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Civics Reader: Insights into the Rights and Duties of American Citizenship©*

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* The Civics Reader was made possible by a generous grant provided by Apgar Foundation, Inc., Indianapolis, IN 46250. The Civics Reader is being utilized by the Civics Education Project in its efforts to teach a quadrivium of courses to incarcerated felons, with the objective to reduce the recidivism rate of returning felons to civil society. This reader is copyrighted (2020).

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Part One: How to use this Civics class Reader

The Civics class will utilize JPay's Lantern Learning Management System (LLMS). LLMS will facilitate making accessible to students assigned reading materials, course evaluations, i.e., quizzes and essays, and interaction between students, instructors and teaching assistants.

Because the Civics class has students with varying educational backgrounds, LLMS provides your instructors with the opportunity to engage students at the most effective level. LLMS allows students with university level capabilities to supplement the assigned readings with more extensive readings and resources, while remedially instructing those students with high school or less capabilities. In other words, the more advanced students will not be held back and the less advanced students will not be left behind. LLMS opens the opportunity for all of the Civics class students to participate at the appropriate level and to engage in a robust learning experience.

Every student in good standing that cannot afford a tablet will be provided one for the duration of the semester.

The reading material that you will be downloading to your tablets will not include quiz, essay or class discussion questions. That material will be made available via the LLMS on a bi-weekly basis. This approach will facilitate making the course (a) more fluid, e.g., tying the reading material to current events; (b) relevant to needs of the students, e.g., clarifying ambiguities prior to moving ahead, and (c) keeping everyone on task.

Although the course delivery system is high tech, old school classroom interaction is still a highly important component the Civics class. Towards that end, consider the following:

Civics Classroom Pedagogical Approach

As we progress through the selected reading in this course, students need to be prepared to be challenged and to challenge their fellow students and instructor. Of course, all within the context of civility and a good dose of humility and humor. As for the humility aspect, it goes without saying that we all have opinions about society and politics, but we must understand that opinions are just that. According to the Oxford Dictionary, an opinion is "a view or judgment formed about something, not necessarily based on fact or knowledge." Obtaining knowledge about the subject matter we are about to embark upon is not an easy task; it requires effort and the requisite intellect. A much easier task is recognizing erroneous opinion. To assist us in that task is the Socratic method, as explained infra:

Questioning methods in Socratic Circles:

Socratic Circles are based upon conversational interaction of between the instructor and students and among the students themselves. The focus is to analyze the salient topics in the assigned readings via questions and answers. When a question is presented, answers are considered and debunked if unpersuasive, inconclusive and/or illogical. It is important to keep the discussion on-topic. Sometimes this can be done by responding to a question with a question. The instructor's responsibility is to

synthesize the questions and responses towards a consensus of what is factual, inconclusive, and/or speculative error.

At the beginning of each session, students should come to class with the assigned readings read and a question he believes would be effective in lighting the fuse to begin a Socratic discussion.

Here's a sampler:

Question: Is democracy the best form of government?

To effectively address this question questions embedded in the original question need to be considered, such as:

- a. What is meant by "best"?
- b. What precisely is "government"?
- c. What is a "democracy"?
- d. What is meant by "form"?

After addressing questions a, b, c and d, the responses are synthesized in the attempt to answer the original question. The results of that attempt may be inclusive. Nevertheless, an inconclusive result is still progress. How so? Because an inclusive result removes being handicapped by mistaking erroneous opinion for truth. What is truth? Truth is when our minds conform to reality. And for practical purposes--and this is especially relevant when politics are involved--it is better to acknowledge one's ignorance than to function under the assumption that you have all the answers. As instructed by Socrates, the truly wise man is not afraid to admit, "I know only one thing--that I know nothing."

Part Two: Editor's Note to Students

The ancients summed up the whole of human wisdom in the maxim, Know Thyself, and certainly there is for an individual no more important as there is no more difficult knowledge, than knowledge of himself, whence he comes, whither he goes, what he is, what he is for, what he can do, what he ought to do, and what are his means of doing it. (Orestes Brownson, 1865)



If you are reading this book there is a high probability that you are currently being denied a fundamental human right, the right to be free. There is also a high probability that your fellow citizens are confident that the denial was properly adjudicated through the criminal justice system. Be that as it may, the purpose of this book is not to address your conviction and sentencing. The fact is that you were convicted, sentenced and incarcerated.

This is not meant to trivialize the personal trauma associated with being incarcerated. The events leading up to your present predicament are tragic, not merely for you but also for your victim(s), your family, and society at-large. Rather than being retrospective, however, the objective of this course is to be prospective; in other words, as a returning citizen to civil society the Civics Education Project, of which this course is an integral part, is designed to enhance your successful reintegration into civil society.

This course offers students the opportunity to gain insights into two constant fundamentals of the American experience. First, it was revolutionary in its acknowledgement of that all men are created equal; and, second, because all are equally endowed by their Creator with certain unalienable rights, all have the duty to respect the rights of others. This is not meant to imply that this obligation is always fulfilled, as is evidenced by individuals' aggression against the rights of others and governments' failure to fulfill the duty to protect those rights. Nevertheless, the failure to fulfill the obligation does not negate it. Moreover, the failure, both individual and governmental, cannot be adequately addressed in the absence of a robust Civics education.

As a returning citizen a robust civics education may be of little or no concern to the convicted felon. Understandably, the concerns of surviving prison life and upon release achieving employment, housing, transportation, reconnecting with family, etc., are in all probability in the forefront of concerns. That's unfortunate, because successful reintegration into civil society will be substantially enhanced by better understanding the society you are reentering.

The high rate of recidivism is due, in part, to well-intentioned convicted felons returning to civil society with the same mindset about civil society, or worse, a mindset perverted by prison life. In the State of Florida close to ninety percent of released felons return to prison. That statistic should be motivation enough for incarcerated felons to use their time well, in order to be best prepared for reentry into civil society.

To better understand the society you will be reentering, civics education is essential. In other words, you must understand what it means to be a functional citizen. Once you know your rights and duties as a citizen and embrace them, i.e., capable of functioning as a responsible citizen, successful reentry into society will be greatly enhanced.

With years of experience of teaching civics to inmates, most have informed me that had they been properly educated about their rights and duties as citizens, as well as the exceptionalism of the American political/economic systems, they would not have followed the path that led to incarceration. This is a profound acknowledgement on their part, and understandable if

dismissed as sentimental nonsense. But don't be too hasty in your judgement. Stay with me on this journey into the founding of the American republic. You too may come to the same conclusion.

For starters, what is meant by the cliché American exceptionalism. It does not mean that American is perfect, the best nation in human history, and deserving of the sort of worship reserved for the Deity. What it does mean is that America is unique in its prosperity, i.e., the result of individuals to pursue their happiness, its founding principles, e.g., inalienable individual rights, its structure, e.g., federalism, and its written constitutions, e.g., the rule of law. Based upon 18th Century standards, the confluence of the preceding factors did make America exceptional and the reverberations of that 18th Century exceptionalism extend to the 21st Century.

Consider this: Imagine a society in which its members were assigned their status at birth and the rights and duties of individuals were assigned accordingly. In short, imagine a society in which the dignity and worth of individuals varied and the variations were back by law. Americans that seceded from Great Britain in 1776 did not have to imagine. They lived at a time when so called lower classes of men were born with saddles on their backs and the upper classes with boots and spurs. The law did not acknowledge the full dignity of the human person. It was grounded in the social status of the person, which in large measure was determined at birth. Obedience and homage were expected and enforced on the lower classes by their alleged superiors and propped up by the political order. This is not fiction, but the reality from which the American revolutionaries rebelled.

If you need proof of the effects of that system, consider the criminal justice system in the 18th Century. Most of you in this class would have been languishing in horrible prisons, tortured and/or executed for your crimes. The English peasant revolt in 1381 [395 years prior to the American Revolution] is revealing. A clergyman, Jean Froissart, reported the following about this revolt:

While the earl of Cambridge sails to Portugal, and the duke of Lancaster negotiates with the Scots, trouble breaks out in England.

While these conferences were going forward, there happened in England great commotions among the lower ranks of the people, by which England was near ruined without recourse. Never was a country in such jeopardy as it was this at that period, and all through the too great comfort of the commonalty. Rebellion was stirred up, as it was formerly done in France by the Jacques Bons-hommes, who did much evil, and sore troubled the kingdom of France. It is marvelous from what a trifle this pestilence raged in England. In order that it may serve as an example to mankind, I will speak of all that was done, from the information I had at the time on the subject.

It is customary in England, as in several other countries, for the nobility to have great privileges over the commonalty, whom they keep in bondage; that is to say, they are bound by law and custom to plough the lands of gentleman, to harvest the grain, to carry it home to the barn, to

thrash and winnow it: they are also bound to harvest the hay and carry it home. All these services they are obliged to perform for their lords, and many more in England than in other countries. The prelates and the gentlemen are thus served. In the counties of Kent, Essex, Sussex and Bedford, these services are more oppressive than in all the rest of the kingdom. The evil-disposed in these districts began to rise, saying, they were too severely oppressed; that at the beginning of the world there were no slaves, and that no one ought to be treated as such, unless he had committed treason against his lord, as Lucifer had done against God: but they had done no such thing, for they were neither angels nor spirits, but men formed after the same likeness with their lords, who treated them as beasts. This they would no longer bear, but had determined to be free, and if they labored or did any other works for their lords, they would be paid for it.

