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THE LEAST DANGEROUS BRANCH: SIX LETTERS FROM *PUBLIUS* TO *CATO* IN SUPPORT OF THE INTERNATIONAL CRIMINAL COURT

Leila Nadya Sadat[†]

In the months between the fall of 1787 and the summer of 1788, the eighty-five essays known as *The Federalist* were authored by Alexander Hamilton, James Madison and John Jay.[1] Coming as they did at the height of the public debate surrounding the creation of a federal government to bind together the original thirteen sovereign states, these essays are renowned among American constitutional scholars for the insights they provide into both the drafting and interpretation of the United States Constitution. Originally appearing in four New York newspapers, *The Federalist* advocated adoption of the proposed U.S. Constitution. Written under the pseudonym *Publius*, after the legendary Roman statesman and general of the same name,[2] the essays touched upon a myriad of subjects, including the role of the federal judiciary in the proposed new nation.

Publius was writing in response to the letters of Cato, which many scholars believe was the *nom de plume* employed by Governor George Clinton of New York,[3] who had argued vigorously against ratification of the Constitution.[4] While Cato raised many points of contention in his

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[1] George W. Carey & James McClellan, *Editors' Introduction* to ALEXANDER HAMILTON, JOHN JAY, & JAMES MADISON, THE FEDERALIST, at xvii, xlv (Gideon ed., 2001) (1778) [hereinafter THE FEDERALIST].

[2] *Id.* at xlv-xlvi. The reference was to Publius Valerius Publicola, who was renowned for his eloquence, generosity, and dedication to republican principles of government. He was said to have been so adored by the people of Rome that they called him "Publicola" or "people lover." By adopting Publius as his pseudonym, Hamilton explicitly rejected the charge that the proposed government would be unfriendly to the people. Robert Scigliano, *Editor's Introduction* to ALEXANDER HAMILTON, JAMES MADISON & JOHN JAY, THE FEDERALIST, at vii, ix (Robert Scigliano ed., Random House, 2000) (1778).

[3] *See* 2 THE COMPLETE ANTIFEDERALIST 101-104 (Herbert J. Storing ed., 1981).

[4] There were actually several Catos famous in Roman history, including Cato the Censor, best know for helping bring on the Third Punic War, but the Cato under which most of the antifederalist papers were penned appears to have been Cato the Younger, who lived from 95 to 46 B.C. He is said to have been an implacable foe of Julius Caesar and a champion of liberty and republican principles. In the early 18th Century, two Englishmen, John Trenchard and Thomas Gordon, penned a set of essays in the *London Journal*, that would be later collected as *Cato's Letters*, that appear to have been the prototype for the antifederalist

letters, at the heart of the debate between the two adversaries was the question of state sovereignty. Cato perceived the proposed federal constitution as a threat to the power of the States; Publius, on the other hand, felt that the new nation needed the strength of a strong central government if it was to overcome the many challenges that lay before it.[5]

The same questions of state sovereignty that troubled the thoughts of those debating the founding of the United States of America have arisen again with regard to the United States' support for and acceptance of the recently established International Criminal Court ("ICC" or "the Court"). Established by a Treaty signed on July 17, 1998, which entered into force on July 1, 2002, [6] the ICC was created by the international community to bring to justice the perpetrators of crimes against humanity, genocide and serious war crimes, in cases falling within the Court's jurisdiction. The debate over the Court and the fears expressed concerning its potential power and the cession of sovereignty it represents are strikingly similar to the arguments advanced both for and against the founding of the United States and the adoption of its Constitution. On one side are those who support the International Criminal Court, seeing its establishment as a natural evolution in the construction of a stable and peaceful international legal order, as well as a central pillar in the continuing struggle for human rights. Like Publius in *Federalist No. 78,* ICC supporters would no doubt argue that the International Criminal Court can pose no real threat to liberty or security, given its status as the "least dangerous branch" of government, having neither the power of the purse, nor the power of the sword, that is, no "direction, either of the strength or of the wealth of the society."[7] On the other side are those, like Cato, who speak of the Court with foreboding, arguing that its establishment was undemocratic, its jurisdiction improper, and asserting that it will be a rogue institution which will bring politically motivated prosecutions against nationals of the United States.[8]

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letters penned during the ratification debates. *See generally* JOHN TRENCHARD & THOMAS FORDON, CATO'S LETTERS (Ronald Hamowy ed., 1995) (1723).

