general welfare*;" conforming herein to the eighth of the Articles of Confederation, the language of which is, that "all charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common Treasury," &c.

On the 22d of August, the committee of five reported, among other additions to the clause, "*giving power* to lay and collect taxes, imposts, and excises," a clause in the words following, "for payment of the debts and necessary expenses," with a proviso qualifying the duration of revenue laws.

This report being taken up, it was moved, as an amendment, that the clause should read, "The Legislature *shall* fulfil the engagements and discharge the debts of the United States."

It was then moved to strike out "discharge the debts," and insert, "liquidate the claims;" which being rejected, the amendment was agreed to as proposed, viz: "The Legislature *shall* fulfil the engagements and discharge the debts of the United States."

On the 23d of August the clause was made to read, "The Legislature shall fulfil the engagements and discharge the debts of the United States, and shall have the power to lay and collect taxes, duties, imposts, and excises," the two powers relating to taxes and debts being merely transposed.

On the 25th of August the clause was again altered so as to read, "All debts contracted and engagements entered into by, or under the authority of Congress, [the Revolutionary Congress,] shall be as valid under this Constitution as under the Confederation."

This amendment was followed by a proposition, referring to the powers to lay and collect taxes, &c., and to discharge the debts, [*old debts,*] to add, "for payment of *said* debts, and for defraying the *expenses that shall be incurred for the common defence and general welfare.*" The proposition was disagreed to, one State only voting for it.

September 4, the committee of eleven reported the following modification: "The Legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare;" thus retaining the terms of the Article of Confederation, and covering, by the general term "debts," those of the old Congress.

A special provision in this mode could not have been necessary for the debts of the new Congress; for a power to provide money, and a power to perform certain acts, of which money is the ordinary and appropriate means, must of course carry with them a power to pay the expense of performing the acts. Nor was any special provision for debts proposed till the case of the revolutionary debts was brought into view; and it is a fair presumption, from the course of the varied propositions which have been noticed, that but for the old debts, and their association with the terms "common defence and general welfare," the clause would have remained as reported in the first draught of a Constitution, expressing generally, "a power in Congress to lay and collect taxes, duties, imposts, and excises," without any addition of the phrase, "to provide for the common defence and general welfare." With this addition, indeed, the language of the clause being in conformity with that of the clause in the Articles of Confederation, it would be qualified, as in those articles, by the specification of powers subjoined to it. But there is sufficient reason to suppose that the terms in question would not have been introduced but for the introduction of the old debts, with which they happened to stand in a familiar though inoperative relation. Thus introduced, however, they passed undisturbed through the subsequent stages of the Constitution.

If it be asked why the terms "common defence and general welfare," if not meant to convey the comprehensive power which, taken literally, they express, were not qualified and explained by some reference to the particular powers subjoined, the answer is at hand, that although it might easily have been done, and experience shows it might be well if it had been done, yet the omission is accounted for by an inattention to the phraseology, occasioned doubtless by its identity with the harmless character attached to it in the instrument from which it was borrowed.

But may it not be asked with infinitely more propriety, and without the possibility of a satisfactory answer, why, if the terms were meant to embrace not only all the powers particularly expressed, but the indefinite power which

has been claimed under them, the intention was not so declared? why, on that supposition, so much critical labour was employed in enumerating the particular powers, and in defining and limiting their extent?

The variations and vicissitudes in the modification of the clause in which the terms "common defence and general welfare" appear, are remarkable, and to be no otherwise explained than by differences of opinion concerning the necessity or the form of a constitutional provision for the debts of the Revolution; some of the members apprehending improper claims for losses by depreciated emissions of bills of credit; others an evasion of proper claims, if not positively brought within the authorized functions of the new Government; and others again considering the past debts of the United States as sufficiently secured by the principle that no change in the Government could change the obligations of the nation. Besides the indications in the journal, the history of the period sanctions this explanation.

