

James Madison, May, 1787. Ancient & Modern Confederacies [April-June?].

OF ANCIENT & MODERN CONFEDERACIES.¹ MAD. MSS.

¹ This memorandum is written on small sheets of paper, which, put together, formed a compact little book, suited to be carried in the pocket. There are 39 pages, and it would seem Madison intended extending it, for an extra page is headed "Gryson Confederacy."

Lycian Confederacy.

In this confederacy the number of votes allotted to each member was proportioned to its pecuniary contributions. The Judges and Town magistrates were elected by the general authority in like proportion.

See Montesquieu² who prefers this mode.

² *L'Esprit des Lois* (1748).

The name of a federal republic may be refused to Lycia which Montesquieu cites as an example in which the importance of the members determined the proportion of their votes in the general Councils. The Gryson³ League is a juster example. Code de l'Hum.⁴ Confederation.

³ Canton of Grisons, Switzerland.

⁴ *Code de l'Humanité on la Legislation*, by Felice in 13 vols.

Lyciorum quoque celebrat Strabo: de quâ pauca libet heic subjungere. Fuêre eorum urbes XXIII, distinctæ in classes tres pro modo virium. In primâ classe censebantur maximæ sex, in alterâ mediæ, numero nobis incerto, in tertiâ reliquæ omnes, quarum fortuna minima. Et

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singulæ quidem urbes hæ domi res suas curabant, magistratus suos, ordinemque civilem suum habebant: universæ tamen in unum coëuntes unam communem rempublicam constituebant, concilioque utebantur uno, velut, senatu majore. In eo de bello, de pace, de fœderibus, denique de rerum Lyciacarum summâ deliberabant et statuebant. Coibant vero in concilium hoc ex singulis urbibus missi cum potestate ferendi suffragii: utebanturque eâ in re jure æquissimo. Nam quælibet urbs primæ classis habebat jus suffragiorum trium, secundæ duorum, tertiæ unius. Eademque proportione tributa quoque conferebant, et munia alia obibant. Quemadmodum enim ratio ipsa dictat, et poscit æquitas, ut plura qui possident, et cæteris ditiores sunt, plura etiam in usus communes, et reipublicæ subsidia conferant, sic quoque eadem æquitatis regula postulat, ut in statuendo de re communi iidem illi plus aliis possint: præsertim cum eorundem magis intersit rempublicam esse salvam quam tenuiorum. Locum concilii hujus non habebant fixum & certum, sed, ex omnibus urbem deligebant, quæ videbatur pro tempore commodissima. Concilio coacto primum designabant Lyciarcham principem totius Reipublicæ, dein magistratus alios creabant partes reipublicæ administraturos demum judicia publica constituebant. Atque hæc omnia faciebant servatâ proportione eâdem, ut nulla omnino urbs præteriretur munerumve aut honorum horum non fieret particeps. Et hoc jus illibatum mansit Lyciis ad id usque tempus, quo Romani assumpto Asiæ imperio magnâ ex parte sui arbitrii id fecerunt.—Ubbo Emmius de Republica Lyciorum in Asia. [Apud Grovonii Thes., iv, 597.]¹

¹ Translation: Strabo [Lib. xiv, cap. iii], moreover, mentions the lack of laws of the Lycians, concerning which we will add a little to what he says.—There were twenty-three cities, divided into three classes, according to their power. To the first class belonged the six largest, to the second those of intermediate rank, the number of which is uncertain, to the third all the rest, whose importance was very small. And each of these cities took care of its affairs at home, and had its own magistrates and its own system of civil government, but all, uniting, formed one joint republic, and had one deliberative assembly, a greater senate, as it were. In that assembly they deliberated and decided concerning war, peace and treaties, and, in a word, concerning all the affairs of Lycia. Persons sent from each

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city with the right to vote met in this assembly; and, in that matter, they were governed by a most equitable law. For any city of the first class had the right to cast three votes, of the second two, of the third one. In the same proportion they also paid taxes, and performed other duties. For as reason itself dictates, and as equity demands that those who possess more and are richer than others, should contribute more to the public service and the support of the State, thus also the same rule of equity requires that, in deciding with regard to the common interest, those same persons should have greater influence than others; especially since they are more interested in the welfare of the State than are the poor. They had no fixed place for this assembly, but they selected, from the entire number, the city that seemed best suited to the occasion. The assembly having convened, they first designated a Lyciarch as head of the whole State; they next chose other magistrates to govern the component parts of the State, and finally, they established courts of justice. And they did all these things maintaining the same proportion, so that no city was neglected, or was excluded from participation in these functions and honors. And this state of things remained unchanged until the time when the Romans, having become masters of Asia, brought it also under their control.

Amphyctionic Confederacy

Instituted by Amphyction son of Deucalion King of Athens 1522 years Ant.: Christ.: Code De l'Humanité.

Seated first at Thermopylæ, then at Delphos, afterwards at these places alternately. It met half yearly to wit in the Spring & Fall, besides extraordinary occasions. Id. In the latter meetings, all such of the Greeks as happened to be at Delphos on a religious errand were admitted to deliberate, but not to vote. Encyclopedie.¹

¹ *Encyclopédie*, published under the direction of Diderot and d'Alembert.