A crazy priest in the county of Kent, called John Ball, who for his absurd preaching, had been thrice confined in the prison of the archbishop of Canterbury, was greatly instrumental in inflaming them with those ideas. He was accustomed, every Sunday after mass, as the people were coming out of the church, to preach to them in the market-places and assemble a crowd around him; to whom he would say, --

"My good friends, things cannot go on well in England, nor ever will until everything shall be in common; when there shall be neither vassal nor lord, and all distinctions levelled; when the lords shall be no more masters than ourselves. How ill have they used us! and for what reason do they hold us in bondage? Are we not all descended from the same parents, Adam and Eve? and what can they show, or what reasons give, why they should be more the masters than ourselves? except, perhaps, in making us labor and work, for them to spend.

They are clothed in velvets and rich stuffs, ornamented with ermine and other furs, while we are forced to wear poor cloth. They have wines, spices, and fine bread, when we have only rye and the refuse of the straw; and if we drink, it must be water. They have handsome seats and manors, when we must brave the wind and rain in our labors in the field; but it is from our labor they have wherewith to support their pomp.

We are called slaves; and if we do not perform our services, we are beaten, and we have not any sovereign to whom we can complain, or who wishes to hear us and do us justice. Let us go to the king, who is young, and remonstrate with him on our servitude, telling him we must have it otherwise, or that we shall find a remedy for it ourselves. If we wait on him in a body, all those who come under the appellation of slaves, or are held in bondage, will follow us, in the hopes of being free. When the king shall see us, we shall obtain a favorable answer, or we must then seek ourselves to amend our condition."

With such words as these did John Ball harangue the people, at his village, every Sunday after mass, for which he was much beloved by them. Some who wished no good declared it was very true, and murmuring to each other, as they were going to the fields, on the road from one village to another, or at their different houses, said, "John Ball preaches such and such things, and he speaks truth."

The archbishop of Canterbury, on being informed of this, had John Ball arrested, and imprisoned for two or three months by way of punishment; but it would have been better if he

had been confined during his life, or had been put to death, than to have been suffered thus to act. The archbishop set him at liberty, for he could not for conscience sake have put him to death.

The moment John Ball was out of prison, he returned to his former errors. Numbers in the city of London having heard of his preaching, being envious of the rich men and nobility, began to say among themselves, that the kingdom was too badly governed, and the nobility had seized all the gold and silver coin. These wicked Londoners, therefore, began to assemble and to rebel: they sent to tell those in the adjoining counties, they might come boldly to London, and bring their companions with them, for they would find the town open to them, and the commonalty in the same way of thinking; that they would press the king so much, there should no longer be a slave in England.¹

We should be careful not to elevate the peasantry as all virtue and no vice. After entrapping one Sir Robert Salle, “they cut off his legs and arms, and rent his body in piecemeal.”² King Richard would have none of this. As reported by Froissart, upwards of fifteen hundred rebels were summarily beheaded or hanged, including John Ball.³ Today we cringe at this 14th Century due process.

There are several important lessons to be learned from this report. First, the peasants were being oppressed. Second, the “crazy priest” John Ball’s reaction to that oppression was necessary to alert and rally a peasant response to the oppression. Third, Ball and the peasants were deemed to be “wicked”, that is evil, because they threatened the established social order. Fourth, that social order neither recognized the inalienable rights of the peasants nor its duty to respect those rights. Fifth, rights are not handed to people on a platter, but must be fought for to be gained and maintained. Sixth, self-interest, power, violence, fraud and fear are not atypical in politics. Seventh, the mob is inclined towards oppression and violence. And, eighth, Froissart and the Archbishop of Canterbury were members of the ruling class, and, one could reasonably assume, placed their personal interests above that of their fellow humans for whom their ministries should have focused.

This rather obscure and long forgotten peasant revolt in the 14th Century follows a pattern consistent throughout human history. The foundation of that pattern is that unchecked political power is inconsistent with the fundamental rights of life, liberty, and property, all of which are essential to a free society.

The delegates meeting in the Philadelphia constitutional convention in 1787 understood this. They understood that unchecked power, whether in the hands of the rich or the mob, was highly problematical. Their goal was to establish a free society in which individuals could pursue their happiness unharassed by the wielders of political power.

Any individual’s success in that pursuit was not guaranteed. What is unique to the American experience is government’s limited role, leaving individuals free to succeed or to fail in their

¹ <http://faculty.nipissingu.ca/muhlberger/FROISSART/PEASANTS.HTM>.

² <http://faculty.nipissingu.ca/muhlberger/FROISSART/SALLE.HTM>.

³ <http://faculty.nipissingu.ca/muhlberger/FROISSART/KING.HTM>.

respective pursuits of happiness. The delegates' preoccupation was to establish a free society, rather than a society in which the government picked the winners and losers in the quest for happiness.

Consequently, central to their discussions was the issue of power. They opted to empower the individual and not government. Rather than be subjected to government, the government was to be subjected to individuals. But a government subjected to the control of individuals, i.e., a government based upon the consent of the governed, is not a panacea for good government. Why? Because the people may consent to unjust government. So, neither the elites nor the people can be trusted with political power.

Questions such as, where is political power to be lodged, by whom is it to be exercised, for what purposes is it to be exercised, and how is it to be checked so that it is not abusively used needed to be reformulated. In other words, a new science of politics needed to be established. That new science of politics discovered that political power needs to be lodged in a divided government consisting of a national and state governments; it is to be exercised by officials elected by those subjected to that power; the purposes for which power is to be exercised is to secure the fundamental rights of the citizenry; to protect against the abusive use of power it must not be concentrated, but decentralized; and, finally, the powers of the government must be documented in understandable language, i.e., a constitution, in order for the people to know when the government has broken faith with the people.

The manner and extent to which those aforementioned principles are disregarded, the American political order established in 1789 is weakened and on a trajectory towards its ultimate replacement by a political order anathema to the security of individual fundamental rights.

What does this have to do with convicted felons? In a word, everything. As a convicted felon you have been deemed, rightly or wrongly, a threat to society. By failing to fulfill your duty to respect the rights of your fellow citizens, your fellow citizens have removed you from the community, for perhaps a year, five years, ten to twenty years, and for some even their natural lives.

The notion of "trajectory", for both individuals and nations, needs some clarification. For the purposes of this book trajectory implies the path of development propelled by certain forces. For example, a nation on a trajectory from a Capitalistic political culture to a Socialistic political culture cannot be done without disregarding individual rights. Convicted felons on a trajectory from past criminal behavior to law abiding behavior, i.e., rehabilitated, do not pose a threat to the rights of their fellow citizens.

In other words, change has consequences and it is important not to confuse change with progress. "Progress means not just changing, but changing for the better."¹ If the pillars of the original political order are the inalienable rights of life, liberty and property and changes to the political order tear down those pillars, then those changes cannot be construed as progress, but

¹ C. S. Lewis, *Mere Christianity*(NY, NY: Harper Collins, 1980), 13.

rather regress. Regress from what and towards what? Regress from freedom towards the society portrayed in the 1381 Peasant Revolt is a distinct possibility.

What is true for a society also holds true for the individual; both are on a sort of trajectory. Either may progress towards the good, or regress away from it. Bad choices result in bad consequences, as convicted felons need not be reminded.

With that stated, this book is predicated upon three assumptions: first, convicted felons understand firsthand the consequences of bad choices; second, convicted felons realize that liberty is worth preserving; and third, convicted felons are in a unique position to appreciate that the 1789 American political order is worth preserving because it was predicated on liberty. It goes without saying that requisite to liberty's preservation are informed and virtuous individuals. As incarcerated convicted felons in this course, you should become both informed and civically virtuous. To be blunt, many Americans are clueless about American exceptionalism vis-à-vis liberty. By both word and deed, returning citizens have much to offer their fellow citizens.

This is not meant to imply that the American political order established in the latter part of the 18th Century was perfected, nor that every free person is virtuous. What it does mean is that the Creator endowed every human being with the right to be free that that the American political order is exceptional in the course of human events because it recognized that fact. It was a struggle to establish a political order committed to liberty and will continue to be a struggle to maintain and improve it, in contradistinction to perfecting it. Perfection is well beyond the reach of human capabilities for the simple reason that human beings are imperfect. It is nonsensical to hope for a perfect political order designed and administered by imperfect people.

Similarly, the returning citizens will face struggles. But it is beyond dispute that the returning citizen is the master of his own destiny in a free society. If he uses his newfound freedom to engage in criminal behavior, he will likely find himself once again denied the fundamental right to liberty.