But it is to be emphatically remarked, that in the multitude of motions, propositions, and amendments, there is not a single one having reference to the terms "common defence and general welfare," unless we were so to understand the proposition containing them made on August 25, which was disagreed to by all the States except one.

The obvious conclusion to which we are brought is, that these terms, copied from the Articles of Confederation, were regarded in the new as in the old instrument, merely as general terms, explained and limited by the subjoined specifications, and therefore requiring no critical attention or studied precaution.

If the *practice* of the revolutionary Congress be pleaded in opposition to this view of the case, the plea is met by the notoriety that on several accounts the practice of that body is not the expositor of the "Articles of Confederation." These articles were not in force till they were finally ratified by Maryland in 1781. Prior to that event, the power of Congress was measured by the exigencies of the war, and derived its sanction from the acquiescence of the States. After that event, habit and a continued expediency, amounting often to a real or apparent necessity, prolonged the exercise of an undefined authority; which was the more readily overlooked, as the members of the body held their seats during pleasure; as its acts, particularly after the failure of the bills of credit, depended for their efficacy on the will of the States, and as its general impotency became manifest. Examples of departure from the prescribed rule are too well known to require proof. The case of the old Bank of North America might be cited as a memorable one. The incorporating ordinance grew out of the inferred necessity of such an institution to carry on the war, by aiding the finances, which were starving under the neglect or inability of the States to furnish their assessed quotas. Congress was at the time so much aware of the

deficient authority, that they recommended it to the State Legislatures to pass laws giving due effect to the ordinance, which was done by Pennsylvania and several other States. In a little time, however, so much dissatisfaction arose in Pennsylvania, where the bank was located, that it was proposed to repeal the law of the State in support of it. This brought on attempts to vindicate the adequacy of the power of Congress to incorporate such an institution. Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a bank at such a crisis, published a small pamphlet, entitled "Considerations on the Bank of North America," in which he endeavoured to derive the power from the *nature* of the *union* in which the colonies were declared and became independent States; and also from the tenor of the "Articles of Confederation" themselves. But what is particularly worthy of notice is, that with all his anxious search in those articles for such a power, he never glanced at the terms "common defence and general welfare" as a source of it. He rather chose to rest the claim on a recital in the text, "that, for the more convenient management of the *general* interests of the *United States*, delegates shall be annually appointed to meet in Congress, which, he said, implied that the *United States* had *general* rights, *general* powers, and *general* obligations, not derived from *any* particular State, nor from *all* the particular States taken separately, but *resulting* from the *union* of the whole," these general powers not being controlled by the article declaring that each State retained *all* powers not granted by the articles, because "the *individual* States *never* possessed and could not retain a *general* power over the others."

The authority and argument here resorted to, if proving the ingenuity and patriotic anxiety of the author on one hand, show sufficiently on the other that the terms common defence and general welfare could not, according to the known acceptance of them, avail his object.

That the terms in question were not suspected in the Convention which formed the Constitution of any such meaning as has been constructively applied to them, may be pronounced with entire confidence; for it exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant and cautious definition of Federal powers should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions and definitions elaborated by them.

Consider for a moment the immeasurable difference between the Constitution limited in its powers to the enumerated objects, and expounded as it would be by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other--the one possessing powers confined to certain specified cases, the other extended to all cases whatsoever; for what is the case that would not be embraced by a general power to raise money, a power to provide for the general

welfare, and a power to pass all laws necessary and proper to carry these powers into execution; all such provisions and laws superseding, at the same time, all local laws and constitutions at variance with them? Can less be said, with the evidence before us furnished by the journal of the Convention itself, than that it is impossible that such a Constitution as the latter would have been recommended to the States by all the members of that body whose names were subscribed to the instrument?