The number and names of the confederated Cities differently reported. The Union seems to have consisted originally of the Delphians and their neighbors only, and by degrees to

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have comprehended all Greece. 10, 11, 12, are the different numbers of original members mentioned by different Authors. Code de l'Humanité.

Each city sent two deputies one to attend particularly to Religious matters — the other to civil and criminal matters affecting individuals—both to decide on matters of a general nature. Id. Sometimes more than two were sent, but they had two votes only. Encyclop.

The Amphyctions took an oath mutually to defend and protect the united Cities—to inflict vengeance on those who should sacrilegiously despoil the temple of Delphos—to punish the violators of this oath—and never to divert the water courses of any of the Amphyctionic Cities either in peace or in war. Code de l'Hum. Æschines orat: vs. Ctesip.

The Amphyctionic Council was instituted by way of defence and terror agst. the Barbarians. Diction. de Treviux.

Foederal Authority.

The Amphyctions had full power to propose and resolve whatever they judged useful to Greece. Encycop Pol. Œcon.

1. They judged in the last resort all differences between the Amphyctionic cities. Code de l'Hum.
2. mulcted the aggressors. Id.
3. employed whole force of Greece agst. such as refused to execute its decrees. Id. & Plutarch, *Cimon*.
4. guarded the immense Riches of the Temple of Delphos, and decided controversies between the inhabitants and those who came to consult the Oracle. Encyclop.
5. superintended the Pythian games. Code de l'Hum.

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6. exercised right of admitting new members. See decree admitting Philip, in Demosthenes on Crown.

7. Appointed General of the federal troops with full powers to carry their decrees into execution. Ibid.

8. Declared & carried on war. Code de l'Human.

Strabo says that the Council of the Amphyctions was dissolved in the time of Augustus; but Pausanias, who lived in the time of Antoninus Pius says it remained entire then, and that the number of Amphyctions was thirty. Potter's Gre. Ant: Vol. 1, p. 90.1

1 John Potter's *Archeologia Græca*, two volumes, Oxford, (1688–9).

The institution declined on the admission of Phil and in the time of the Roman Emperors, the functions of the Council were reduced to the administration & police of the Temple. This limited authority expired only with the Pagan Religion. Code de l'Human.

Vices of the Constitution.

It happened but too often that the Deputies of the strongest Cities awed and corrupted those of the weaker, and that Judgment went in favor of the most powerful party. Id. see also Plutarch's Themistocles.

Greece was the victim of Philip. If her Confederation had been stricter, & been persevered in, she would never have yielded to Macedon, and might have proved a Barrier to the vast projects of Rome. Code de l'Hum.

Philip had two votes in the Council. Rawleigh Hist: World, lib. 4, c. 1, Sec. 7

The execution of the Amphyctionic powers was very different from the Theory. Id.—It did not restrain the parties from warring agst. each other. Athens & Sparta were members

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during their conflicts. Quer. whether Thucidides or Xenophon in their Histories ever allude to the Amphyctionic authority which ought to have kept the peace?

See Gillies' Hist. Greece, particularly Vol. II. p. 345.

Achæan Confederacy

In 124 olympd. the Patrians & Dymæans joined first in this league. Polyb. lib. 2, c. 3.1

1 Polybe's *General History* (probably the Paris edition of 1609).

This League consisted at first of three small Cities. Aratus added Sicyon, and drew in many other Cities of Achaia & Peloponnesus. Of these he formed a Republic of a peculiar sort. Code de l'Human.

It consisted of twelve cities, and was produced by the necessity of such a defence agst the Etolians. Encyclo. Pol. Œ. & Polyb. lib. 2.

The members enjoyed a perfect equality, each of them sending the number of deputies to the Senate. Id.

The Senate assembled in the Spring & Fall, and was also convened on extraordinary occasions by two Pretors charged with the administration during the recess, but who could execute nothing witht. the consent of the Inspectors. Id.

Fœderal Authority

1. The Senate composed of the deputies made war & peace. D'Albon I page 270

2. Appointed a Captain General annually. Co. d'Hum.

3. Transferred the power of deciding to ten Citizens taken from the deputies, the rest retaining a right of consultation only. Id.

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4. Sent and received Ambassadors. D'Albon. Ibid.

5 appointed a prime Minister. D'Albon. Ibid.

6. Contracted foreign Alliances. Code de l'Hum.

7. Confederated Cities in a manner forced to receive the same laws & customs weights & measures: Id. & Polyb. lib. 2 cap. 3, yet considered as having each their independent police & Magistrates. Encyclop. Pol. Œcon.

8. Penes hoc concilium erat summum rerum arbitrium, ex cujus decreto bella suscipiebantur, & finiebantur, pax conveniebat, fœdera feriebantur & solvebantur, *leges fiebant ratœ aut irritœ*. Hujus etiam erat Magistratus toti Societati communes eligere, legationes decernere &c. Regebant concilium prætor præcipue, si præsens esset, et magistratus alii, quos Achæi nuncupabant. Ubbo Emmius.

