

James Madison to Edmund Randolph, New York, 8 April 1787

Your two favors of the 22d & 27th. of March have been received since my last. In a former one you ask what Tribunal is to take cognizance of Clarke's offence? If our own laws will not reach it, I see no possibility of punishing it. But will it not come within the Act of the last Session concerning treasons *and other offences* committed without the Commonwealth. I have had no opportunity yet of consulting Mr. Otto on the allegation of Oster touching the marriage of French subjects in America. What is the *conspicuous prosecution* which you suspect will shortly display a notable instance of perjury?

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virga. had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas which have occurred, leaving explanations for our interview.

I think with you that it will be well to retain as much as possible of the old Confederation, tho' I doubt whether it may not be best to work the valuable articles into the new System, instead of engrafting the latter on the former. I am also perfectly of your opinion that in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States as that a partial adoption will be binding. Particular States may view the different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratification of both would go for nothing. I have not however examined this point thoroughly. In truth my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point that an individual independence of the States, is utterly irreconcilable with the idea of an aggregate sovereignty. I think at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is I think a change in the principle of representation. According to the present form of the Union, an equality of suffrage if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massts. or Virga.

Let the national Government be armed with a positive & compleat authority in all cases where uniform measures are necessary. As in trade &c. &c. Let it also retain the powers which it now possesses.

Let it have a negative in all cases whatsoever on the Legislative Acts of the States as the K. of G. B. heretofore had. This I conceive to be essential and the least possible abridgement of the State Sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the federal assent wd have been given to paper money &c. &c.

Let this national supremacy be extended also to the Judiciary departmt. If the judges in the last resort depend on the States & are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the Tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the national Government.

The supremacy of the whole in the Executive department seems liable to some difficulty. Perhaps an extension of it to the case of the Militia may be necessary & sufficient.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches: One of them to be chosen every years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A National Executive will also be necessary. I have scarcely venturd to form my own opinion yet either of the manner in which it ought to be constituted or of the authorities with which it ought [to be] cloathed.

An article ought to be inserted expressly guarantying the tranquility of the States agst. internal as well as external dangers.

To give the new system its proper energy it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it my self to go no further than is essential, The objections drawn from this source are to be laid aside. I flatter myself however that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The Northern States will be reconciled to it by the *actual* superiority of their populousness: the Southern by their *expected* superiority in this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant Will. It is also already seen by many & must by degrees be seen by all that unless the Union be organized efficiently & on Republican Principles, innovations of a much more objectionable form may be obruded, or in the most favorable event, the partition of the Empire into rival & hostile confederacies, will ensue.

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