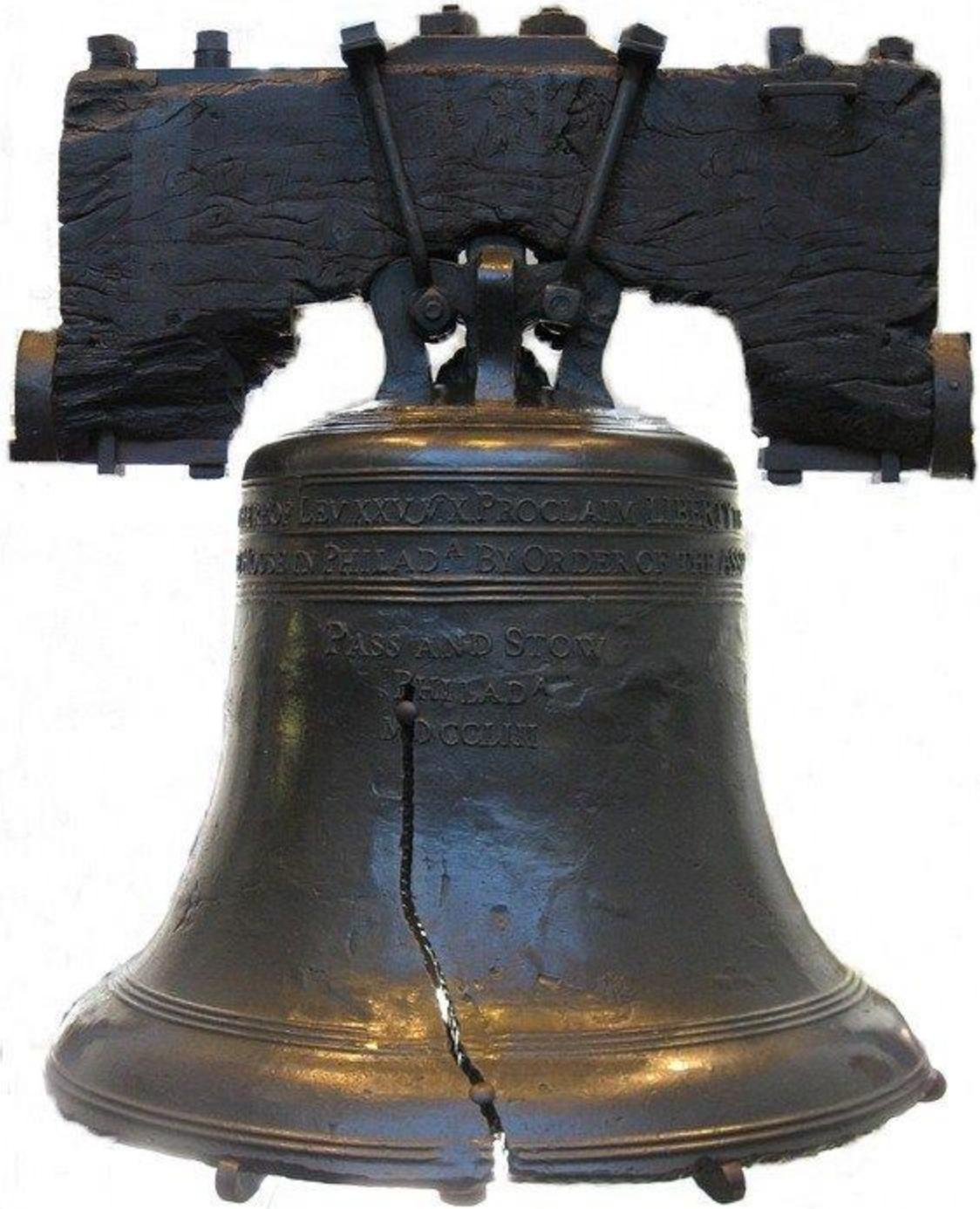
As you will learn as we progress through this course, the individual and society at-large have this in common; both can forfeit the natural right to liberty and find themselves under the boot of oppression, be it a prison guard or a government bureaucrat.

In short, if the American political order established in 1789 is compared to a perfect political order, it will always fall short. If, on the other hand, it is compared to what was (or is) humanly possible under the circumstances, it will be both appreciated and perhaps be improved over time. The same goes for the returning citizen. Reintegration into civil society will prove to be a process, subjected to the imperfections of the societal and political environs that are unavoidable. With that caveat, this book is written for progressives, properly understood.

As forewarned by C. S. Lewis, "progress means getting nearer to the place where you want to be. And if you have taken a wrong turn, then to go forward does not get you any nearer. If you are on the wrong road, progress means doing an about-turn and walking back to the right road;

and in that case the man who turns back soonest is the most progressive man.”¹ This truism is not only applicable to nations, but also to individuals and especially relevant to convicted felons. This course aims to make its students progressive men, properly understood. By making you a better man, your communities will be better communities, and better communities will make America a better nation. This was the hope of the 1776 American revolutionaries.

¹ Ibid., 28.



Part Three: The Prologue

“The Government of the United States was formed by the Constitution of the United States—and ours is a democratic, federal republic.” (John C. Calhoun, 1850)

What is a democratic/federal republic? Simplistically stated, it is a system of government that involves elected representatives to make public policy based upon the consent of those that elected them; moreover, two distinct governments (state and national) share jurisdiction over the same territory/people. However, the American experience is much more complicated, because its fundamental principle is that individuals have certain inalienable rights, such as the rights of life, liberty and property, for which state and national governments were established to secure. The implications of this fundamental principle are profound, the profundity of which you will appreciate as you progress through this course.

With that in mind, what does it mean to be an American? Or, more specifically, what does being a responsible citizen in a democratic/federal republic entail? Convicted felons should be especially interested in this question, for several reasons. First, they experienced in a dramatic way the adjudication of their rights and duties in the course of their trials; second, they experienced firsthand the consequences of society’s response to those deemed to be a threat to the rights of their fellow citizens; third, even though incarcerated, they continue to have rights and duties as citizens; and, fourth, as returning citizens they have an opportunity to make amends to society and function in civil society as responsible citizens.

In order to be a responsible citizen, one needs to be civically informed. To be civically informed means that you understand your rights and duties as a citizen. This does not mean that you must believe in them, although you should; but it does mean in either case that you must function in civil society as if you do, otherwise civil society will respond accordingly. If you are incredulous about this reality your immediate surroundings, e.g., prison walls, razor wire, guards, etc., should make dispel your incredulity.

Let’s face some hard facts. First, life is not always fair. Enough said about that. Second, the students in this course are convicted felons. Third, civil society has little sympathy for convicted felons. And, fourth, civil society has even less sympathy for reoffending felons. If you don’t want to experience the fourth category (for some of you for the second, third, or fourth time), you are being well-advised to learn your civics.

To be civically informed necessitates incurring the information costs of civics education. Much of the chaos swirling around the political issues of the day, including the criminal justice system, stems from inadequate civics education regarding the value of the Founding principles. This course hopes to remedy that failure.

Being a citizen does not take much effort; being a responsible citizen does. On one level to be an American is matter of location. People located west of the Prime Meridian includes North America, Central America, and South America. North America includes the United States and Canada. The United States has identifiable borders with the United States Government having the delegated power to make and enforce laws within those borders. For our purposes the word “American” means a person subject to the laws within the borders of these United States of America.

But what does it mean to be a US citizen in the civics sense of the word? Are there rights and duties unique to the American experience? Consider this: a Peruvian and Floridian are both Americans in the geographic sense, their respective national identities are distinct. That distinctiveness stems from living in distinct cultures, shaped by language, religion, diet, dress, social habits, social institutions, music, art, political institutions, common values, etc., but most importantly they are citizens under the jurisdiction of their respective governments.

This is not to imply that a Peruvian and Floridian do not have much in common. They both share a fundamental human nature which make them more similar than dissimilar. Nevertheless, there is no denying that they are different, at least on a superficial level. To a lesser degree, the same could be said about an Alabamian raised on a farm and a New Yorker raised in New York City. Nevertheless, the Alabamian and New Yorker would have more in common with each other than they would have with a Peruvian raised in Lima. How do these differences come to be?

Their membership in two distinct cultures certainly played a major role. However, this begs the question. How or why did their two distinct cultures come to be? The etymology of the word “culture” hints at the answer. The word’s meaning derives from “to cultivate or till”. Just as a farmer cultivates his crops by tilling the soil, sowing seed, fertilizing and watering, the individual is cultivated by language, religion, diets, dress, social habits, social institutions, music, art, political institutions, common values, etc. As an open field may be altered by a farmer’s cultivation, a society may also be altered, with this important difference: unlike vegetation, people have intellect and will. In other words, a person is much more complicated than a stalk of corn.

So, then, who plays the role of the farmer in cultivating a culture? Social Scientists talk about the agents of socialization, such as religion, family, schools, peer groups, and the media. But all

of these agents of socialization are impacted by custom and law. A society's customs are inherited from one generation to the next, such as a gentleman holding open a door for a lady or shooting off fireworks on the Fourth of July. In other words, a widely accepted way of behaving specific to a particular place or time. Adhering to customs is basically voluntary and not sanctioned by the force of law.

In a free society, customs would evolve, or devolve, as the inhabitants prefer. Noncompliance with customs does have penalties, such as shame, ridicule, ostracism, etc., Law is another matter. Penalties for noncompliance with law include pecuniary and the possible deprivation of liberty or even execution. So even though the invisible hand of custom cultivates a society, the very visible hand of the law plays the role of the farmer. The law may be benign in its relationship to custom or, at the extreme, malevolent and plow it under.