Hi numero X erant suffragiis legitimi concilii, quod verno tempore habebatur, electi ex universa societate prudentia præcipui, quorum concilio potissimum prætor ex lege utebatur. Horum potestas & dignitas maxima erat post ipsum Prætorem, quos idcirco Livius, Polybium sequens, summum Achæorum magistratum appellabat. Cum his igitur de negociis gravioribus in concilio agitandis Prætor præconsultabat, nec de iis, nisi in id pars major consentiret, licebat ad consilium referre. Id.

Ista veto imprimis memorabilis lex est, vinculum societatis Achaicæ maximé stringens, et concordiam muniens, quâ interdictum fuit, ne cui civitati Societatis hujus participi fas esset, seorsim ad externos ullos mittere legatos, non ad Romanos, non ad alios. Et hoc expressim inserta fuit pactis conventis Achæorum cum populo Romano. . . . Omnium autem laudatissima lex apud eos viguit &c., quâ vetitum, ne quis omnino, sive privatæ conditionis, seu magistratum gerens, ullam ob causam, quæcunque etiam sit, dona a Rege aliquo caperet.¹ Id.

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1 Translation: This assembly was invested with the supreme authority, and in pursuance of its decisions wars were begun and ended, and laws became valid and were abrogated. It was also within its province to choose magistrates common to the whole community, to decide upon sending embassies, etc. . . . The prætor, especially, presided over the assembly, if he was present, and also other magistrates, whom the Achæi called . These were ten in number, and were elected from the entire community by a vote of the legitimate assembly (which was held in the spring) as being eminent for wisdom, and their advice was mainly followed by the prætor, according to law. Their power and dignity were next to those of the prætor and therefore Livy, following Polybius(II, 38 *seq.*), calls them the chief magistracy of the Achæans. With these therefore the prætor consulted beforehand concerning the transaction of the more important business in the assembly, nor was it allowable, unless the majority concurred, to lay it before the assembly.

That was indeed a specially memorable law, drawing very close the bond of the Achæan league, and strengthening harmony; by it any city forming part of this league was forbidden to send, independently, ambassadors to any foreign nation; they were not to send them to the Romans, and not to others. And this was expressly inserted in the treaties of the Achæans with the Roman people. . . . The most excellent law of all was in force among them . . . whereby any one, whether a private individual or a magistrate, was forbidden to accept gifts from any King on any account whatever.

Vices of the Constitution.

The defect of subjection in the members to the general authority ruined the whole Body. The Romans seduced the members from the League by representing that it violated their sovereignty. Code de l'Human.

After the death of Alexander, this Union was dissolved by various dissensions, raised chiefly thro' the acts of the Kings of Macedon. Every City was now engaged in a separate interest & no longer acted in concert. Polyb. lib. 2, cap. 3. After in 142 Olympd, they saw

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their error & began to think of returning to their former State. This was the time when Pyrrhus invaded Italy. Ibid.

Helvetic Confederacy.

Commenced in 1308 by the temporary, and in 1315 by the perpetual Union of Uri, Switz & Underwald, for the defence of their liberties agst. the invasions of the House of Austria. In 1315 the Confederacy included 8 Cantons, and 1513 the number of 13 was completed by the accession of Appenzel. Code de l'Hum.

The General Diet representing the United Cantons is composed of two deputies from each. Some of their allies as the Abbi St. Gall &c., are allowed by long usage to attend by their deputies. Id.

All general Diets are held at such time & place as Zurich, which is first in rank & the depository of the common archives, shall name in a circular summons. But the occasion of annual conferences for the administration of their dependent bailages has fixed the same time, to wit the feast of St. John, for the General Diet. And the city of Frauenfeld in Turgovia is now the place of Meeting. Formerly it was the City of Baden. Id.

The Diet is opened by a Complimentary Address of the first Deputy of each Canton by turns, called the Helvetic salutation. It consists in a congratulatory review of circumstances & events favorable to their common interest—and exhortations to Union and patriotism.

The deputies of the first canton Zurich propose the matters to be discussed. Questions are decided by plurality of voices. In case of division, the Bailiff of Turgovia has the casting one. The Session of the Diet continues about a month. Id.

After the objects of universal concern are despatched, such of the deputies whose Constituents have no share in the dependent bailages, withdraw, and the Diet then

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becomes a representation of the Cantons to whom these bailages belong, and proceeds to the consideration of the business relating thereto. Id.

Extraordinary Diets for incidental business or giving audience to foreign ministers may be called at any time by any one of the Cantons or by any foreign minister who will defray the expense of meeting. Seldom a year without an extraordinary Diet. Stanyan's Switzerland

There is an annual Diet of 12 Cantons by one deputy from each for the affairs of the Ultramontane bailages. Code de l'Human.

Particular Cantons also have their diets for their particular affairs, the time & place for whose meeting are settled by their particular Treaties.

All public affairs are now treated not in Genl. Diet, but in the particular Assemblies of Protestant & Catholic Cantons. D'Albon.

Foederal Authority

The title of Republic and Sovereign State improperly given to this Confederacy, which has no concentered authority the Diets being only a Congress of Delegates from some or all of the Cantons, and having no fixt objects that are national. Dictionaire de Suisse.