[5] In response to Hamilton's "federalists," the opponents of ratification were labeled "antifederalists," a nomenclature they rejected, but which ultimately stuck, and which is now the accepted designation for those who were suspicious of the Constitution during the ratification debates. *See* Josephine F. Pacheco, *Editor's Introduction to* ANTIFEDERALISM: THE LEGACY OF GEORGE MASON 1-2 (Josephine F. Pacheco, ed., George Mason Univ. Press 1992). For a discussion of federalist and antifederalist thought, *See, e.g.,* FEDERALISTS AND ANTIFEDERALISTS: THE DEBATE OVER THE RATIFICATION OF THE CONSTITUTION (John P. Kaminski & Richard Leffler eds., 2d ed. 1998).

[6] Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 183/9 (1998), 37 I.L.M. 999, *available at* http://www.un.org/law/icc/statute/romefra.htm (last visited Feb. 1, 2004).

[7] THE FEDERALIST, *supra* note 1, at 402.

[8] *See, e.g.,* John R. Bolton, Remarks to the Federalist Society (Nov. 14, 2002), *available at* http://www.state.gov/t/us/rm/15158.htm (last visited Feb. 1, 2004).

The debate over ratification of the International Criminal Court Treaty has taken an increasingly acrimonious turn in the United States, particularly since the Statute's entry into force last year.[9] Currently, 92 countries are Parties to the Statute and 143 have signed the Treaty. The Prosecutor, who was elected in Spring 2003, is considering which cases will be the first to be investigated. The Court's judges and Registrar are completing the work required for the Court's organization, and permanent quarters are in the process of being constructed in The Hague where the Court will have its seat. At the same time, opponents of the Court in the United States have vowed never to ratify the Statute and have even suggested that the Court should be destroyed.

As it turns out, the Diplomatic Conference at which the ICC was established was held in Rome, the birthplace and residence of Publius, and a place said to be still haunted by his ghost. Sensing the familiar contours of a debate already waged and, to a large extent won by authors writing in his name, Publius now cannot resist facing his old adversary, Cato, once again, by weighing in on this modern equivalent of the federalist and antifederalist debates. He considers U.S. citizens as fellow countrymen and women because of his role in the country's important founding debates, and has therefore authorized me to convey the following six letters in support of the International Criminal Court on his behalf, which it is my great pleasure to do.[10]

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No. 1
Introduction

Fellow citizens, I own to you, that, after having giving it an attentive consideration, I am clearly of the opinion that it is in your interest to ratify the International Criminal Court Statute. I am convinced that this is the safest course for your liberty, your dignity, your happiness and the peace and the stability of the world you inhabit.

I propose in a series of essays to discuss the following interesting particulars . . . *the utility of the International Criminal Court to your prosperity and the peace of the world . . . The insufficiency of the present system to achieve that condition . . . The necessity of the Court's*

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[9] *See, e.g.*, Leila Nadya Sadat, *Summer in Rome, Spring in the Hague, Winter in Washington? U.S. Policy Towards the International Criminal Court*, WIS. J. INT'L L. (2003) (forthcoming 2003).