Passing from this view of the sense in which the terms common defence and general welfare were used by the framers of the Constitution, let us look for that in which they must have been understood by the Convention, or, rather, by the people, who, through their Conventions, accepted and ratified it. And here the evidence is, if possible, still more irresistible, that the terms could not have been regarded as giving a scope to Federal legislation infinitely more objectionable than any of the specified powers which produced such strenuous opposition, and calls for amendments which might be safeguards against the dangers apprehended from them.

Without recurring to the published debates of those Conventions, which, as far as they can be relied on for accuracy, would, it is believed, not impair the evidence furnished by their recorded proceedings, it will suffice to consult the list of amendments proposed by such of the Conventions as considered the powers granted to the new Government too extensive or not safely defined.

Besides the restrictive and explanatory amendments to the text of the Constitution, it may be observed, that a long list was premised, under the name and in the nature of "declarations of rights;" all of them indicating a jealousy of the Federal powers, and an anxiety to multiply securities against a constructive enlargement of them. But the appeal is more particularly made to the number and nature of the amendments proposed to be made specific and integral parts of the constitutional text.

No less than seven States, it appears, concurred in adding to their ratifications a series of amendments which they deemed requisite. Of these amendments, *nine* were proposed by the Convention of Massachusetts, *five* by that of South Carolina, *twelve* by that of New Hampshire, *twenty* by that of Virginia, *thirty-three* by that of New York, *twenty-six* by that of North Carolina, *twenty-one* by that of Rhode Island.

Here are a majority of the States proposing amendments, in one instance thirty-three by a single State; all of them intended to circumscribe the powers granted to the General Government, by explanations, restrictions, or prohibitions, without including a single proposition from a single State referring to the terms common defence and general welfare; which, if understood to convey the

asserted power, could not have failed to be the power most strenuously aimed at, because evidently more alarming in its range than all the powers objected to put together; and that the terms should have passed altogether unnoticed by the many eyes which saw danger in terms and phrases employed in some of the most minute and limited of the enumerated powers, must be regarded as a demonstration that it was taken for granted that the terms were harmless, because explained and limited, as in the "Articles of Confederation," by the enumerated powers which followed them.

A like demonstration that these terms were not understood in any sense that could invest Congress with powers not otherwise bestowed by the constitutional charter, may be found in what passed in the first session of the first Congress, when the subject of amendments was taken up, with the conciliatory view of freeing the Constitution from objections which had been made to the extent of its powers, or to the unguarded terms employed in describing them. Not only were the terms "common defence and general welfare" unnoticed in the long list of amendments brought forward in the outset, but the journals of Congress show that, in the progress of the discussions, not a single proposition was made in either branch of the Legislature which referred to the phrase as admitting a constructive enlargement of the granted powers, and requiring an amendment guarding against it. Such a forbearance and silence on such an occasion, and among so many members who belonged to the part of the nation which called for explanatory and restrictive amendments, and who had been elected as known advocates for them, cannot be accounted for without supposing that the terms "common defence and general welfare" were not at that time deemed susceptible of any such construction as has since been applied to them.

It may be thought, perhaps, due to the subject, to advert to a letter of October 5, 1787, to Samuel Adams, and another of October 16, of the same year, to the Governor of Virginia, from R. H. Lee, in both of which it is seen that the terms had attracted his notice, and were apprehended by him "to submit to Congress every object of human legislation." But it is particularly worthy of remark, that, although a member of the Senate of the United States when amendments of the Constitution were before that house, and sundry additions and alterations were there made to the list sent from the other, no notice was taken of those terms as pregnant with danger. It must be inferred, that the opinion formed by the distinguished member at the first view of the Constitution, and before it had been fully discussed and elucidated, had been changed into a conviction that the terms did not fairly admit the construction he had originally put on them, and therefore needed no explanatory precaution against it.

Allow me, my dear sir, to express on this occasion, what I always feel, an anxious hope that, as our Constitution rests on a middle ground between a form wholly national and one merely federal, and on a division of the powers of



Government between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view, as a key to the sound interpretation of the instrument, and a warning against any doctrine that would either enable the States to invalidate the powers of the United States, or confer all power on them.