The 13 Cantons do not make one Commonwealth like the United Provinces, but are so many independent Comonwealths in strict alliance. There is not so much as any common instrument by which they are all reciprocally bound together; The 3 primitive Cantons alone being each directly allied to the other twelve. The others in many instances are connected¹ *indirectly* only, as allies of allies. In this mode any one Canton may draw

1 Note in Madison's writings: By ye Convention of Stantz, any member attacked has a *direct* claim on the succour of the whole confederacy. Coxe, p. 343. William Coxe's *Voyages*.

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in all the others to make a common cause in its defence. Stanyan.

The confederacy has no common Treasury—no common troops—no common Coin—no common Judicatory—nor any other common mark of sovereignty. Id.

The General Diet cannot terminate any interesting affair without special instructions, & powers, & the deputies accordingly take most matters proposed ad referendum. Code de l'Hum.

The Cantons individually exercise the right of sending & receiving ambassadors—making Treaties—coining money—proscribing the money of one another—prohibiting the importation and exportation of merchandise—furnishing troops to foreign States, and doing everything else which does not wound the liberty of any other Canton. Excepting a few cases specified in the Alliances and which directly concern the object of the league, no Canton is subject to the Resolutions of the plurality. Id.

The only establishment truly national is that of a federal army, as regulated in 1668, and which is no more than an eventual plan of defence adopted among so many allied States. Id.

1. The League consists in a perpetual defensive engagement agst. external attacks and internal troubles. It may be regarded as an axiom in the public Law of the confederacy, that the federal engagements are precedent to all other political engagements of the Cantons. Id.

2. Another axiom is that there are no particular or common possessions of the Cantons for the defence of which the others are not bound as Guarantees or auxiliaries of Guarantees. Id.

3. All disputes are to be submitted to Neutral Cantons, who may employ force if necessary in execution of their decrees. Id. Each party to choose 4 Judges who may in case of

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disagreement chuse umpire, and these under oath of impartiality to pronounce definitive sentence, which all Cantons to enforce.—D'Albon. & Stan.

4. No Canton ought to form new alliances without the consent of the others [this was stipulated in consequence of an improper alliance in 1442 by Zurich with the House of Austria.] Id.

5. It is an essential Object of the league to preserve interior tranquillity by the reciprocal protection of the form of Governmt established in each Canton, so that each is armed with the force of the whole Corps for the suppression of rebellions & Revolts, and the History of Switzerland affords frequent instances of mutual succors for these purposes. Dictre. de Suisse.

6. The Cantons are bound not to give shelter to fugitives from Justice, in consequence of which each Canton can at this day banish malefactors from all the territories of the League. Id.

7. Tho' each Canton may prohibit the exportation & importation of merchandize, it must allow it to pass thro' from one neighboring Canton to another without any augmentation of the tolls. Code de l'Hum.

8. In claiming succors agst foreign powers, the 8 Elder Cantons have a more extensive right than the 5 Junior ones. The former may demand them of one another without explaining the motives of the quarrel. The latter cannot intermeddle but as mediators or auxiliaries; nor can they commence hostilities without the sanction of the Confederates; and if cited by their adversaries, cannot refuse to accept the other Cantons for arbiters or Judges. Dictre. de Suisse.

9. In general each Canton is to pay its own forces without compensation from the whole or the succoured party. But in case a siege is to be formed for the benefit of a particular Canton, this is to defray the expence of it, and if for the common benefit, each is to pay its

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just proportion. D'Albon. On no pretext is a Canton to be forced to march its troops out of the limits of Switzerland. Stanyan.

10. Foreign Ministers from different Nations reside in different Cantons. Such of them as have letters of credence for the whole Confederacy address them to Zurich the chief Canton. The Ambassador of France, who has most to do with the Confederacy is complimented at his Quarters by deputies from the whole body.

Vices of the Constitution

1. disparity in size of Cantons
2. different principles of Governmt. in diff't. Cantons
3. intolerance in Religion
4. weakness of the Union. The comon bailages wch. served as a cement, sometimes become occasions of quarrels. Dictre. de Suisse.

In a treaty in 1683 with Victor Amadœus of Savoy, it is stipulated that he shall interpose as Mediator in disputes between the Cantons, and if necessary use force agst the party refusing to submit to the sentence. Dictrc. de Suisse.—a striking proof of the want of authority in the whole over its parts.

Belgic Confederacy

established in 1679 by the Treaty called the Union of Utrecht. Code de l'Humanité

The provinces came into this Union slowly. Guelderland the smallest of them made many difficulties. Even some of the Cities & towns pretended to annex conditions to their acceding. Id.

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When the Union was originally established a committee composed of deputies from each province was appointed to regulate affairs, and to convoke the provinces according to art. XIX of the Treaty. Out of this Committee grew the States General Id.—who strictly speaking are only the Representatives of the States General who amount to 800 members. Temple, p. 112.1

1 Sir William Temple's *Remarks on the United Provinces* (1674).

The number of Deputies to the States General from each province not limited, but have only a single voice. They amount commonly, all together to 40 or 50. They hold their seats, some for life, some for 6 3 & 1 years, & those of Groninguen & Overysse during pleasure. They are paid, but very moderately, by their respective constituents, and are amenable to their Tribunals only. Code de l'Hum. No military man is deputable to the States Genl. Id.