[10] The careful reader will note that Publius has borrowed quite extensively in these letters from his earlier writings. *See* THE FEDERALIST NOS. 1, 6-11, 15, 17, 21, 27, 67, 78, 85 (Alexander Hamilton), NO. 2 (John Jay), NOS. 14, 38, 41, 44 (James Madison).

establishment to the attainment of this object . . . The conformity of the Statute of the Court to the principles of international law and public order . . . Its analogy to your own principles of good governance and the rule of law . . . and lastly, *the additional security and prosperity which the ratification of the Court's Statute will afford to the preservation of the American Constitution, to your liberty and peace, and indeed, the liberty and peace of the world.*

PUBLIUS

No. 2

Concerning Dangers from Wars between States, the effects of Internal Wars, and the Commission of Atrocities

Fellow citizens, I have observed the fall of Rome and the crimes committed against her and her citizens throughout the ages. How many times has my beautiful city been sacked by foreign armies, sometimes due to causes external to Rome, and sometimes as a result of disunion and enmity within the Roman empire. Nor, my friends, has Rome always been the victim of war; for Rome herself was never sated of carnage and conquest. I have observed terrible atrocities everywhere on the earth, atrocities that have increased their toll on the citizenry as methods of warfare have increased the quantity and lethality of armaments available to despots and their generals. In my earlier letters to the Americans, I warned of the dangers of hostility between and within nations, and noted that the causes were innumerable. Love of power, desire of pre-eminence and dominion . . . jealousy of power, desire of equality and safety . . . rivalships and competitions of commerce between nations . . . petty private passions which inspire the attachments, enmities, interests, hopes and fears of leading individuals in the communities of which they are members. Men of this class, whether the favourites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage, or personal gratification. Throughout the ages these men brought about the ruination of their own countries and the destruction of their neighbors. So strong is the propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. In almost unspeakable acts of barbarity, they have caused the violation of women and girls, the deaths or disappearances of fathers and sons, and have even taken children of tender age to be killed or so abused in their body and their spirit that they have died from want or broken hearts. Imprisonment,

starvation, torture, deportation, enslavement and murder have been the tools employed by the wicked to these ends, and the terrible toll they have taken on humanity has become so great that the numbers used to describe the slaughter have become more than the human spirit can comprehend.

In the last century, these acts of beastly cruelty so shocked the conscience of mankind that it was finally declared, and rightly so, that no man ordering such things could be anything but a criminal before the bar of international justice. Terrible crimes were charged and proven during the famous trials held in the city of Nuremberg, at the close of the Second World War, and fair trials they were. It was declared, and later affirmed by all Nations of the world, that no man on earth, whether the mightiest King or the lowliest servant, could claim his immunity from the reach of international law. It was also affirmed that crimes against the peace of the world, crimes against humanity and crimes of war were not only immoral, as all men of character had known since time immemorial, but were ILLEGAL. It is true that criticisms were made of the parallel proceedings held in the city of Tokyo, for those proceedings did not respect the need for impartiality so essential for the maintenance of the rule of law. But those criticisms notwithstanding, the world solemnly confirmed the principles articulated in the judgment rendered by the International Military Tribunal at Nuremberg, that those who committed international crimes would be held to account; that the law of force was to be replaced by the force of LAW; and that humanity would chart a new course to guarantee its collective security against the predatory aggressions of ruthless leaders. Thus it was declared and solemnly affirmed in the United Nations Charter and by the adoption of the Nuremberg Principles by the General Assembly of that august institution at the end of the second "war to end all wars."

PUBLIUS

No. 3

Concerning the Necessity and Utility of an International Criminal Court in the attainment of Peace

In the course of the preceding papers, I have endeavoured, my fellow citizens, to place before you, in a clear and convincing light, the importance of the accomplishments of the Nuremberg Tribunal. Yet in spite of the achievements of that high Tribunal, the international legal order has been defective in one most important way, one which has disappointed our hopes for the system established among nations. The most palpable defect of the existing legal order is the total want of a SANCTION to its laws. The United Nations, as composed prior to the establishment of the International Criminal Court, has no power to compel obedience or punish disobedience