I close these remarks, which I fear may be found tedious, with assurances of my great esteem and best regards.

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## **Memorandum not used in letter to Mr. Stevenson.**

These observations will be concluded with a notice of the argument in favour of the grant of a full power to provide for common defence and general welfare, drawn from the punctuation in some editions of the Constitution.

According to one mode of presenting the text, it reads as follows: "Congress shall have power--To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform." To another mode, the same with commas *vice* semicolons.

According to the other mode, the text stands thus: "Congress shall have power; To lay and collect taxes, duties, imposts, and excises: To pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

And from this view of the text, it is inferred that the latter sentence conveys a distinct substantive power to provide for the common defence and general welfare.

Without inquiring how far the text in this form would convey the power in question; or admitting that any mode of presenting or distributing the terms could invalidate the evidence which has been exhibited, that it was not the intention of the general or of the State Conventions to express, by the use of the terms common defence and general welfare, a substantive and indefinite power; or to imply that the general terms were not to be explained and limited by the specified powers succeeding them, in like manner as they were explained and limited in the former Articles of Confederation from which the terms were taken; it happens that the authenticity of the punctuation which preserves the unity of the clause can be as satisfactorily shown, as the true intention of the parties to the Constitution has been shown in the language used by them.

The only instance of a division of the clause afforded by the journal of the Convention is in the draught of a Constitution reported by a committee of five members, and entered on the 12th of September.

But that this must have been an erratum of the pen or of the press, may be inferred from the circumstance, that, in a copy of that report, printed at the time for the use of the members, and now in my possession, the text is so printed as to unite the parts in one substantive clause; an inference favoured also by a previous report of September 4, by a committee of eleven, in which the parts of the clause are united, not separated.

And that the true reading of the Constitution, as it passed, is that which unites the parts, is abundantly attested by the following facts:

1. Such is the form of the text in the Constitution printed at the close of the Convention, after being signed by the members, of which a copy is also now in my possession.
2. The case is the same in the Constitution from the Convention to the old Congress, as printed on their journal of September 28, 1787, and transmitted by that body to the Legislatures of the several States.
3. The case is the same in the copies of the transmitted Constitution, as printed by the ratifying States, several of which have been examined; and it is a presumption that there is no variation in the others.

The text is in the same form in an edition of the Constitution published in 1814, by order of the Senate; as also in the Constitution as prefixed to the edition of the laws of the United States; in fact, the proviso for uniformity is itself a proof of identity of them.

It might, indeed, be added, that in the journal of September 14, the clause to which the proviso was annexed, now a part of the Constitution, viz: "but all duties, imposts, and excises, shall be uniform throughout the United States," is called the "first," of course a "single" clause. And it is obvious that the uniformity required by the proviso implies that what it referred to was a part of the same clause with the proviso, not an antecedent clause altogether separated from it.

Should it be not contested that the original Constitution, in its engrossed or enrolled state, with the names of the subscribing members affixed thereto, presents the text in the same form, that alone must extinguish the argument in question.

If, contrary to every ground of confidence, the text, in its original enrolled document, should not coincide with these multiplied examples, the first question would be of comparative probability of error, even in the enrolled document, and in the number and variety of the concurring examples in opposition to it.

And a second question, whether the construction put on the text, in any of its forms or punctuations, ought to have the weight of a feather against the solid and diversified proofs which have been pointed out, of the meaning of the parties to the Constitution.

### **Supplement to the letter of November 27, 1830, to A. Stevenson, on the phrase "common defence and general welfare."--On the power of indefinite appropriation of money by Congress.**

It is not to be forgotten, that a distinction has been introduced between a power merely to appropriate money to the common defence and general welfare, and a power to employ all the means of giving full effect to objects embraced by the terms.