Ambassrs. of Republic have session & deliberation but no suffrage in States Genl. Id. The grand pensioner of Holland as ordinary deputy from Holland, attends always in the States Genl, & makes the propositions of that Province to States Gl. Id.

They sit constantly at the Hague since 1593, and every day in the week except Saturday & Sunday. The States of Holland in granting this residence, reserve by way of protestation, the rights, the honors & prerogatives belonging to them as sovereigns of the Province; yielding the States Genl. only a rank in certain public ceremonies. Id.

The eldest deputy from each province presides for a week by turns. The president receives letters &c. from the Ministers of the Republic at foreign Courts, and of foreign Ministers residing at the Hague, as well as of all petitions presented to the Assembly; all which he causes to be read by the Secretary. Id.

The Secretary besides correcting & recording the Resolutions prepares & despatches instructions to Ministers abroad—& letters to foreign powers. He assists also at conferences held with foreign Ministers & *there gives his voice*. He has a deputy when

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there is not a second Secretary. The Agent of the States Genl is charged with the Archives and is also employed on occasions of receiving foreign Ministers or sending Messages to them. Id.

Federal Authority.

The avowed objects of the Treaty of Union. 1. to fortify the Union—2. to repel the common enemy. Id

The Union is to be perpetual in the same manner as if the Confederates formed one province only, without prejudice however to the privileges & rights of each province & City. Id.

Differences between provinces & between Cities are to be settled by the ordinary Judges —by arbitration—by amicable agreement, without the interference of other provinces otherwise than by way of accommodation. The Stadtholder is to decide such differences in the last resort. Id.

No change to be made in the articles of Union, without unanimous consent of the parties & everything done contrary to them to be null & void. Id

States General. 1. execute, without consulting their constituents, treaties & alliances already formed. Id.

2. take oaths from Generals & Governrs, and appoint Field Deputies

3. The collection of duties on imports & exports and the expedition of Safe Conducts are in their name & by their officers. Id.

4. they superintend & examine accounts of the E. India Company. Id

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5. inspect the Mint—appoint les Maitres de la Monnoye—fix la *taille* & la valeur of the Coin, having always regard to the regular rights of the provinces within their own Territories. Id.

6. Appoint a Treasurer General & Receiver General of the Quotas furnished by the Provinces. Id.

7. elect out of a double nomination, the fiscal & other officers within the departments of the admiralties, except that the High officers of the fleet are appointed by the Admiral General, to whom the maritime provinces have ceded this right. Id.—The Navy supported by duties on foreign trade, appropriated thereto by the maritime provinces, for the benefit of the whole Republic. Id.

8. They govern as sovereigns, the dependent territories, according to the several capitulations. Id.

9. they form Committees of their own body of a member from each deputation, for foreign affairs—finances marine—& other matters. At all these conferences the Grand Pensioner of Holland & the Secretary of the States Genl. attend and have a deciding voice. Id.

10. Appt. & receive Ambassrs—negociate wth. foreign powers—deliberate on war—peace—alliances—the raising forces—care of fortifications—military affairs *to a certain degree*—the equipment of fleets—building of ships—directions concerning money. Id. But they can neither make peace—nor war—nor truces—nor treaties—nor raise troops—nor impose taxes, nor do other acts requiring unanimity without consulting & obtaining the sanction of the Provinces. Id. Coining money also requires unanimity & express sanction of provinces. Temple. repealing an old law on same footing. Burrish. Batav. illustrata. In points not enumerated in this article plurality of voices decides. Code de l'Hum.

11. composition & publication of edicts & proclamations relative both to the objects expressed in the articles of Union and to the measures taken for the comon good, are in the name of the States, and altho' they are addressed to the States of the Provinces who

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announce them with their sanction, still it is in the name of the States Genl. that obedience is required of all the inhabitants of the provinces. Code de l'Hum.

The Provinces have reserved to themselves

1. their sovereignty within their own limits in general. Code de l'Hum.
2. the right of coining money, as essential to Sovereignty, but agreed at the same time that the money which sd. be current throughout the Republic sd. have the same intrinsic value: To give effect to which regulation a mint is established at the Hague under a chamber which has the inspection of all money struck either in name of States Genl. or particular provinces, as also of foreign coin. Id.—Coining money not in provinces or Cities, but in the generality of Union by comon agreement. Temple.
3. Every province raises what money & by what means it pleases, and sends its quota to Receiver General Temple.

The quotas were not settled without great difficulty. Id.

4. the naming to Goverts. of Towns within themselves—keeping keys & giving word to Magistrates—a power over troops in all things not military—conferring Cols. Comissions & inferior posts in such Regiments as are paid by the provinces respectively—taking oath of fidelity—concerning a revocation of all which the States Genl. are not permitted to deliberate. Id.

The Provinces are restricted

1. from entering into any foreign Treaties without consent of the rest. Code de Hum.
2. from establishing imposts prejudicial to others without general consent. Id.
3. from charging their neighbours with higher duties than their own subjects. Id.

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Council of State.—composed of deputies from the provinces in different proportions. 3 of them are for life, the rest generally for 3 years: they vote per capita. Temple.