So who makes the law? That would be the lawgiver, whether the lawgiver (or lawgivers) be one person, a minority of people, or a majority of people. Just as the farmer uses force to make the ground productive, by plowing, sowing and reaping, the lawgiver uses the force of the law to shape culture. The laws through which felons were indicted, tried, convicted and sentenced are obvious examples. The hard reality is that the convicted felon made two fatal missteps. First, he transgressed against laws making him subject to the attendant penalties. And, second, it's too late to complain that the laws are unfair or unjust. If true, at best he should have worked to change those laws when there was an opportunity to do so. At a minimum he should have complied with the law (or laws) in order to avoid the consequences of noncompliance.

The former remarks are very simplistic, used primarily to begin the discussion. Each person has a unique personal history. Growing up in dysfunctional families, in crime ridden neighborhoods, with inept government schools, drugs, alcohol, sexual addictions make the prospects for knowing the laws or how to change them somewhat nonsensical. But those possibilities reveal an even more important truth. There are costs attached to bad decisions, whether those decisions were made by parents, educators and/or legislators.

Let's go back to basics. The Greek philosopher Aristotle (b. 384 – d. 322 BC) considered similar questions hundreds of years ago. He often compared the lawgiver to a craftsman. The lawgiver produces a legal system, whereas the craftsman, such as a potter, produces a vase. Aristotle maintained that the production of the vase has four causes: the material cause, i.e., clay, the formal cause, i.e., shaping the clay into the form of a vase, the efficient cause, i.e., the potter doing the shaping, and the final cause, i.e., the vase can contain liquids. Similarly, the lawgiver's material cause is the people, the formal cause is organizing the people into a community, the efficient cause is the law-making process, and the final cause is along a continuum of a prosperous and contented community or a prosperous and contented ruling class.

In the final analysis certain differences between the Peruvian and Floridian can be traced to law. The law has limits, such as climate, available natural resources, and demographics. So certain opportunities for the lawgiver which are feasible in Florida are not necessarily available in Peru, and vice-versa. But there is an opportunity available to both, a commitment to the inalienable rights of life, liberty and property. It is this commitment that made the formation of America exceptional, not perfect but exceptional.

Was the commitment to the inalienable rights of life, liberty and property empty rhetoric or genuine? Could it be genuine and empty rhetoric, depending upon the timeframe? And even if its genuine, is it feasible? And if it's feasible, is it desirable? These are important and complicated questions, to be answered by the student as he progresses through this Civics course.

For the sake of argument, let's assume that the American Revolution was motivated by the colonists' desire to secure their fundamental rights against a tyrannical British King and parliament. Once independence was secured, Americans began the hard work of establishing a system of government, i.e., deciding who or what had the power to make and enforce laws. Towards that end the Founders drafted, debated, and eventually ratified the US Constitution.

The system of government that emerged is one in which the American people and States are the delegators and the United States Government the trustee of the powers so delegated. In contractual terms the former are the principals and the latter the agent of the former. This arrangement operationalizes government based upon the consent of the governed. In a perfect world, if the delegators of power were steadfast in their commitment to the inalienable rights of life, liberty and property, government--national and state--would be more inclined to protect those rights.

This is especially relevant to the convicted felon. Consider this question: If you were raised in a society that emphasized the duty to respect the rights of your fellow citizens and society at-large, and you firmly embraced and fulfilled that duty, would you be a convicted felon?

Unfortunately, Americans are not raised in such a society and most are ignorant about the importance of the Founding principles. Perhaps this explains, in part, why your fellow Americans are not fulfilling their duty to respect convicted felons right to liberty, or simply warehousing felons paying little attention to over-criminalization, rehabilitation and successful reentry.

If the lodestar of American society and politics was a rock-solid commitment to the fundamental rights of life, liberty, and property, America would be substantially different today, at both the individual and societal levels.

Depending upon the stage of American political development, the commitment to fundamental rights has consistently waived, and not without heated controversy and/or bloodshed. This stems from the fact that the quest for power is constant, and once obtained is subject to abuse, and sometimes that abuse is exercised with the consent of the governed. Sometimes the consent is informed consent, at other times uninformed. Regarding the latter, the people may be fraudulently duped, i.e., cultivated, into supporting a government transgressing against the fundamental rights the government was originally designed to secure.

This raises a profound and enduring question for any civics education project. Should civics education primarily be indoctrination to produce compliant citizens to the regime currently in power, or should the focus be on education about the principles which government officials took an oath to uphold. If the latter, knowing what those principles are is essential in any civics education endeavor.

To be an American, or more specifically a responsible U.S. citizen, intimates that you are an informed member of a society ordered along a set of widely accepted principles, the most important of which is the duty to respect the inalienable rights of fellow citizens. This duty is the tie that should bind us together as Americans. Moreover, it is this principle from which laws should emanate. The breadth and depth of the acceptance of this principle in large measure determines not merely the nature of American laws but also the justice of the laws.

This raises two troubling questions. First, what is an informed American citizen to do if, or when, the government has deviated from its responsibility, i.e., duty, to protect inalienable rights? And, second, what should State governments do when large segments of the citizenry elect irresponsible national legislators as agents of oppression? The Framers of the American political order anticipated both contingencies and prepared accordingly. But the preparation, and this is highly important, rests on the citizens' civic virtue, the heart and soul of a properly ordered civics education.

If civics is the study of the rights and duties of citizenship, a citizen needs to know what powers were initially delegated to the government and the manner and extent to which that delegation has been maintained. Why is this important? It's important because if the citizen understands at the macro level the limits of government action, he is more susceptible to understand at the micro individual level the limits of individual action. In other words, a government murdering, i.e., unjust wars, and/or stealing, i.e., confiscatory taxation, would certainly set a bad example for its citizenry and almost certainly filter down to the citizenry's behavior.

How can the average American be educated to the extent whereby he/she can recognize when the government has failed to constitutionally exercise the powers entrusted to it to secure fundamental rights?

In answering that question, it is necessary to grasp the intentions of the Framers that drafted and the States that ratified the US Constitution. Then trace how those intentions are maintained or not by those entrusted with political power.

To reiterate, this civics course to provide the student with the skillset to function as a responsible citizen. That skillset includes an understanding of the founding principles, the application of critical thinking to contemporary politics, and an appreciation of the distinction between just and unjust actions.

It would be impractical to proceed one step further until we address the elephant in the room: JUSTICE. Justice should be the measuring stick of any attempt at civics education. The Founders of the American political system were preoccupied with establishing a just political order. To gain insight into their notions of such an order, let's turn to an astute French theorist, Federic Bastiat. In 1850 he penned his concise treatise on the subject titled *The Law*.

You may agree or disagree with Bastiat's conclusions, which is fine but also irrelevant. The importance of the *The Law*, written in 1850, for our purposes are the insights it provides into the thinking of the Founders' worldview, thereby providing us with a yardstick to determine the justice, or lack thereof, of government's and the citizenry's responsibilities as intended by the Founders. Although written some sixty-one years after the ratification of the US Constitution, *The Law* encapsulates the theory of Adam Smith's 1776 magnum opus *An Inquiry into the Nature and Causes of the Wealth of Nations*, which had a profound impact the the thinking of the Founding generation.



Frédéric Bastiat (1801-1850) was a French economist committed to free trade and that the only legitimate function of positive law was to secure the fundamental rights of life, liberty, and property.

THE LAW

The law perverted! The law — and, in its wake, all the collective forces of the nation — the law, I say, not only diverted from its proper direction, but made to pursue one entirely contrary! The law become the tool of every kind of avarice, instead of being its check! The law guilty of that very iniquity which it was its mission to punish! Truly, this is a serious fact, if it exists, and one to which I feel bound to call the attention of my fellow citizens.

We hold from God the gift which, as far as we are concerned, contains all others, Life — physical, intellectual, and moral life.

But life cannot support itself. He who has bestowed it, has entrusted us with the care of supporting it, of developing it, and of perfecting it. To that end, He has provided us with a collection of wonderful faculties; He has plunged us into the midst of a variety of elements. It is by the application of our faculties to these elements, that the phenomena of assimilation and of appropriation, by which life pursues the circle which has been assigned to it, are realized.

Existence, faculties, assimilation — in other words, personality, liberty, property — this is man.

It is of these three things that it may be said, apart from all demagogue subtlety, that they are anterior and superior to all human legislation.

It is not because men have made laws, that personality, liberty, and property exist. On the contrary, it is because personality, liberty, and property exist beforehand, that men make laws. What, then, is law? As I have said elsewhere, it is the collective organization of the individual right to lawful defense.

Nature, or rather God, has bestowed upon every one of us the right to defend his person, his liberty, and his property, since these are the three constituent or preserving elements of life; elements, each of which is rendered complete by the others, and cannot be understood without them. For what are our faculties, but the extension of our personality? and what is property, but an extension of our faculties?

If every man has the right of defending, even by force, his person, his liberty, and his property, a number of men have the right to combine together, to extend, to organize a common force, to provide regularly for this defense.

Collective right, then, has its principle, its reason for existing, its lawfulness, in individual right; and the common force cannot rationally have any other end, or any other mission, than that of the isolated forces for which it is substituted. Thus, as the force of an individual cannot lawfully touch the person, the liberty, or the property of another individual — for the same reason, the common force cannot lawfully be used to destroy the person, the liberty, or the property of individuals or of classes.

For this perversion of force would be, in one case as in the other, in contradiction to our premises. For who will dare to say that force has been given to us, not to defend our rights, but to annihilate the equal rights of our brethren? And if this be not true of every individual force, acting independently, how can it be true of the collective force, which is only the organized union of isolated forces?