to its resolutions, either by pecuniary mulcts, or the imposition of criminal penalties. Ruthless individuals engage in acts of beastly criminality with total IMPUNITY, making a mockery of law and all its import. The hope of impunity is a strong incitement to crime; the dread of punishment, a proportionally strong discouragement to it. Terrorists destroy property and murder thousands of innocent citizens, tyrants cause thousands, even tens of thousands, of their citizens to "disappear," or be tortured and killed, while women suffer indignities too awful to be the subject of these essays. All of these barbarous acts can be punished by individual nations under doctrines established during the days when pirates roamed the sea, under the guise of that esteemed principle of law known as the principle of universal jurisdiction, whereby the perpetrators of such acts are *hostis humani generis,* the enemy of all humankind. But individual nations do not often see the interest in pursuing criminals who have committed crimes far from their shores. It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighbourhood, and to his neighbourhood than to the community at large, the people of each nation would be less likely to pursue the perpetrators of terrible crimes on behalf their injured victims living in some far off land.

Additionally, men of great criminal accomplishments are more often than not men of great power, ready to make war on their neighbors or their own people if any effort to apprehend them is attempted. As remedies, we have seen in a few cases the establishment of tribunals to hear particular causes, such as the International Criminal Tribunal for the Former Yugoslavia, the Tribunal for Rwanda, and the hybrid courts established for Sierra Leone and East Timor. But citizens complain, not without some cause, that justice must be for all times and all places, not just for some.

In such cases, what is the community of nations to do? The PLAN proposed, to which this writer adheres, is for the community of nations to together establish a judicial body to hear cases involving offenses which transgress against them all, but which are truly not within either the competence or the capacity of any one of them alone; and to that end, to elect distinguished individuals to serve that institution faithfully, as judges, prosecutor, and clerk. This, fellow citizens, is the task set before the international community of nations; indeed, it was the task set before the Framers of the International Criminal Court Statute, when they met, deliberated and debated the many complex and important subjects concerning the Plan in at the Diplomatic Conference of Plenipotentiaries held in the City of Rome during the long, hot summer of 1998.

PUBLIUS

No. 4

Concerning the constitution of the new Court:
a gross attempt to misrepresent this part of the plan detected

Fellow citizens, we proceed now to an examination of the Court itself.

In unfolding the defects of the existing situation, the utility and necessity of a permanent international criminal court have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed: the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace two primary objections: 1st. The possibility for the Prosecutor to commence an investigation on his own initiative, with the approval of a Pre-Trial Chamber of the Court. 2d. The possibility for cases to be brought against the nationals of a State which has not itself become a party to the Treaty.

The adversaries of the Plan have argued that because the institution proposed by the Treaty permits the Court's Prosecutor to initiate investigations on his own initiative, the Plan is irremediably flawed, and the institution created an entity liable to threaten the liberty of innocent Americans. Yet, here the writers against the Treaty seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to tyranny, they have endeavoured to enlist all their jealousies and apprehensions in opposition to the intended Prosecutor of the International Criminal Court by portraying him as all powerful and independent, accountable to no one but himself in his work. Attempts extravagant as these to metamorphose the object, render it necessary to take an accurate view of its real nature and form; in order to ascertain its true aspect and genuine appearance. This it is simple to do. *First*, the Prosecutor can commence no investigation on his own initiative without the approval of a Trial Chamber. *Second*, once an investigation has been authorized, the Prosecutor must notify all States Parties and those States which would normally exercise jurisdiction over the crimes of the investigation, with the result that the Prosecutor must then defer fully to a State's decision to open its own investigation into the alleged crimes. *Third*, the jurisdiction of the Court is complementary to national courts, meaning that the International Criminal Court may only assert jurisdiction if no State is able and willing to pursue the case. *Fourth*, the accused and any State which has jurisdiction or from which acceptance of jurisdiction is required under the Treaty may challenge the admissibility of the case. *Fifth*, the Prosecutor may be removed from office by an absolute majority of States Parties for misconduct or a serious breach of his duties under the

Statute. *Sixth,* the Prosecutor has no direct power of enforcement whatsoever, but depends virtually entirely on the good offices of States for his success.

