

## New Model Federalist No. 12 – On International Cooperation

That some great works are beyond the ability of one country alone – That reform of international institutions is needed for those works – That international cooperation requires some constraints on sovereignty – That sovereignty may not be limited without some form of political association between countries – That confederation is a useful form of association for dynamic collaboration – That international institutions ought to be purposeful, potent, and representative – That some institutions ought to offer varying levels of commitment – That equitable contributions are best secured by weighted voting – That contributions can be in kind – That the United States ought more readily to form international institutions with friendly republics than with autocratic rivals

*What is at stake is more than one small country; it is a big idea; a new world order, where diverse nations are drawn together in common cause to achieve the universal aspirations of mankind... —George H. W. Bush, State of the Union Address to Congress, Jan. 29, 1991.*

In our previous essay, we put forth ideas for how our Republic may preserve and wield its national might. Yet even while the United States of America remains the greatest of the world powers – as we insist that it be throughout the century ahead – there are nonetheless some great works that neither our Union nor any other country can accomplish alone in their entirety, but must instead achieve in cooperation with the other countries of the world. Among these tasks are the control and eradication of diseases, the maintenance of the world economy, the establishment of technological standards, the conservation of our Earth’s wildlands, the halt of global warming, and the exploration of outer space. We shall examine some of these tasks themselves in our next essay; here, we shall focus on the international institutions that may be used to accomplish them.

International cooperation is ingrained into the history of our own Union, which came into being, in many respects, as an alliance and trade union of thirteen sovereign States. In the 20<sup>th</sup> century, our Republic turned again to formal associations between countries, this time spanning the globe, to address the world’s challenges and extend its own influence. For seven decades, that system of institutions, including such names as the United Nations, the World Bank, the International Monetary Fund, NATO, and the World Trade Organization, kept the general peace, rebuilt the world economy, and withstood the threat of Communism. It came to be known first as the free world and then, in time, as a world order led by the United States.

Yet the world is always in motion, and no system that remains static can endure forever.<sup>1</sup> So it has come that the present world order is under strain from those, both within our Union and abroad, who now question its purpose, potency, and representative nature. That order has indeed reached a limit, and it must be reformed and reinvigorated so as to advance the interests of our Republic and other enlightened societies throughout the 21<sup>st</sup> century. We thus call for a reform of the American-led world order that recasts international institutions honestly as confederations, carefully bounded in scope and accountable to their member nations yet possessing the means to achieve their ends. To succeed in this endeavor is to perpetuate the Pax Americana for another century or more, and so reap the peace and prosperity that it bestows; to fail is to see that era reduced to a wistful memory, a bygone triumph whose vast promise was squandered by neglect.

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<sup>1</sup> “It is a very true thing that all worldly things have a limit to their life... So those are better ordered and have a longer life that by means of their orders can often be renewed or indeed that through some accident outside the said order come to the said renewal. And it is a thing clearer than light that these bodies do not last if they do not renew themselves.” Niccolò Machiavelli, *Discourses on Titus Livy*, Bk. 3, Ch. 1.

The first and greatest question regarding cooperation between independent nations is that of sovereignty. Sovereignty is the exercise by a body politic of its general will; it cannot be given up without dissolving the political community from which it stems, although it can be limited by transferring power or by promising or forswearing certain acts.<sup>2</sup> In a republic, the general will is expressed through the vote of representatives elected by the people, and sovereignty may not be limited without their consent. As any collaboration with a foreign country necessarily places some constraint on sovereignty, because each government must, at minimum, refrain from acts that would impede the ability of the two countries to work together, it follows that in a republic any terms of foreign collaboration must be approved by the legislature. For this reason, our Republic's Constitution requires the Senate to ratify treaties, which thus become U.S. law.<sup>3</sup>

That manner of reconciling international cooperation with the general will is well suited to short projects or fixed accords, fulfillment of which requires little discretion. Such compacts were common at our Union's founding.<sup>4</sup> Yet it is ill fitted to the collaborations prevalent today, which are generally of longer duration and dynamic in their execution. Modern technological advancements have both enabled and rendered imperative such close and extended cooperation between countries, for events in one nation now rapidly affect the entire world. Yet any such collaboration, though it may be agreed upon in general terms through a ratified treaty, requires decisions to be made in response to particular developments on the ground; and any decision so made risks adding a new constraint to sovereignty.<sup>5</sup>

Thus, it becomes necessary to establish a more responsive form of association between countries, so as to enable the people of each to consent to particular decisions made in the pursuit of a common enterprise. We ought, then, to review the ways in which this end can be achieved. There exist four forms of political association that govern cooperation between peoples, which differ in the degree to which they limit the sovereignty of their constituent parts. Some of them are well-suited for domestic governance, others for international collaboration.