Nothing, therefore, can be more evident than this: The law is the organization of the natural right of lawful defense; it is the substitution of collective for individual forces, for the purpose of acting in the sphere in which they have a right to act, of doing what they have a right to do, to secure persons, liberties, and properties, and to maintain each in its right, so as to cause justice to reign over all. And if a people established upon this basis were to exist, it seems to me that order would prevail among them in their acts as well as in their ideas. It seems to me that such a people would have the most simple, the most economical, the least oppressive, the least to be felt, the least responsible, the most just, and, consequently, the most solid Government which could be imagined, whatever its political form might be.

For, under such an administration, everyone would feel that he possessed all the fullness, as well as all the responsibility of his existence. So long as personal safety was ensured, so long as labor was free, and the fruits of labor secured against all unjust attacks, no one would have any difficulties to contend with in the State. When prosperous, we should not, it is true, have to thank the State for our success; but when unfortunate, we should no more think of taxing it with our disasters, than our peasants think of attributing to it the arrival of hail or of frost. We should know it only by the inestimable blessing of Safety.

It may further be affirmed, that, thanks to the non-intervention of the State in private affairs, our wants and their satisfactions would develop themselves in their natural order. . .

Unhappily, law is by no means confined to its own department. Nor is it merely in some indifferent and debatable views that it has left its proper sphere. It has done more than this. It has acted in direct opposition to its proper end; it has destroyed its own object; it has been employed in annihilating that justice which it ought to have established, in effacing amongst Rights, that limit which was its true mission to respect; it has placed the collective force in the service of those who wish to traffic, without risk, and without scruple, in the persons, the liberty, and the property of others; it has converted plunder into a right, that it may protect it, and lawful defense into a crime, that it may punish it.

How has this perversion of law been accomplished? And what has resulted from it?

The law has been perverted through the influence of two very different causes — bare egotism and false philanthropy.

Let us speak of the former. Self-preservation and development are the common aspirations of all men, in such a way that if everyone enjoyed the free exercise of his faculties and the free disposition of their fruits, social progress would be incessant, uninterrupted, inevitable.

But there is also another disposition which is common to them. This is to live and to develop, when they can, at the expense of one another. This is no rash imputation, emanating from a gloomy, uncharitable spirit. History bears witness to the truth of it, by the incessant wars, the migrations of races, sacerdotal oppressions, the universality of slavery, the frauds in trade, and the monopolies with which its annals abound. This fatal disposition has its origin in the very constitution of man — in that primitive, and universal, and invincible sentiment which urges it towards its well-being, and makes it seek to escape pain.

Man can only derive life and enjoyment from a perpetual search and appropriation; that is, from a perpetual application of his faculties to objects, or from labor. This is the origin of property.

But yet, he may live and enjoy by seizing and appropriating the productions of the faculties of his fellow men. This is the origin of plunder.

Now, labor being in itself a pain, and man being naturally inclined to avoid pain, it follows, and history proves it, that wherever plunder is less burdensome than labor, it prevails; and neither religion nor morality can, in this case, prevent it from prevailing.

When does plunder cease, then? When it becomes more burdensome and more dangerous than labor.

It is very evident that the proper aim of law is to oppose the powerful obstacle of collective force to this fatal tendency; that all its measures should be in favor of property, and against plunder.

But the law is made, generally, by one man, or by one class of men. And as law cannot exist without the sanction and the support of a preponderating force, it must finally place this force in the hands of those who legislate.

This inevitable phenomenon, combined with the fatal tendency which, we have said, exists in the heart of man, explains the almost universal perversion of law. It is easy to conceive that, instead of being a check upon injustice, it becomes its most invincible instrument.

It is easy to conceive that, according to the power of the legislator, it destroys for its own profit, and in different degrees, amongst the rest of the community, personal independence by slavery, liberty by oppression, and property by plunder.

It is in the nature of men to rise against the injustice of which they are the victims. When, therefore, plunder is organized by law, for the profit of those who perpetrate it, all the plundered classes tend, either by peaceful or revolutionary means, to enter in some way into the manufacturing of laws. These classes, according to the degree of enlightenment at which they have arrived, may propose to themselves two very different ends, when they thus attempt the attainment of their political rights; either they may wish to put an end to lawful plunder, or they may desire to take part in it.

Woe to the nation where this latter thought prevails amongst the masses, at the moment when they, in their turn, seize upon the legislative power!

Up to that time, lawful plunder has been exercised by the few upon the many, as is the case in countries where the right of legislating is confined to a few hands. But now it has become universal, and the equilibrium is sought in universal plunder. The injustice which society contains, instead of being rooted out of it, is generalized. As soon as the injured classes have recovered their political rights, their first thought is, not to abolish plunder (this would suppose them to possess enlightenment, which they cannot have), but to organize against the other classes, and to their own detriment, a system of reprisals, — as if it was necessary, before the reign of justice arrives, that all should undergo a cruel retribution, — some for their iniquity and some for their ignorance.

It would be impossible, therefore, to introduce into society a greater change and a greater evil than this — the conversion of the law into an instrument of plunder.

What would be the consequences of such a perversion? It would require volumes to describe them all. We must content ourselves with pointing out the most striking.

In the first place, it would efface from everybody's conscience the distinction between justice and injustice. No society can exist unless the laws are respected to a certain degree, but the safest way to make them respected is to make them respectable. When law and morality are in contradiction to each other, the citizen finds himself in the cruel alternative of either losing his moral sense, or of losing his respect for the law — two evils of equal magnitude, between which it would be difficult to choose.

It is so much in the nature of law to support justice, that in the minds of the masses they are one and the same. There is in all of us a strong disposition to regard what is lawful as legitimate, so much so that many falsely derive all justice from law. It is sufficient, then, for the law to order and sanction plunder, that it may appear to many consciences just and sacred. Slavery, protection, and monopoly find defenders, not only in those who profit by them, but in those who suffer by them. If you suggest a doubt as to the morality of these institutions, it is said directly — "You are a dangerous innovator, a utopian, a theorist, a despiser of the laws; you would shake the basis upon which society rests."

If you lecture upon morality, or political economy, official bodies will be found to make this request to the Government:

That henceforth science be taught not only with sole reference to free exchange (to liberty, property, and justice), as has been the case up to the present time, but also, and especially, with reference to the facts and legislation (contrary to liberty, property, and justice) which regulate French industry. That, in public pulpits salaried by the treasury, the professor abstain rigorously from endangering in the slightest degree the respect due to the laws now in force.

So that if a law exists which sanctions slavery or monopoly, oppression or plunder, in any form whatever, it must not even be mentioned — for how can it be mentioned without damaging the respect which it inspires? Still further, morality and political economy must be taught in connection with this law — that is, under the supposition that it must be just, only because it is law.

Another effect of this deplorable perversion of the law is, that it gives to human passions and to political struggles, and, in general, to politics, properly so called, an exaggerated preponderance. . . .

. . . Yes, as long as it is admitted that the law may be diverted from its true mission, that it may violate property instead of securing it, everybody will be wanting to manufacture law, either to defend himself against plunder, or to organize it for his own profit. The political question will always be prejudicial, predominant, and absorbing; in a word, there will be fighting around the door of the Legislative Palace.

The struggle will be no less furious within it. To be convinced of this, it is hardly necessary to look at what passes in the Chambers in France and in England; it is enough to know how the question stands.

Is there any need to prove that this odious perversion of law is a perpetual source of hatred and discord, that it even tends to social disorganization? Look at the United States. There is no country in the world where the law is kept more within its proper domain — which is, to secure to everyone his liberty and his property. Therefore, there is no country in the world where social order appears to rest upon a more solid basis. Nevertheless, even in the United States, there are two questions, and only two, which from the beginning have endangered political order. And what are these two questions? That of slavery and that of tariffs; that is, precisely the only two questions in which, contrary to the general spirit of this republic, law has taken the character of a plunderer. Slavery is a violation, sanctioned by law, of the rights of the person. Protection [tariffs] is a violation perpetrated by the law upon the rights of property; and certainly it is very remarkable that, in the midst of so many other debates, this double legal scourge, the sorrowful inheritance of the Old World, should be the only one which can, and perhaps will, cause the rupture of the Union. Indeed, a more astounding fact, in the heart of society, cannot be conceived than this: That law should have become an instrument of injustice. And if this fact occasions consequences so formidable to the United States, where there is but one exception, what must it be with us in Europe, where it is a principle — a system? . . .

. . . The delusion of the day is to enrich all classes at the expense of each other; it is to generalize plunder under pretence of organizing it. Now, legal plunder may be exercised in an infinite multitude of ways. Hence come an infinite multitude of plans for organization; tariffs, protection, perquisites, gratuities, encouragements, progressive taxation, gratuitous instruction, right to labor, right to profit, right to wages, right to assistance, right to instruments of labor, gratuity of credit, etc., etc. And it is all these plans, taken as a whole, with what they have in common, legal plunder, which takes the name of socialism.

Now socialism, thus defined, and forming a doctrinal body, what other war would you make against it than a war of doctrine? You find this doctrine false, absurd, abominable. Refute it. This will be all the more easy, the more false, the more absurd and the more abominable it is. Above all, if you wish to be strong, begin by rooting out of your legislation every particle of socialism which may have crept into it, — and this will be no light work. . .