They are subordinate to the States General, who frequently however consult with them. In matters of war which require secrecy they act of themselves. Military & fiscal matters are the objects of their administration. They vote

They execute the resolutions of the States Genl., propose requisitions of men & money & superintend the fortifications &c., & the affairs of revenues & Govts., of the conquered possessions. Temple.

Chamber of Accounts, was erected for the ease of the Council of State. It is subordinate to the States Genl, is composed of two deputies from each province, who are changed triennially. They examine and state all accts of the several Receivers—controul and register orders of Council of State disposing of the finances. Id.

College of Admiralty established by the States Genl 1597 is subdivided into five of wch. three are in Holland—one in Zealand—one in Friezland, each composed of 7 deputies, 4 appd. by the province where the admiralty resides & 3 by the other provinces. The vice-Admiral presides in all of them when he is present. Temple.

They take final cognizance of all crimes & prizes at sea; — — — — of all frauds in customs provide quota of fleets resolved on by States Genl. appt. Capts. & superior officers of each squadron take final cognizance also of Civil matters within 600 florins—an appeal lying to States Genl for matters beyond that sum. Code de l'Hum. & Temple.

The authority of States Genl. in Admiralty Depmart. is much limited by the influence & privileges of maritime provinces, & the jurisdiction herein is full of confusion & contradiction. Code de l'humanité.

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Stadtholder who is now hereditary in his *political* capacity is authorized 1. to settle differences between provinces, provisionally till other methods can be agreed on, which having never been this prerogative may be deemed a permanent one. Code de l'Hum.

2. Assists at deliberations of States Genl. & their particular conferences, recommends & influences appointmt. of Ambassadors. Id.

3. has seat & suffrage in Council of State. Id.

4. presiding in the provincial Courts of Justice where his name is prefixed to all public acts. Id.

5 supreme Curator of most of the Universities. Id.

6. As Stadtholder of the provinces has considerable rights partaking of the sovereignty, as appointing town magistrates on presentation made to him of a certain number. Executing provincial decrees &c Id. & Mably, Etud. de l'hist.

7. gives audiences to Ambassadors & may have Agents with their Sovereigns for his private affairs. Mab. Ibid¹

¹ Gabriel Bonnot de Mably (1709–1785).

8. exercises power of pardon. Temple.

In his *Military* capacity as Capt. Genl.

1. commands forces—directs marches—provides for garrisons—& in general regulates military affairs. Code de l'Hum.

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2. disposes of all appointmts., from Ensigns to Cols. The Council of State havg. surrendered to him the appointmts. within their disposal Id. & the States Genl. appt the higher grades on his recomendation. Id

3. disposes of the Govts. &c. of the fortified towns tho' the comissions issue from the States Genl. Id.

In his *Marine* capacity as Admiral General 1. superintends & directs everything relative to naval forces & other affairs within Admiralty. Id

2 presides in the Admiralties in person or by proxy. Id

3 Appoints Lieuts. Admirals & officers under them. Id.

4. establishes Councils of war, whose sentences are in the name of the States Genl. & his Highness and are not executed till he approves. Id.

The Stadtholder has a general & secret influence on the great machine which cannot be defined. Id.

His Revenue from appointmts amount to 300,000 florins, to which is to be added his extensive patrimonies. Id.

The standing army of the Republic, 40,000 men.

Vices of the Constitution

The Union of Utrecht imports an authority in the States Genl. seemingly sufficient to secure harmony; but the Jealousy in each province of its sovereignty renders the practice very different from the Theory. Code de l'Hum.

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It is clear that the delay occasioned by recurring to seven independent provinces including about 52 voting Cities &c. is a vice in the Belgic Republic which exposes it to the most fatal inconveniences. Accordingly the fathers of their country have endeavored to remedy it in the extraordinary Assemblies of the States Genl. in (1584) in 1651, 1716, 1717, but unhappily without effect. This vice is notwithstanding deplorable. Id.—Among other evils it gives foreign ministers the means of arresting the most important deliberations by gaining a single province or city. This was done by France in 1726, when the Treaty of Hanover was delayed a whole year. In 1688 the States concluded a Treaty of themselves but at the risk of their heads. Id. It is the practice also in matters of contribution or subsidy to pass over this article of the Union, for where delay wd. be dangerous the consenting provinces furnish their quotas without waiting for the others, but by such means the Union is weakened and if often repeated must be dissolved—Id.

Foreign Ministers elude matters taken ad referendum by tampering with the provinces & Cities. Temple p. 116.

Treaty of Union obliges each Province to levy certain contributions. But this article never could probably never will be executed because the inland provinces who have little commerce cannot pay an equal Quota. Burrish. Bat. illustrat:

Deputations from agreeing to disagreeing provinces frequent. Temple.

It is certain that so many independent Corps & interests could not be kept together without such a center of Union as the Stadtholdership, as has been allowed & repeated in so many solemn Acts. Code de Hum.

In the intermission of the Stadtholdership Holland by her Riches & Authority which drew the others into a sort of dependence, supplied the place. Temple.

