

## **Antifederalist No. 17**

### **Federalist Power Will Ultimately Subvert State Authority**

The "necessary and proper" clause has, from the beginning, been a thorn in the side of those seeking to reduce federal power, but its attack by Brutus served to call attention to it, leaving a paper trail of intent verifying its purpose was not to give Congress anything the Constitution "forgot," but rather to show two additional tests for any legislation Congress should attempt: to wit -- that the intended actions would be both necessary AND proper to executing powers given under clauses 1-17 of Article I Section 8. This is the famous Brutus.

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This [new] government is to possess absolute and uncontrollable powers, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section eighth, article first, it is declared, that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof." And by the sixth article, it is declared, "that this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or law of any State to the contrary notwithstanding." It appears from these articles, that there is no need of any intervention of the State governments, between the Congress and the people, to execute any one power vested in the general government, and that the Constitution and laws of every State are nullified and declared void, so far as they are or shall be inconsistent with this Constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. The government, then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New York or Massachusetts; has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offenses, and annex penalties, with respect to every object to which it extends, as any other in the world. So far, therefore, as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the States; but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual States must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance -- there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has the authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the Constitution or laws of an State, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; -- there is no limitation to this power, unless it be said that the clause which directs the use to

which those taxes and duties shall be applied, may be said to be a limitation. But this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defense and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defense, and they only are to determine what is for the general welfare. This power, therefore, is neither more nor less than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only the power to lay taxes unlimited as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No State legislature, or any power in the State governments, have any more to do in carrying this into effect than the authority of one State has to do with that of another. In the business, therefore, of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all others after it; it is the great mean of protection, security, and defense, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this Constitution, to the State governments, on this article of raising money. No State can emit paper money, lay any duties or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States. The only means, therefore, left for any State to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Everyone who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct tax; when the federal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers be absorbed in that of the general government.

It might be here shown, that the power in the federal legislature, to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend not only to a consolidation of the government, but the destruction of liberty. I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may, from time to time, ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same State; and it extends to all cases in law and equity arising under the Constitution. One inferior court must be established, I presume, in each State, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the State courts. These courts will be, in themselves, totally independent of the States, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected that they will swallow up all the powers of the courts in the respective States.

How far the clause in the eighth section of the first article may operate to do away with all idea of confederated States, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution all powers vested by the Constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for aught I know, be exercised in such manner as entirely to abolish the State legislatures. Suppose the legislature of a State should pass a law to raise money to support their government and pay the State debt; may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this Constitution, are the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of the different States to the contrary notwithstanding. By such a law, the government of a particular State might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the Constitution would warrant a law of this kind! Or unnecessarily to alarm the fears of the people, by suggesting that the Federal legislature would be more likely to pass the limits assigned them by the Constitution, than that of an individual State, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontrollable powers of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers; and are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the State governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual States, small as it is, will be a clog upon the wheels of the government of the United States; the latter, therefore, will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over everything that stands in their way. This disposition, which is implanted in human nature, will operate in the Federal legislature to lessen and ultimately to subvert the State authority, and having such advantages, will most certainly succeed, if the Federal government succeeds at all. It must be very evident, then, that what this Constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise in operation.

*BRUTUS*