. . . You would oppose law to socialism. But it is the law which socialism invokes. It aspires to legal, not extralegal plunder. It is of the law itself, like monopolists of all kinds, that it wants to make an instrument; and when once it has the law on its side, how will you be able to turn the law against it? How will you place it under the power of your tribunals, your gendarmes, and of your prisons? What will you do then? You wish to prevent it from taking any part in the making of laws. You would keep it outside the Legislative Palace. In this you will not succeed, I venture to prophesy, so long as legal plunder is the basis of the legislation within.

It is absolutely necessary that this question of legal plunder should be determined, and there are only three solutions of it:

1. When the few plunder the many.
2. When everybody plunders everybody else.
3. When nobody plunders anybody.

Partial plunder, universal plunder, absence of plunder, amongst these we have to make our choice. The law can only produce one of these results.

Partial plunder. — This is the system which prevailed so long as the elective privilege was partial; a system which is resorted to, to avoid the invasion of socialism.

Universal plunder. — We have been threatened by this system when the elective privilege has become universal; the masses having conceived the idea of making law, on the principle of legislators who had preceded them.

Absence of plunder. — This is the principle of justice, peace, order, stability, conciliation, and of good sense, which I shall proclaim with all the force of my lungs (which is very inadequate, alas!) till the day of my death.

And, in all sincerity, can anything more be required at the hands of the law? Can the law, whose necessary sanction is force, be reasonably employed upon anything beyond securing to everyone his right? I defy anyone to remove it from this circle without perverting it, and consequently turning force against right. And as this is the most fatal, the most illogical social

perversion which can possibly be imagined, it must be admitted that the true solution, so much sought after, of the social problem, is contained in these simple words — LAW IS ORGANIZED JUSTICE.

Now it is important to remark, that to organize justice by law, that is to say by force, excludes the idea of organizing by law, or by force any manifestation whatever of human activity — labor, charity, agriculture, commerce, industry, instruction, the fine arts, or religion; for any one of these organizations would inevitably destroy the essential organization. How, in fact, can we imagine force encroaching upon the liberty of citizens without infringing upon justice, and so acting against its proper aim?

Here I am encountering the most popular prejudice of our time. It is not considered enough that law should be just, it must be philanthropic. It is not sufficient that it should guarantee to every citizen the free and inoffensive exercise of his faculties, applied to his physical, intellectual, and moral development; it is required to extend wellbeing, instruction, and morality, directly over the nation. This is the fascinating side of socialism.

But, I repeat it, these two missions of the law contradict each other. We have to choose between them. A citizen cannot at the same time be free and not free. . . Legal plunder has two roots: one of them, as we have already seen, is in human egotism; the other is in false philanthropy.

Before I proceed, I think I ought to explain myself upon the word plunder.

I do not take it, as it often is taken, in a vague, undefined, relative, or metaphorical sense. I use it in its scientific acceptation, and as expressing the opposite idea to property. When a portion of wealth passes out of the hands of him who has acquired it, without his consent, and without compensation, to him who has not created it, whether by force or by artifice, I say that property is violated, that plunder is perpetrated. I say that this is exactly what the law ought to repress always and everywhere. If the law itself performs the action it ought to repress, I say that plunder is still perpetrated, and even, in a social point of view, under aggravated circumstances. In this case, however, he who profits from the plunder is not responsible for it; it is the law, the lawgiver, society itself, and this is where the political danger lies.

It is to be regretted that there is something offensive in the word. I have sought in vain for another, for I would not wish at any time, and especially just now, to add an irritating word to our dissensions; therefore, whether I am believed or not, I declare that I do not mean to accuse the intentions nor the morality of anybody. I am attacking an idea which I believe to be false —

a system which appears to me to be unjust; and this is so independent of intentions, that each of us profits by it without wishing it and suffers from it without being aware of the cause.

Any person must write under the influence of party spirit or of fear, who would call in question the sincerity of protectionism, of socialism, and even of communism, which are one and the same plant, in three different periods of its growth. All that can be said is, that plunder is more visible by its partiality in protectionism and by its universality in communism; whence it follows that, of the three systems, socialism is still the most vague, the most undefined, and consequently the most sincere.

Be it as it may, to conclude that legal plunder has one of its roots in false philanthropy, is evidently to put intentions out of the question.

With this understanding, let us examine the value, the origin, and the tendency of this popular aspiration, which pretends to realize the general good by general plunder.

The Socialists say, since the law organizes justice, why should it not organize labor, instruction, and religion? Why? Because it could not organize labor, instruction, and religion, without disorganizing justice. For, remember, that law is force, and that consequently the domain of the law cannot lawfully extend beyond the domain of force.

When law and force keep a man within the bounds of justice, they impose nothing upon him but a mere negation. They only oblige him to abstain from doing harm. They violate neither his personality, his liberty, nor his property. They only guard the personality, the liberty, the property of others. They hold themselves on the defensive; they defend the equal right of all. They fulfill a mission whose harmlessness is evident, whose utility is palpable, and whose legitimacy is not to be disputed. This is so true that, as a friend of mine once remarked to me, to say that the aim of the law is to cause justice to reign, is to use an expression which is not rigorously exact. It ought to be said, the aim of the law is to prevent injustice from reigning. In fact, it is not justice which has an existence of its own, it is injustice. The one results from the absence of the other.

But when the law, through the medium of its necessary agent — force — imposes a form of labor, a method or a subject of instruction, a creed, or a worship, it is no longer negative; it acts positively upon men. It substitutes the will of the legislator for their own will, the initiative of the legislator for their own initiative. They have no need to consult, to compare, or to foresee; the law does all that for them. The intellect is for them a useless lumber; they cease to be men; they lose their personality, their liberty, their property.

Endeavor to imagine a form of labor imposed by force, which is not a violation of liberty; a transmission of wealth imposed by force, which is not a violation of property. If you cannot succeed in reconciling this, you are bound to conclude that the law cannot organize labor and industry without organizing injustice.

When, from the seclusion of his cabinet, a politician takes a view of society, he is struck with the spectacle of inequality which presents itself. He mourns over the sufferings which are the lot of so many of our brethren, sufferings whose aspect is rendered yet more sorrowful by the contrast of luxury and wealth.

He ought, perhaps, to ask himself, whether such a social state has not been caused by the plunder of ancient times, exercised in the way of conquests; and by plunder of later times, effected through the medium of the laws? He ought to ask himself whether, granting the aspiration of all men after wellbeing and perfection, the reign of justice would not suffice to realize the greatest activity of progress, and the greatest amount of equality compatible with that individual responsibility which God has awarded as a just retribution of virtue and vice?

He never gives this a thought. His mind turns towards combinations, arrangements, legal or factitious organizations. He seeks the remedy in perpetuating and exaggerating what has produced the evil. For, justice apart, which we have seen is only a negation, is there any one of these legal arrangements which does not contain the principle of plunder?

You say, "There are men who have no money," and you apply to the law. But the law is not a self-supplied fountain, whence every stream may obtain supplies independently of society. Nothing can enter the public treasury, in favor of one citizen or one class, but what other citizens and other classes have been forced to send to it. If everyone draws from it only the equivalent of what he has contributed to it, your law, it is true, is no plunderer, but it does nothing for men who want money — it does not promote equality. It can only be an instrument of equalization as far as it takes from one party to give to another, and then it is an instrument of plunder. Examine, in this light, the protection of tariffs, prizes for encouragement, right to profit, right to labor, right to assistance, right to instruction, progressive taxation, gratuitousness of credit, social workshops, and you will always find at the bottom legal plunder, organized injustice.

You say, "There are men who want knowledge," and you apply to the law. But the law is not a torch which sheds light abroad which is peculiar to itself. It extends over a society where there are men who have knowledge, and others who have not; citizens who want to learn, and others who are disposed to teach. It can only do one of two things: either allow a free operation to this

kind of transaction, i.e., let this kind of want satisfy itself freely; or else force the will of the people in the matter, and take from some of them sufficient to pay professors commissioned to instruct others gratuitously. But, in this second case, there cannot fail to be a violation of liberty and property, — legal plunder.

You say, "Here are men who are wanting in morality or religion," and you apply to the law; but law is force, and need I say how far it is a violent and absurd enterprise to introduce force in these matters?

As the result of its systems and of its efforts, it would seem that socialism, notwithstanding all its self-complacency, can scarcely help perceiving the monster of legal plunder. But what does it do? It disguises it cleverly from others, and even from itself, under the seductive names of fraternity, solidarity, organization, association. And because we do not ask so much at the hands of the law, because we only ask it for justice, it supposes that we reject fraternity, solidarity, organization, and association; and they brand us with the name of individualists.

We can assure them that what we repudiate is not natural organization, but forced organization.

It is not free association, but the forms of association which they would impose upon us. It is not spontaneous fraternity, but legal fraternity. It is not providential solidarity, but artificial solidarity, which is only an unjust displacement of responsibility.

Socialism, like the old policy from which it emanates, confounds Government and society. And so, every time we object to a thing being done by Government, it concludes that we object to its being done at all. We disapprove of education by the State — then we are against education altogether. We object to a State religion — then we would have no religion at all. We object to an equality which is brought about by the State then we are against equality, etc., etc. They might as well accuse us of wishing men not to eat, because we object to the cultivation of corn by the State.