With such a Governmt. the Union never cd. have subsisted, if in effect the provinces had not within themselves a spring capable of quick—ing their tardiness, and impelling them

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to the same way of thinking. This Spring is the Stadtholder. His prerogatives are immense —I, &c. &c.—A strange effect of human contradictions. Men too jealous to confide their liberty to their representatives who are their equals, abandoned it to a prince who might the more easily abuse it as the affairs of the Republic were important & had not them fixed themselves. Mably Etude d'Hist., 205. 6.

Grotius has sd. that the hatred of his countrymen agst. the H of Austria kept them from being destroyed by the vices of their Constitution. Ibid.

The difficulty of procuring unanimity has produced a breach of fundamentals in several instances—Treaty of Westphalia was concluded without consent of Zealand &c D'Albon & Temple—These tend to alter the constitution D'Albon.

It appears by several articles of the Union that the confederates had formed the design of establishing a Genl tax, [Impôt,] to be administered by the States Genl. But this design so proper for bracing this happy Union has not been executed. Code de l'Hum.

Germanic Confederacy—took its present form in the year —. —Code de l'Hum.

The Diet is to be convoked by the Emperor, or on his failure, by the Archbishop of Mentz, with consent of Electors once in ten years at least from the last adjournment, and six months before the time of meeting. Ratisbon is the seat of the Diet since 1663.

The members amount to 285, and compose three Colleges, to wit, that of the Electors—of Princes—of Imperial Cities. The voices amount to 159, of which 153 are individual & 6 collective. The latter are particular to the College of princes and are formed out of 39 prelates &c. and 93 Counts &c. The individual voices are common to the three Colleges, and are given by 9 Electors—94 princes, 33 of the ecclesiastical & 61 of the secular Bench —& 50 Imperial Cities, 13 of the Rhenish, & 37 of the Suabian Bench. The K. of Prussia has nine voices in as many different capacities. Id

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The three Colleges assemble in the same House but in different apartments Id

The Emperor as head of the Germanic body is presidt. of the Diet. He & others are represented by proxies at present. Id

The deliberations are groundd. on propositions from Emperor & commerce in the College of Electors, from whence they pass to that of the princes, & thence to that of the Imperial Cities. They are not resolutions till they have been passed in each. When the Electors & Princes cannot agree, they confer; but do not confer with the Imperial Cities. plurality of voices decide in each College, except in matters of Religion & a few reserved cases, in which according to the Treaty of Westphalia, and the Imperial Capitulations the Empire is divided into the Catholic & Evangelic Corps. Id.

After the Resolutions have passed the three Colleges, they are presented to the Representative of the Emperor, without whose ratification they are null. Id they are called placita after passing the three Colleges—conclusa after ratification by Emperor. Id.

The Collection of Acts of one Diet is called the Recess, which cannot be made up & have the force of law, till the Close of the Diet. the subsisting diet has not been closed for more than a hundred years, of course it has furnished no effective Resolution, though a great number of Interesting ones have passed. This delay proceeds from the Imperial Court who refuse to grant a Recess, notwithstanding the frequent and pressing applications made for one. Id

Fœderal Authority.

The powers as well as the organization of the Diet have varied at different times. Antiently it elected as a corps the Emperors and judged of their Conduct. The Golden Bull gives this right to the Electors alone. Antiently it regulated tolls—at present the Electors alone do this. Id

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The Treaty of Westphalia & the capitulations of the Emperors from Charles V downwards, define the present powers of the Diet. These concern—1. Legislation of the Empire—2. War & peace & alliances—3. raising troops—4. contributions—5 construction of fortresses—6 Money—7 Ban of the Empire. 8 Admission of new princes—9. the Supreme tribunals—10. disposition of Grand fiefs & grand Charges—In all these points the Emperor & Diet must concur. Id

The Ban of the Empire is a sort of proscription by which the disturbers of the public peace are punished. The offenders life & goods are at the mercy of every one, formerly the Emperors themselves pronounced the ban agst. those who offended them. It has been since regulated that no one shall be exposed to the Ban without the examination & consent of the Diet. Encyclop.

By the Ban the party is outlawed, degraded from all his federal rights—his subjects absolved from their allegiance—and his possessions forfeited. Code de l'Hum.

The Ban is incurred when the Emperor or one of the supreme Tribunals address an order to any one, on pain in case of disobedience, of being proscribed ipso facto. Id.

The Circles formerly were in number 6 only. There are now ten. They were instituted for the more effectual preservation of the public peace, and the execution of decrees of Diet & supreme Tribunals against contumacious members, for which purposes they have their particular diets, with the chief prince of the Circle at their head, have particular officers for commanding the forces of the Circle, levy contributions, see that Justice is duly administered—that the coin is not debased—that the customs are not unduly raised.—Savage vol. 2 p. 35.

If a Circle fail to send its due succours, it is to pay damages suffered therefrom to its neighbours. If a member of the circle refuse, the Col. of the Circle is to admonish, & if this

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be insufficient, the delinquent party is to be compelled under a sentence from the Imperial Chamber. Id.

Aulic Council [established by Diet in 1512. Encyclop.,] composed of members appointed by the Emperor. Code de l'Hum.