The first form is alliance, which we define here as any league, be it military, commercial, or otherwise, wherein the contracting parties transfer no power and limit their sovereignty only to the extent that they each agree to carry out or refrain from certain acts. No governing body is established to mediate between them or to enforce terms. Although the parties may consult from time to time, their governments are the only medium through which popular consent is conveyed,

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<sup>2</sup> "I therefore maintain that since sovereignty is merely the exercise of the general will, it can never be alienated, and that the sovereign, which is only a collective being, cannot be represented by anything but itself. Power can perfectly well be transmitted, but not the will." Jean-Jacques Rousseau, *On the Social Contract*, Bk. 2, Ch. 1.

<sup>3</sup> "He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;" *U.S. Constitution*, Art. 2, Sec. 2; "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;" *U.S. Constitution*, Art. 6.

<sup>4</sup> "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 nonobservance, as the interests or passions of the contracting powers dictate." Alexander Hamilton, *Federalist No. 15*.

<sup>5</sup> This logic follows the non-delegation principle of legislative power that we examined in our essay on bureaucracy. Just as it is not necessarily sufficient that a regulation is pursuant to a law passed by Congress if it introduces new obligations on citizens, so it is not necessarily sufficient that an international decision is pursuant to a ratified treaty.

and decisions are made by consensus between them. Alliances are as old as mankind, yet their faithful fulfillment has been the exception rather than the rule.<sup>6</sup> This is due to the fact that they are rigid and have nothing to bind them but the mutual interest of their contracting parties. Because considerations of interest change, the time soon arrives when one party's interest no longer wholly aligns with the others'; because there are no means of modifying the terms of the alliance except its renegotiation by all parties, often the recourse of the dissenting party is to threaten to withdraw. The alliance is put to the test; usually it fails. Alliances that survive the longest are generally those that are tested the least,<sup>7</sup> but if their terms are so seldom applied, then the cooperation they are meant to achieve is practically meaningless.

The second form, on the other extreme, is unitary government. There, all power is vested in a central government, which exerts authority upon individual citizens directly. Though it may grant autonomy to subordinate entities within its jurisdiction, it bears no obligation to do so and may withdraw such autonomy at will. Unitary government functions best for the governance of small republics: most U.S. States, internally, have this form of government, as do many small countries abroad. When applied to large populations and territories, however, it tends to neglect the varied interests contained therein and degenerate instead into tyranny of the majority, which then becomes the tyranny of one.<sup>8</sup> We have argued vigorously throughout this series against the application of this form of association to the United States, and it follows that we soundly reject its application to the world. All attempts to bind the world under one government have begun as base tyranny and failed in bloodshed; and it shall always be so.

The third form is federation, in which the constituent parts and a central governing body each limit their sovereignty by dividing power between themselves, with each retaining a partial share. Certain powers are granted to the center, whereas others are reserved to the various parts. The constituent parts do not possess the right to leave the federation; representation is given both to the people directly and to their partly-sovereign bodies politic; and the federal center exerts its enumerated powers upon individual citizens directly.<sup>9</sup> This form, of course, is that used by the

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<sup>6</sup> "In the early part of the present century, there was an epidemical rage in Europe for this species of compacts; from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power and the peace of that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive but afflicting lesson to mankind on how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith; and which oppose general considerations of peace and justice to the impulse of any immediate interest and passion." Alexander Hamilton, *Federalist No. 15*.

<sup>7</sup> NATO has to some extent been an exception, due in part to the fact that it contains elements of a confederation.

<sup>8</sup> "History furnishes no example of a free republic, anything like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world." Brutus, *Letter No. 1*.

<sup>9</sup> "The proposed Constitution therefore is in strictness neither a national nor a federal constitution; but a composition of both. In its foundation, it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national." James Madison, *Federalist No. 39*. The Founders used 'federal' and 'confederate' interchangeably, as history had until then only furnished examples of the looser association which we here term a confederation. In framing a Constitution with the traits described by Madison, they created the form of association that we here refer to as a federation. The United States was the first such federation; and the distinction which grew thereafter between federation and confederation became clear when the secessionists of the Civil War referred to their government as 'confederate' and our Union's as 'federal.'