How is it that the strange idea of making the law produce what it does not contain — prosperity, in a positive sense, wealth, science, religion — should ever have gained ground in the political world? The modern politicians, particularly those of the Socialist school, found their different theories upon one common hypothesis; and surely a more strange, a more presumptuous notion, could never have entered a human brain.

They divide mankind into two parts. Men in general, except one, form the first; the politician himself forms the second, which is by far the most important.

In fact, they begin by supposing that men are devoid of any principle of action, and of any means of discernment in themselves; that they have no moving spring in them; that they are inert matter, passive particles, atoms without impulse; at best a vegetation indifferent to its own mode of existence, susceptible of receiving, from an exterior will and hand, an infinite number of forms, more or less symmetrical, artistic, and perfected.

Moreover, every one of these politicians does not scruple to imagine that he himself is, under the names of organizer, discoverer, legislator, institutor or founder, this will and hand, this universal spring, this creative power, whose sublime mission it is to gather together these scattered materials, that is, men, into society.

Starting from these data, as a gardener according to his caprice, shapes his trees into pyramids, parasols, cubes, cones, vases, espaliers, distaffs, or fans; so the Socialist, following his chimera, shapes poor humanity into groups, series, circles, sub-circles, honeycombs, or social workshops, with all kinds of variations. And as the gardener, to bring his trees into shape, wants hatchets, pruning hooks, saws, and shears, so the politician, to bring society into shape, wants the forces which he can only find in the laws; the law of customs, the law of taxation, the law of assistance, and the law of instruction.

It is so true, that the Socialists look upon mankind as a subject for social combinations, that if, by chance, they are not quite certain of the success of these combinations, they will request a portion of mankind, as a subject to experiment upon. It is well known how popular the idea of trying all systems is, and one of their chiefs has been known seriously to demand of the Constituent Assembly a parish, with all its inhabitants, upon which to make his experiments. It is thus that an inventor will make a small machine before he makes one of the regular size. Thus, the chemist sacrifices some substances, the agriculturist some seed and a corner of his field, to make trial of an idea.

But, then, think of the immeasurable distance between the gardener and his trees, between the inventor and his machine, between the chemist and his substances, between the agriculturist and his seed! The Socialist thinks, in all sincerity, that there is the same distance between himself and mankind.

It is not to be wondered at that the politicians of the nineteenth century look upon society as an artificial production of the legislator's genius. This idea, the result of a classical education, has taken possession of all the thinkers and great writers of our country.

To all these persons, the relations between mankind and the legislator appear to be the same as those which exist between the clay and the potter.

Moreover, if they have consented to recognize in the heart of man a principle of action, and in his intellect a principle of discernment, they have looked upon this gift of God as a fatal one, and thought that mankind, under these two impulses, tended fatally towards ruin. They have taken it for granted, that if abandoned to their own inclinations, men would only occupy themselves with religion to arrive at atheism, with instruction to come to ignorance, and with labor and exchange to be extinguished in misery.

Happily, according to these writers, there are some men, termed governors and legislators, upon whom Heaven has bestowed opposite tendencies, not for their own sake only, but for the sake of the rest of the world.

Whilst mankind tends to evil, they incline to good; whilst mankind is advancing towards darkness, they are aspiring to enlightenment; whilst mankind is drawn towards vice, they are attracted by virtue. And, this granted, they demand the assistance of force, by means of which they are to substitute their own tendencies for those of the human race.

It is only needful to open, almost at random, a book on philosophy, politics, or history, to see how strongly this idea — the child of classical studies and the mother of socialism — is rooted in our country; that mankind is merely inert matter, receiving life, organization, morality, and wealth from power; or, rather, and still worse — that mankind itself tends towards degradation, and is only arrested in its tendency by the mysterious hand of the legislator. Classical conventionalism shows us everywhere, behind passive society, a hidden power, under the names of Law, or Legislator (or, by a mode of expression which refers to some person or persons of undisputed weight and authority, but not named), which moves, animates, enriches, and regenerates mankind. . .

. . . And, in fact, what is the political work which we are endeavoring to promote? It is no other than the instinctive effort of every people towards liberty. And what is liberty, whose name can make every heart beat, and which can agitate the world, but the union of all liberties, the liberty of conscience, of instruction, of association, of the press, of locomotion, of labor, and of exchange; in other words, the free exercise, for all, of all the inoffensive faculties; and again, in other words, the destruction of all despotisms, even of legal despotism, and the reduction of law to its only rational sphere, which is to regulate the individual right of legitimate defense, or to repress injustice?

This tendency of the human race, it must be admitted, is greatly thwarted, particularly in our country [France], by the fatal disposition, resulting from classical teaching, and common to all politicians, of placing themselves beyond mankind, to arrange, organize, and regulate it, according to their fancy. For whilst society is struggling to realize liberty, the great men who place themselves at its head, imbued with the principles of the seventeenth and eighteenth

centuries, think only of subjecting it to the philanthropic despotism of their social inventions, and making it bear with docility, according to the expression of Rousseau, the yoke of public felicity, as pictured in their own imaginations.

This was particularly the case in 1789. No sooner was the old system destroyed, than society was to be submitted to other artificial arrangements, always with the same starting — point — the omnipotence of the law.

Saint-Just. — "The legislator commands the future. It is for him to will for the good of mankind. It is for him to make men what he wishes them to be."

Robespierre. — "The function of Government is to direct the physical and moral powers of the nation towards the object of its institution."

Billaud Varennes. — "A people who are to be restored to liberty must be formed anew. Ancient prejudices must be destroyed, antiquated customs changed, depraved affections corrected, inveterate vices eradicated. For this, a strong force and a vehement impulse will be necessary. . . the inflexible austerity of Lycurgus created the firm basis [tyranny] of the Spartan republic. The feeble and trusting disposition [democracy] of Solon plunged Athens into slavery. This parallel contains the whole science of Government."

Lepelletier. — "Considering the extent of human degradation, I am convinced — of the necessity of effecting an entire regeneration of the race, and, if I may so express myself, of creating a new people."

Men, therefore, are nothing but raw material. It is not for them to will their own improvement. They are not capable of it; according to Saint-Just, it is only the legislator who is. Men are merely to be what he wills that they should be. According to Robespierre, who copies Rousseau literally, the legislator is to begin by assigning the aim of the institutions of the nation. After this, the Government has only to direct all its physical and moral forces towards this end. All this time the nation itself is to remain perfectly passive . . .

One of the strangest phenomena of our time, and one which will probably be a matter of astonishment to our descendants, is the doctrine which is founded upon this triple hypothesis: the radical passiveness of mankind, — the omnipotence of the law, — the infallibility of the legislator: this is the sacred symbol of the party which proclaims itself exclusively democratic.. .

You must see, then, that the socialist democrats cannot in conscience allow men any liberty, because, by their own nature, they tend in every instance to all kinds of degradation and demoralization.

We are therefore left to conjecture, in this case, upon what foundation universal suffrage is claimed for them with so much importunity.

The pretensions of organizers suggest another question, which I have often asked them, and to which I am not aware that I ever received an answer: Since the natural tendencies of mankind are so bad that it is not safe to allow them liberty, how comes it to pass that the tendencies of organizers are always good? Do not the legislators and their agents form a part of the human race? Do they consider that they are composed of different materials from the rest of mankind? They say that society, when left to itself, rushes to inevitable destruction, because its instincts are perverse. They pretend to stop it in its downward course, and to give it a better direction. They have, therefore, received from heaven, intelligence and virtues which place them beyond and above mankind: let them show their title to this superiority. They would be our shepherds, and we are to be their flock. This arrangement presupposes in them a natural superiority, the right to which we are fully justified in calling upon them to prove.

You must observe that I am not contending against their right to invent social combinations, to propagate them, to recommend them, and to try them upon themselves, at their own expense and risk; but I do dispute their right to impose them upon us through the medium of the law, that is, by force and by public taxes. . .

To presume to have recourse to power and taxation, besides being oppressive and unjust, implies further, the injurious supposition that the organized is infallible, and mankind incompetent.

And if mankind is not competent to judge for itself, why do they talk so much about universal suffrage? . . .

I shall now resume the subject by remarking, that immediately after the economical part of the question, and at the entrance of the political part, a leading question presents itself. It is the following:

What is law? What ought it to be? What is its domain? What are its limits? Where, in fact, does the prerogative of the legislator stop?

I have no hesitation in answering, Law is common force organized to prevent injustice; — in short, Law is Justice.

It is not true that the legislator has absolute power over our persons and property, since they pre-exist, and his work is only to secure them from injury.

It is not true that the mission of the law is to regulate our consciences, our ideas, our will, our education, our sentiments, our works, our exchanges, our gifts, our enjoyments. Its mission is to prevent the rights of one from interfering with those of another, in any one of these things.

Law, because it has force for its necessary sanction, can only have as its lawful domain the domain of force, which is justice.

And as every individual has a right to have recourse to force only in cases of lawful defense, so collective force, which is only the union of individual forces, cannot be rationally used for any other end.

The law, then, is solely the organization of individual rights, which existed before legitimate defense.

Law is justice.

So far from being able to oppress the persons of the people, or to plunder their property, even for a philanthropic end, its mission is to protect the former, and to secure to them the possession of the latter.