1. The first observation to be here made is, that an *express* power to appropriate money authorized to be raised, to objects authorized to be provided for, could not, as seems to have been supposed, be at all necessary; and that the insertion of the power "to pay the debts," &c., is not to be referred to that cause. It has been seen, that the particular expression of the power originated in a cautious regard to debts of the United States antecedent to the radical change in the Federal Government; and that, but for that consideration, no particular expression of an appropriating power would probably have been thought of. An express power to raise money, and an express power (for example) to raise an army, would surely imply a power to use the money for that purpose. And if a doubt could possibly arise as to the implication, it would be completely removed by the express power to pass all laws necessary and proper in such cases.

2. But admitting the distinction as alleged, the appropriating power to *all* objects of "common defence and general welfare" is itself of sufficient magnitude to render the preceding views of the subject applicable to it. Is it credible that such a power would have been unnoticed and unopposed in the Federal Convention? in the State Conventions, which contended for, and proposed restrictive and explanatory amendments? and in the Congress of 1789, which recommended so many of these amendments? A power to impose *unlimited taxes* for *unlimited purposes* could never have escaped the sagacity

and jealousy which were awakened to the many inferior and minute powers which were criticised and combated in those public bodies.

3. A power to appropriate money, without a power to apply it in execution of the object of appropriation, could have no effect but to lock it up from public use altogether; and if the appropriating power carries with it the power of application and execution, the distinction vanishes. The power, therefore, means nothing, or what is worse than nothing, or it is the same thing with the sweeping power "to provide for the common defence and general welfare."

4. To avoid this dilemma, the consent of the States is introduced as justifying the exercise of the power in the full extent within their respective limits. But it would be a new doctrine, that an extra-constitutional consent of the parties to a Constitution could amplify the jurisdiction of the constituted Government. And if this could not be done by the concurring consents of all the States, what is to be said of the doctrine that the consent of an individual State could authorize the application of money belonging to all the States to its individual purposes? Whatever be the presumption that the Government of the whole would not abuse such an authority by a partiality in expending the public treasure, it is not the less necessary to prove the existence of the power. The Constitution is a limited one, possessing no power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free Government.

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them; and all such minorities, however composed, act with consistency in opposing a latitude of construction, particularly that which has been applied to the terms "common defence and general welfare," which would impair the security intended for minor parties. Whether the distrustful precaution interwoven in the Constitution was or was not in every instance necessary; or how far, with certain modifications, any farther powers might be safely and usefully granted, are questions which were open for those who framed the great Federal Charter, and are still open to those who aim at improving it. But while it remains as it is, its true import ought to be faithfully observed; and those who have most to fear

from constructive innovations ought to be most vigilant in making head against them.

But it would seem that a resort to the consent of the State Legislatures, as a sanction to the appropriating power, is so far from being admissible in this case, that it is precluded by the fact that the Constitution has expressly provided for the cases where that consent was to sanction and extend the power of the national Legislature. How can it be imagined that the Constitution, when pointing out the cases where such an effect was to be produced, should have deemed it necessary to be positive and precise with respect to such minute spots as forts, &c., and have left the general effect ascribed to such consent to an argumentative, or, rather, to an arbitrary construction? And here again an appeal may be made to the incredibility that such a mode of enlarging the sphere of federal legislation should have been unnoticed in the ordeals through which the Constitution passed, by those who were alarmed at many of its powers bearing no comparison with that source of power in point of importance.

5. Put the case that money is appropriated to a canal<sup>1</sup> to be cut within a particular State; how and by whom, it may be asked, is the money to be applied and the work to be executed? By agents under the authority of the General Government? then the power is no longer a mere appropriating power. By agents under the authority of the States? then the State becomes either a branch or a functionary of the Executive authority of the United States; an incongruity that speaks for itself.