Thus, like the judiciary in the American system, the Prosecutor of the International Criminal Court, and indeed, the Court itself, will always be one of the least dangerous entities in the international legal order, because it will possess almost no independent capacity to annoy or injure. The executive in the American system not only dispenses the honours, but holds the sword of the community, while the legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. In contrast, the International Criminal Court does neither of these things. Like the American judiciary, the Court has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the international community of nations even for the efficacy of its judgments.

The second objection asserts that the nationals of States not party to the Treaty should be exempted from its jurisdiction without the express consent of their government in all cases. This objection fails for two primary reasons. *First*, it has become a fundamental principle of law to which all nations adhere that States have jurisdiction over crimes committed within their territories. Thus, whether or not a State is a party to the Treaty, it cannot protect its nationals from the provisions of the Treaty once they stray from the shelter of its borders. So an American who commits a crime abroad must put his defense before the courts of that foreign land, so too States may delegate their power of territorial jurisdiction by surrendering an individual to the International Criminal Court for crimes he has alleged to have committed once he leaves the safety of his home State. This is a foundational principle of public international law and public order, reiterated at Nuremberg, and one that has not seriously been challenged since.

Second, to accept the position of the opponents to the plan would be to withdraw from the international community the possibility of protecting itself against rogues, terrorists and tyrants. A rule of law must apply equally to all, if a law it can be. To exempt the citizens of one nation without their consent would mean that the citizens of all would necessarily have to be exempted as well. Yet what purpose could this serve? It would permit tyrants and criminals to assure their immunity from justice simply by making sure and certain that their countries did not ratify the Statute. Dictators could ensure their impunity simply by repudiating the Treaty, and terrorists and others with criminal designs could avoid the application of international criminal law simply by congregating in States not party to the ICC Statute or any other anti-crime conventions. No peace loving state has an interest in the creation of "law-free zones" in which international

criminals may circulate and operate with impunity. Rather, all men of peace and of commerce have an interest in the even and steady application of the law to one and to all the same. The citizens of the United States of America have nothing to fear from the rule of law; indeed, they have everything to gain.

PUBLIUS

No. 5

Concerning two miscellaneous objections

Curiously, it has been alleged that this Court will be at once too strong and too weak.[11] *Too strong* because it will bring frivolous, politically motivated and unwarranted claims against American men and women of good character and reputation, and unfairly subject their soldiers and leaders to claims that will injure them and the nation. *Too weak* because it will not have the force required to enforce its commands and therefore cause the good name of JUSTICE to fall into disrepute, and will fail in its mission to deter the commission of atrocities.

As to the former claim, this is easily set aside. It cannot have escaped the notice of those who have attended with care the arguments employed against the International Criminal Court that the authors of those arguments have chosen to dwell on all the possible abuses which must be incident to every power or trust of which a beneficial use can be made. Claims that this is a "rogue institution" or a "kangaroo court" do not fit easily either with the very careful manner in which the Court's jurisdiction has been limited and defined, nor with the high standards of behavior, moral character, integrity and competence required of the Court's personnel. Indeed, in recent elections, the States party to the Treaty selected men and women of extraordinary competence to lead the institution, harkening as they do from nations which themselves respect the rule of law, and, it should be added, which would consider themselves the allies and friends of the United States of America. It is true that the sceptic may argue that the excellence of the Court's current officers does not insure the integrity of their successors. But cool and candid people will at once reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT good; and that in every political institution, a power to advance the public happiness, involves a discretion which may

[11] *See, e.g.*, Stephen D. Krasner, *A World Court that Could Backfire*, N.Y. TIMES, Jan. 15, 2001, at A15; Jack Goldsmith, *The Self-Defeating International Criminal Court*, 70 U. CHI. L. REV. 89 (2003); Bolton, *supra* note 8.