Its cognizance is restrained to matters above 2,000 Crowns; is concurrent with the jurisdiction of the Imperial Chamber in controversies between the States—also in those of subjects of the Empire by way of appeal from subaltern Tribunals of the Empire, and from sovereign tribunals of princes. Id.—Arms are to be used for carrying its decrees into execution, as was done in 1718 by the troops of the Circle of upper Rhine in a controversy between Landgrave of Hesse Cassel & Prince of Hesse of Rhinfitz. Id.

Imperial Chamber, established in 1495 by the Diet as a means of public peace, by deciding controversies between members of the Empire. Code de l'Hum.

This is the first Tribunal of the Empire. It has an appellate jurisdiction in all Civil, and fiscal causes or where the public peace may be concerned. It has a concurrent jurisdiction with the Aulic Council; and causes cannot be removed from one to the other. Id.

The Judges of this Tribunal are appointed partly by the Emperor—partly by Electors—partly by circles—are supported by all the States of the Empire, excepting the Emperor. They are badly paid, though great salaries are annexed to their offices. Id.

In every action, real or personal—The Diet—Imperial Chamber and Aulic Council are so many supreme Courts to which none of the States can demur. The jurisprudence, by which they govern themselves, are according to the subject matter—1. the provincial laws of Germany 2. the Scripture—3 the law of nature—4 law of Nations—5 the Roman law—6 the canon law—7 the foedal law of the Lombards. Id.

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Members of Diet as such are subject in all public affairs to be judged by Emperor & Diet,—as individuals in private capacity are subject to Aulic Council & Imperial Chamber. Id.

The members have reserved to themselves the right 1. to enter into war & peace with foreign powers 2 to enter into alliances with foreign powers and with one another, not prejudicial to their engagements to the Empire Code de 'Hum.—3 to make laws, levy taxes, raise troops, to determine on life & death. Savage. 4 Coin money. Id. 5. exert territorial sovereignty within their limits in their own name. Code de l'Hum. 6. to grant pardons. Savage, p. 44. 7. to furnish their quotas of troops, equipped mounted & armed & to provide for sustenance of them, as if they served at home. Code de l'Hum.

Members of Empire restricted

1. from entering into Confederacies prejudicial to the Empire.
2. from laying tolls or customs upon bridges, rivers, or passages to which strangers are subject, without consent of the Emperor in full Diet.
3. cannot give any other value to money, nor make any other kind of money, than what is allowed by the Empire. Savage vol. 2, p. 45.
4. (by edict of 1548, particularly) from taking arms one agst. another, from doing themselves justice—from affording retreat, much more, assistance to infractors of the public peace; the ban of the Empire being denounced agst. the transgressors of these prohibitions, besides a fine of 2000 marks of gold and loss of regalities.—Code d'Hum.

Emperor.—has the prerogative 1. of exclusively making propositions to the Diet—2 presiding in all Assemblies & Tribunals of the Empire when he chuses—3 of giving suffrage in all affairs treated in the diet—4 of negating their resolutions—5 of issuing them in his own name—6 of watching over the safety of the Empire—7 of naming Ambassadors to negotiate within the Empire as well as at foreign Courts—affairs

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concerning the Germanic Corps. 8. of re-establishing in good fame persons dishonored by Council of war & civil Tribunals. Code d'Hum.—9 of giving investiture of the principal immediate fiefs of the Empire, wch is not indeed of much consequence—10 of conferring vacant electorates—11 of preventing subjects from being withdrawn from the jurisdiction of their proper Judge—12. Of conferring charges of the Empire. 13 of conferring dignities & titles as of Kings &c.—14 of instituting military orders—15 of granting the dernier resort—16, of judging differences & controversies touching tolls—17. of deciding contests between Catholic & Protestant States touching precedence &c.—Id.—18. of founding Universities within the lands of the States, so far as to make the person endowed with Academic honors therein be regarded as such throughout Germany.—19 of granting all sorts of privileges not injurious to the States of the Empire—20 of establishing great fairs—21 of receiving the droit des Postes generales—22 of striking money, but without augmenting or diminishing its value. 23 of permitting strangers to enlist soldiers, conformably to Recess of 1654. Id. 24. Of receiving and applying Revenues of Empire.—Savage, p. He cannot make war or peace, nor laws, nor levy taxes nor alter the denomination of money nor weights or measures.—Savage, v. 2, p. 35. The Emperor as such does not properly possess any territory within the Empire, nor derive any revenue for his support. Code de 'Hum.

Vices of the Constitution.

1. The Quotas are complained of & supplied very irregularly & defectively Code de'Hum, provision is made by decree of diet for enforcing them, but it is a delicate matter to execute it agst. the powerful members. Id.
2. The establishmt. of Imperial Chamber has not been found an efficacious remedy agst civil wars. It has committed faults. *The Ressoritissans* have not always been docile. Id.
3. Altho' the establishmt. of Imperial Chambers &c give a more regular form to the police of the fiefs, it is not to be supposed they are capable of giving a certain force to the laws and

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maintaining the peace of the Empire if the House of Austria had not acquired power eno' to maintain itself on the imperial Throne, to make itself respected, to give orders which it might be imprudent to despise, as the laws were therefore despised. Mabley Etude d' hist., p. 180

[Jealousy of the Imperial authority seems to have been a great cement of the Confederacy.]