6. The distinction between a pecuniary power only, and a plenary power "to provide for the common defence and general welfare," is frustrated by another reply to which it is liable. For if the clause be not a mere introduction to the enumerated powers, and restricted to them, the power to provide for the common defence and general welfare stands as a distinct substantive power, the first on the list of legislative powers; and not only involving all the powers incident to its execution, but coming within the purview of the clause concluding the list, which expressly declares that Congress may make all laws necessary and proper to carry into execution the *foregoing* powers vested in Congress.

The result of this investigation is, that the terms "common defence and general welfare" owed their induction into the text of the Constitution to their connexion in the "Articles of Confederation," from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same

was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Congress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution. It equally appears that the alleged power to appropriate money to the "common defence and general welfare" is either a dead letter, or swells into an unlimited power to provide for unlimited purposes, by all the means necessary and proper for those purposes. And it results finally, that if the Constitution does not give to Congress the unqualified power to provide for the common defence and general welfare, the defect cannot be supplied by the consent of the States, unless given in the form prescribed by the Constitution itself for its own amendment.

As the people of the United States enjoy the great merit of having established a system of Government on the basis of human rights, and of giving to it a form without example, which, as they believe, unites the greatest national strength with the best security for public order and individual liberty, they owe to themselves, to their posterity, and to the world, a preservation of the system in its purity, its symmetry, and its authenticity. This can only be done by a steady attention and sacred regard to the chartered boundaries between the portion of power vested in the Government over the whole, and the portion undivested from the several Governments over the parts composing the whole; and by a like attention and regard to the boundaries between the several departments, Legislative, Executive, and Judiciary, into which the aggregate power is divided. Without a steady eye to the landmarks between these departments, the danger is always to be apprehended, either of mutual encroachments and alternate ascendancies incompatible with the tranquil enjoyment of private rights, or of a concentration of all the departments of power into a single one, universally acknowledged to be fatal to public liberty.

And without an equal watchfulness over the great landmarks between the General Government and the particular Governments, the danger is certainly not less, of either a gradual relaxation of the band which holds the latter together, leading to an entire separation, or of a gradual assumption of their powers by the former, leading to a consolidation of all the Governments into a single one.

The two vital characteristics of the political system of the United States are, first, that the Government holds its powers by a charter granted to it by the people; second, that the powers of Government are formed into two grand divisions--one vested in a Government over the whole community, the other in a number of independent Governments over its component parts. Hitherto charters have been written grants of privileges by Governments to the people. Here they are written grants of power by the people to their Governments.

Hitherto, again, all the powers of Government have been, in effect, consolidated into one Government, tending to faction and a foreign yoke among a people within narrow limits, and to arbitrary rule among a people spread over an extensive region. Here the established system aspires to such a division and organization of power as will provide at once for its harmonious exercise on the true principles of liberty over the parts and over the whole, notwithstanding the great extent of the whole; the system forming an innovation and an epoch in the science of Government not less honorable to the people to whom it owed its birth, than auspicious to the political welfare of all others who may imitate or adopt it.

As the most arduous and delicate task in this great work lay in the untried demarkation of the line which divides the general and the particular Governments by an enumeration and definition of the powers of the former, more especially the legislative powers; and as the success of this new scheme of polity essentially depends on the faithful observance of this partition of powers, the friends of the scheme, or rather the friends of liberty and of man, cannot be too often earnestly exhorted to be watchful in marking and controlling encroachments by either of the Governments on the domain of the other.

1. On more occasions than one, it has been noticed in Congressional debates that propositions appear to have been made in the Convention of 1787 to give to Congress the power of opening canals, and to have been rejected; and that Mr. Hamilton, when contending in his report in favour of a bank for a liberal construction of the powers of Congress, admitted that a canal might be beyond the reach of those powers.

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## The Founders' Constitution

Volume 2, Article 1, Section 8, Clause 1, Document 27

[http://press-pubs.uchicago.edu/founders/documents/a1\\_8\\_1s27.html](http://press-pubs.uchicago.edu/founders/documents/a1_8_1s27.html)

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