United States, as well as such other countries as Germany and India; and, as we have reasoned throughout this series, it is the best form for governing large republics, insofar as a federation can both act vigorously and maintain liberty. Yet the political will to establish federations between countries does not exist today, nor is it likely to, absent an overwhelming and immediate interest: to join a federation requires countries to substantially constrain their sovereignty, which they are loath to do so long as conditions allow for a secure, independent existence.

The fourth form is confederation, which also apportions power between a governing body and its constituent parts, but favors the parts. The central body has fewer powers allocated to it; it exercises its powers through the governments of its parts, not on individual citizens directly; and each part reserves the right to withdraw from the confederation. Confederation is inadequate for governing a republic, as the experience of the United States has shown.<sup>10</sup> Yet, if well designed, it may be effectual for international cooperation: unlike alliances, confederations can adapt to the times and penalize recalcitrance; unlike unitary governments or federations, they do not require their members to substantially constrain their sovereignty. This is especially so if a confederation is limited to specific ends and does not presume a general responsibility for its members' affairs.

Alliances were the most common form of cooperation before the world wars; but when the alliance system failed manifestly to prevent the deaths of tens of millions in those struggles, the leaders of our Republic and of other countries turned to institutions to govern the interactions between them. Many of these institutions were founded upon treaties, but are confederations in key aspects: the United Nations, the European Union, the International Monetary Fund, NATO, the World Bank, and others all have permanent governing bodies that assume some powers, however small, from their member countries; all exercise those powers through their member governments, not on citizens directly; and all allow voluntary withdrawal from their ranks.

Confederations they are, but some have long been flawed in their design. The experience of world war at first hid those shortcomings: the desire to avoid another catastrophic conflict caused many countries to work in concert, regardless of the failings of the institutions created for that purpose. Then the Cold War came, and those flaws could be explained as a consequence of the confrontation between East and West. When the Soviet Union fell and the United States rose triumphant, our Republic's might again masked the deficiencies of this world order, because countries would cooperate with its institutions to avoid crossing our Union. But now the world wars have faded from memory, new rivals have filled the void left in 1991, and the Iraq War has revealed a limit to American might, and so the flaws of the prevailing world order stand bare.

That some existing institutions are deficient is made evident by recent developments. The United Nations could not deter Russian aggression against Georgia and Ukraine, nor end bloody repression and war in Syria, nor effectually rebuke North Korea's acquisition of nuclear arms;

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<sup>10</sup> "The great and radical vice in the construction of the existing Confederation is the principle of legislation for states or governments, in their corporate or collective capacities and as contradistinguished from the individuals of whom they consist. . . . The consequence of this is, that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations, which the States observe or disregard at their option." Alexander Hamilton, *Federalist No. 15*. He refers to the Articles of Confederation, which provided a system of government for our Union so poor it had to be replaced within a decade by the federal Constitution. When it was again attempted by the rebel Confederate States, the same failings returned; thus, even had they not perpetuated the evil of slavery nor been at war with the legitimate government of the Union, their endeavor would eventually have collapsed due to internal strife arising from the inadequacy of its constitution.

the European Union lost Britain and could not prevent Poland's and Hungary's slides into 'illiberal democracy'; the World Trade Organization can only look on as trade groans under the weight of tariffs, thinly justified under exceptions to its own rules. Three shortcomings make this so: international institutions, though noble in intent, often lack purpose, power, or representation.

When an institution lacks purpose, it achieves little, for it does not know what it wishes to achieve. Such is the case for several regional associations whose bland pronouncements, while regularly issued, are all soon forgotten. As international institutions are not general governments, their purposes cannot be assumed: they must be stated explicitly within the institution's founding documents. Moreover, the more focused the purpose, the more effective the institution shall be. The International Monetary Fund possesses this quality, insofar as its purpose is known to all and can be expressed simply: it exists to make loans to countries that are at risk of default. Its entire structure is designed to support this function; as a result, it fulfills its purpose on a regular basis, earning, at turns, both praise and opprobrium, but never finding itself ignored.