be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

Yet we have already established both the *necessity* and the *utility* of the Court to the problem at hand, and have reviewed the sum or quantity of power delegated by the proposed Treaty to the International Criminal Court; and are brought to the undeniable conclusion, that no part of the power is unnecessary or improper for accomplishing the necessary object of the Treaty. Thus it cannot be correct that the Treaty is too strong in conferring power upon the Court to the detriment of the States. But can it be too weak? Here, the adversaries to the plan, unconvinced as to their own assertions of excessive powers delegated to the Court, have argued that it is too weak to achieve its objectives, and should therefore be set aside. It is a matter both of wonder and regret, that those who raise so many objections against the International Criminal Court, should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect: it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man of any sensibility or intelligence could find the situation acceptable in its current state: a situation involving the attempted extermination of entire races of human beings and the terror of innocent civilians as a direct result of the international community's failure to provide any remedy to the terrible scourge of international crime. How can it not be preferable to try this bold experiment, based upon the wisdom and knowledge gained through the practice of the Nuremberg and Tokyo tribunals, as well as their sister institutions, the ICTY and ICTR? What remedy do the opponents of the Plan propose now that international criminals commit their deeds not only in far off lands, but launch attacks at the very heart and soul of America. The prosperity and security of the people depends on their continuing firmly united against the evils that have multiplied in the last century, and the wishes, prayers and efforts of our best and wisest citizens have been constantly directed to that object.

PUBLIUS

No. 6
Conclusion

Thus have I, fellow citizens, executed the task I had assigned to myself; with what success your conduct must determine. I trust, at least, you will admit, that I have not failed in the assurance I gave you respecting the spirit with which my endeavours should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Court. The charge of a conspiracy against the liberties of the people, the claim that this will be a dangerous court which must be shunned by all right thinking men, the unwarrantable concealments and misrepresentations, which have been in various ways practised to keep the truth from the public eye, are of a nature to demand the reprobation of all honest men. It is possible that these circumstances may have occasionally betrayed me into intemperances of expressions, like those I uttered so long ago, for which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Concessions on the part of the friends of the Plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. Why, say they, should we adopt an imperfect thing? Why did we not postpone the decision to adopt the Treaty in Rome until it had been amended and made perfect? This may be plausible, but it is plausible only. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective; and that, without material alterations, the rights and interests of the United States of America cannot be safely confided in it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of any measure can be found that will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such a one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should have esteemed it the extreme of imprudence to prolong negotiations on the International Criminal Court, and to expose the international community to the jeopardy of successive attempts at Treaty negotiation, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man, and compromises must result from the deliberations of all collective bodies. Indeed, it is likely that had a decision on the Statute been postponed at Rome, the Statute would have become increasingly imperfect, as delicate

compromises unraveled, and the will to achieve a final goal dissipated. It was necessary to mould and arrange all the particulars which are to compose the whole, in such a manner, as to satisfy all the parties to the Treaty; and hence also an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The Rome Diplomatic Conference opened a window of opportunity to address the problem of atrocities, and it is utterly improbable to imagine assembling a new Treaty Conference, under circumstances in any degree so favourable to a happy issue, as those in which the Rome Conference met, deliberated, and concluded. That already 143 nations have signed the Treaty, and 92 have ratified it, is a testament to that fact.

The establishment of the International Criminal Court, in time of profound peace, by the voluntary consent of the international community of nations, is a PRODIGY, to the success of which I look forward with trembling anxiety. I hope, fellow citizens, that you will once again heed my words. More than 200 years have passed since I wrote to you with such passion to debate the elaboration of your Constitution; and then, just as now, I could not bear to imagine the opportunity to advance the rule of law and greatness of your nation fall prey to timidity and fear of a future unknown. I submit to you, my fellow citizens, these considerations, in full confidence that the good sense which has so often marked your decisions, will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scenes into which the adversaries of the Plan would conduct you. Hearken not to the voice, which petulantly tells you that the institution recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; and that it rashly attempts what is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys. The work that the Framers accomplished in the great city of Rome, when they conceived a new institution to help end IMPUNITY for the commission of international crimes, is work undertaken and accomplished in the greatest American tradition, enshrining enduring respect for the rule of law. They formed the design of a great institution, which it is incumbent on their successors to improve and perpetuate. If their work betrays imperfections, we should wonder at the fewness of them, and marvel instead at the wisdom and courage of men of good will.

PUBLIUS