Others, such as the United Nations, possess a discernible purpose, but lack altogether the power to achieve it.<sup>11</sup> This result arises because the means necessary to an institution's ends have not been allocated to it in its founding treaty, or because the mechanisms of exercising them have been designed so as to render their actual use impossible. It is true that confederations always have difficulty in compelling their constituent parts to take actions contrary to their parochial interest. This disadvantage, however, may be mitigated in two ways. The first is to establish the purposes of an institution in proportion to the common interest that may be expected from its members. To create an institution, for instance, which includes Saudi Arabia and Iran, and to set as its purpose the provision of security would be folly; but to set as its purpose the maintenance of a high price for oil invites success.<sup>12</sup> The second is to establish a means for the governing body to penalize recalcitrance in one area by denying benefits in another:<sup>13</sup> for instance, the European Union can withhold common funds from member countries that violate its regulations.

The European Union, in turn, has both notable ends and the ability to reach them, but has brought upon itself such popular resentment that its very continuance has from time to time been threatened. The complaint has been of insufficient representation in its governance.<sup>14</sup> Just as the principle of non-delegation, which we examined in our essay on bureaucracy, forbids elected legislators from delegating their lawmaking power to unelected agencies at home, so too does it forbid delegating that power to unrepresentative institutions abroad. Violation of this principle is

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<sup>11</sup> This is not to imply that the UN is altogether impotent, only that it is unequal to its stated purpose in Sec. 1, Art. 1 of its Charter: "to maintain international peace and security...to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression..." By that standard, the UN has proven ineffective. It has, however, done effective work as relates to its purpose in Sec. 3 of Art. 1, "...to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character..." mainly in the realm of preventing famine and disease. The UN is thus effective in accomplishing ends that all countries can agree upon – which are few, indeed, and inadequate to that institution's whole purpose. For its worth in that limited scope, however, and in providing a forum for consultation, it certainly ought to be preserved.

<sup>12</sup> Thus has OPEC been an effective institution, despite counting among its members fierce strategic rivals.

<sup>13</sup> "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." Alexander Hamilton, *Federalist No. 15*.

<sup>14</sup> The European Union has representative bodies, in the form of the European Parliament and the European Council, but those have been less vigorous than the bureaucratic European Commission; regulations produced by that body have raised the ire of European citizens and created an opening for the pernicious peddlers of 'illiberal democracy.'

the gravest danger to a confederation: the resentment it sows ensures that, if not reformed, the confederation will either dissolve or become tyrannical. It is thus necessary that the governing body of an international institution neither take on a life of its own nor be captured by a minority of its members, but rather be held continually accountable to the whole.

We thus posit that all international institutions ought to have clearly defined and carefully limited ends, power to achieve those ends, and a vigorous representative system to make rules necessary and proper to the institution's purpose, and that these traits be codified in a founding treaty. If this standard seems similar to most enlightened forms of government, that is because it is: systems of governance between countries, which all international institutions are to a degree, ought to mirror just systems of governance within countries, but with their ends limited to those objects which the joining nations determine is worth limiting some of their sovereignty to attain.

A model approaching this ideal is the European Space Agency. Its purpose, to explore the reaches of outer space and conduct civil research therein, is limited and clear; it possesses its own funds and personnel, and is working to develop its own facilities, all of which give it power to achieve its ends;<sup>15</sup> and at regular intervals it convenes a representative council of its members to determine its budget and objectives, thereby rendering it accountable to the countries it serves. It has in this way enjoyed several decades of quiet success, and today stands nearly equal to our Republic's storied NASA in its capabilities and achievements.

Other existing institutions ought openly to acknowledge their confederative nature; in so doing, they will be compelled to reckon with the limitations and imperatives inherent to such a form of association and to reform themselves where they are deficient. Moreover, collaborations that today are governed only by static treaty, and so rely on their signatories to remain consistent without regard to their domestic political upheavals, could in some cases be improved if they are recast as institutions of this sort. Trade, in particular, could benefit from such reform: the North American Free Trade Agreement might have avoided full renegotiation had it, through regular revision by its members' representatives, been able to respond incrementally to the popular will.

We further propose that our Union seek to found new institutions upon these principles, wherever foreign collaboration would advance a common interest more effectively than national action alone.<sup>16</sup> For such institutions to be entered into voluntarily, they might need to allow a degree of flexibility. The European Union possesses this quality in rudimentary form: there is membership in the European Economic Area, which carries one set of privileges and obligations; membership in the union itself, which carries another; and for the most committed, adoption of the euro. Such variations in commitment, whereby a joining country chooses which aspects of its sovereignty it will limit in exchange for gaining certain benefits from an institution, can and ought to be formalized in the institution's founding treaty; countries may therefore join without having to make a leap of faith. Once inside such a 'multi-speed confederation,' as this concept is becoming known,<sup>17</sup> a country, seeing the benefit membership brings, might decide to increase its commitment to the institution thereafter; and so much the better if it does, for unity bolsters an institution's potency, advancing the interests of all within.

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<sup>15</sup> It can exclude from its ventures a country that denies it the use of national facilities, which, given the prestige of exploration, is a strong incentive for members to cooperate. It is also entirely independent from the European Union.

<sup>16</sup> Envision, for instance, a reconstituted Trans-Pacific Partnership or a North American Epidemic Response Center.

<sup>17</sup> *The Economist* newspaper has used the term in relation to the European Union, among others.

Contributions to an institution's governing body, the source of considerable controversy, also admits of a simple solution in several cases: the institution ought to be so designed that the share of votes each member possesses in it is in proportion to the contribution the member makes to the institution's sustenance, whether the contribution consists of funds, facilities, personnel, or services.<sup>18</sup> That this method reduces the influence of small and poor nations in such institutions is to some extent true, and in certain cases it might be appropriate to balance weighted votes in some areas with equal votes in others; but in general, as it is small and poor countries which benefit the most from international institutions, proportional voting is a just aspect for such confederations. The World Bank is a successful example of this dynamic: wealthy countries hold greater sway in its decisions, but poor ones reap a greater relative benefit from its projects.

The notion that contributions can consist not only in funds, but also in items that advance the common goal, applies particularly to military collaborations. It is often the case therein that members who face the least immediate threat ride on the expenses of those who bear the primary military burden. Exhortation and, at last resort, the threat of exclusion, are a partial remedy in such cases; yet they might be more usefully accompanied with demands for specific capabilities, rather than for a fixed expenditure of funds. Such an approach allows reluctant members to be inventive in their contribution and to align it with some other particular interest, such as the advancement of a domestic industry, which can also serve the common aim.

We must lastly add a note, perhaps obvious, that international institutions function more effectively when they are formed with friendly nations. China and Russia are unlikely to join our Republic in a new institution unless their aim is merely to stymie it, as they so often do to the United Nations.<sup>19</sup> Our Union shall sooner find success if it focuses on improving its cooperation with fellow republics, especially those with whom it has much in common, such as the members of the former British Commonwealth;<sup>20</sup> or if it builds upon existing leagues with the potential to be invigorated, such as the Organization of American States. Republics, in the long run, are more reliable partners in international endeavors,<sup>21</sup> and ties of language and history ease collaboration.

So is it that our Union could address those great works which it alone cannot solve, and reliably maintain influence abroad, in a manner quite recognizable to its people from its resemblance to their own history and principles, by reforming and building upon the system of international institutions which exists at present. All shall not be achieved in a day, but our Republic ought at once to start the task of reforming its world order; challenges to all mankind await resolution, to which we shall turn our attention in our next and final essay.

—U.S. Citizen

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<sup>18</sup> "It is unlikely that the states that associate will be of the same size and have equal power. The republic of the Lycians was an association of twenty-three towns; the large ones had three votes in the common council; the medium-sized ones, two; the small ones, one. ...The towns of Lycia paid the costs in proportion to their votes. ...If one had to propose a model of a fine federal republic, I would choose the republic of Lycia." Montesquieu, *Spirit of the Laws*, Bk. 9, Ch. 3. Montesquieu also used the term 'federal' to refer to what we now consider a confederation. This consideration does not apply to federations today; as their constituent parts limit a greater part of sovereignty to the center and lack the right to exit the federation, their interests must be guarded by some equal representation.

<sup>19</sup> Though this does not mean that cooperation with them on certain objects cannot prove fruitful.

<sup>20</sup> Some of these are constitutional monarchies, and not republics in name; but they share representative institutions.

<sup>21</sup> "Confederations are broken for utility. In this, republics are by far more observant of accords than are princes. Examples could be brought up in which the least utility has made a prince break faith and a great utility has not made a republic break faith." Niccolo Machiavelli, *Discourses on Titus Livy*, Bk. 1, Ch. 59.