It must not be said, either, that it may be philanthropic, so long as it abstains from all oppression; for this is a contradiction. The law cannot avoid acting upon our persons and property; if it does not secure them, it violates them if it touches them. The law is justice.

Nothing can be more clear and simple, more perfectly defined and bounded, or more visible to every eye; for justice is a given quantity, immutable and unchangeable, and which admits of neither increase or diminution.

Depart from this point, make the law religious, fraternal, equalizing, industrial, literary, or artistic, and you will be lost in vagueness and uncertainty; you will be upon unknown ground, in a forced Utopia, or, which is worse, in the midst of a multitude of Utopias, striving to gain possession of the law, and to impose it upon you; for fraternity and philanthropy have no fixed limits, like justice. Where will you stop? Where is the law to stop? One person . . . will only extend his philanthropy to some of the industrial classes, and will require the law to dispose of the consumers in favor of the producers. Another . . . will take up the cause of the working

classes, and claim for them by means of the law, at a fixed rate, clothing, lodging, food, and everything necessary for the support of life. A third . . . will say, and with reason, that this would be an incomplete fraternity, and that the law ought to provide them with instruments of labor and the means of instruction. A fourth will observe that such an arrangement still leaves room for inequality, and that the law ought to introduce into the most remote hamlets luxury, literature, and the arts. This is the high road to communism; in other words, legislation will be — what it now is — the battlefield for everybody's dreams and everybody's covetousness. Law is justice.

In this proposition we represent to ourselves a simple, immovable Government. And I defy anyone to tell me whence the thought of a revolution, an insurrection, or a simple disturbance could arise against a public force confined to the repression of injustice. Under such a system, there would be more wellbeing, and this wellbeing would be more equally distributed; and as to the sufferings inseparable from humanity, no one would think of accusing the Government of them, for it would be as innocent of them as it is of the variations of the temperature. Have the people ever been known to rise against the court of appeals, or assail the justices of the peace, for the sake of claiming the rate of wages, gratuitous credit, instruments of labor, the advantages of the tariff, or the social workshop? They know perfectly well that these combinations are beyond the jurisdiction of the justices of the peace, and they would soon learn that they are not within the jurisdiction of the law.

But if the law were to be made upon the principle of fraternity, if it were to be proclaimed that from it proceed all benefits and all evils — that it is responsible for every individual grievance and for every social inequality — then you open the door to an endless succession of complaints, irritations, troubles, and revolutions. . .

. . . Does it follow that, if we are free, we shall cease to act? Does it follow, that if we do not receive an impulse from the law, we shall receive no impulse at all? Does it follow, that if the law confines itself to securing to us the free exercise of our faculties, our faculties will be paralyzed? Does it follow, that if the law does not impose upon us forms of religion, modes of association, methods of instruction, rules for labor, directions for exchange, and plans for charity, we shall plunge eagerly into atheism, isolation, ignorance, misery, and egotism? Does it follow, that we shall no longer recognize the power and goodness of God; that we shall cease to associate together, to help each other, to love and assist our unfortunate brethren, to study the secrets of nature, and to aspire after perfection in our existence?

And it is under the law of justice, under the reign of right, under the influence of liberty, security, stability, and responsibility, that every man will attain to the measure of his worth, to all the dignity of his being, and that mankind will accomplish, with order and with calmness — slowly, it is true, but with certainty — the progress decreed to it.

I believe that my theory is correct; for whatever be the question upon which I am arguing, whether it be religious, philosophical, political, or economical; whether it affects well-being, morality, equality, right, justice, progress, responsibility, property, labor, exchange, capital, wages, taxes, population, credit, or Government; at whatever point of the scientific horizon I start from, I invariably come to the same thing — the solution of the social problem is in liberty.

And have I not experience on my side? Cast your eye over the globe. Which are the happiest, the most moral, and the most peaceable nations? Those where the law interferes the least with private activity; where the Government is the least felt; where individuality has the most scope, and public opinion the most influence; where the machinery of the administration is the least important and the least complicated; where taxation is lightest and least unequal, popular discontent the least excited and the least justifiable; where the responsibility of individuals and classes is the most active, and where, consequently, if morals are not in a perfect state, at any rate they tend incessantly to correct themselves; where transactions, meetings, and associations are the least fettered; where labor, capital, and production suffer the least from artificial displacements; where mankind follows most completely its own natural course; where the thought of God prevails the most over the inventions of men; those, in short, who realize the most nearly this idea — That within the limits of right, all should flow from the free, perfectible, and voluntary action of man; nothing be attempted by the law or by force, except the administration of universal justice.

I cannot avoid coming to this conclusion — that there are too many great men in the world; there are too many legislators, organizers, institutors of society, conductors of the people, fathers of nations, etc., etc. Too many persons place themselves above mankind, to rule and patronize it; too many persons make a trade of attending to it. It will be answered: — "You yourself are occupied upon it all this time." Very true. But it must be admitted that it is in another sense entirely that I am speaking; and if I join the reformers it is solely for the purpose of inducing them to relax their hold. . . .

I am acting with regard to it in the spirit which animated a celebrated traveler. He found himself in the midst of a savage tribe. A child had just been born, and a crowd of soothsayers, magicians, and quacks were around it, armed with rings, hooks, and bandages. One said — "This child will never smell the perfume of a calumet, unless I stretch his nostrils." Another said — "He will be without the sense of hearing, unless I draw his ears down to his shoulders." A third said — "He will never see the light of the sun, unless I give his eyes an oblique direction." A fourth said — "He will never be upright, unless I bend his legs." A fifth said — "He will not be able to think, unless I press his brain." "Stop!" said the traveler. "Whatever God does, is well done; do not pretend to know more than He; and as He has given organs to this frail creature, allow those organs to develop themselves, to strengthen themselves by exercise, use, experience, and liberty."

God has implanted in mankind, also, all that is necessary to enable it to accomplish its destinies. There is a providential social physiology, as well as a providential human physiology. The social organs are constituted so as to enable them to develop harmoniously in the grand air of liberty. Away, then, with quacks and organizers! Away with their rings, and their chains, and their hooks, and their pincers! Away with their artificial methods! Away with their social workshops, their governmental whims, their centralization, their tariffs, their universities, their State religions, their gratuitous or monopolizing banks, their limitations, their restrictions, their moralizations, and their equalization by taxation! And now, after having vainly inflicted upon the social body so many systems, let them end where they ought to have begun — reject all systems, and make trial of liberty — of liberty, which is an act of faith in God and in His work.



Part Four: Political Commotion

The Continental Association was approved by the [First Continental Congress](#) in 1774 to boycott trade with Great Britain. The Congress hoped that economic sanctions would pressure Britain to repeal the [Intolerable Acts](#) passed by Parliament, thereby normalizing relations between the mother country and her American colonies.

The Intolerable Acts included: the [Boston Port Act](#), which closed the port of Boston until the colonists paid for the destroyed during the Boston Tea Party; the [Massachusetts Government Act](#), which cancelled Massachusetts' colonial charter and brought it under control of the British government; the [Administration of Justice Act](#), which gave the Royal governor the prerogative to transfer trials to other venues in the British Empire. [George Washington](#) called this the "Murder Act" because it allowed British officials to harass Americans and then escape justice; and the [Quartering Act](#), which applied to all of the colonies.

Journals of the Continental Congress - The Articles of Association; October 20, 1774

We, his majesty's most loyal subjects, the delegates of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties of Newcastle, Kent and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed to represent them in a continental Congress, held in the city of Philadelphia, on the 5th day of September, 1774, avowing our allegiance to his majesty, our affection and regard for our fellow-subjects in Great-Britain and elsewhere, affected with the deepest anxiety, and most alarming apprehensions, at those grievances and distresses, with which his Majesty's American subjects are oppressed; and having taken under our most serious deliberation, the state of the whole continent, find, that the present unhappy situation of our affairs is occasioned by a ruinous system of colony administration, adopted by the British ministry about the year 1763, evidently calculated for enslaving these colonies, and, with them, the British Empire. In prosecution of which system, various acts of parliament have been passed, for raising a revenue in America, for depriving the American subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger, by directing a new and illegal trial beyond the seas, for crimes alleged to have been committed in America: And in prosecution of the same system, several late, cruel, and oppressive acts have been passed, respecting the town of Boston and the Massachusetts-Bay, and also an act for extending the province of Quebec, so as to border on the western frontiers of these colonies, establishing an arbitrary government therein, and discouraging the settlement of British subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices, to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked ministry shall chuse so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives liberty, and property of his majesty's subjects, in North-America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: And, therefore, we do, for ourselves, and the inhabitants of the several colonies, whom we represent, firmly agree and associate, under the sacred ties of virtue, honour and love of our country, as follows:

1. That from and after the first day of December next, we will not import, into British America, from Great-Britain or Ireland, any goods, wares, or merchandise whatsoever, or from any other place, any such goods, wares, or merchandise, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East-India tea from any part of the world; nor any molasses, syrups, paneles, coffee, or pimento, from the British plantations or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign indigo.

2. We will neither import nor purchase, any slave imported after the first day of December next; after which time, we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

3. As a non-consumption agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree and associate, that from this day, we will not purchase or use any tea, imported on account of the East-India company, or any on which a duty hath been or shall be paid; and from and after the first day of March next, we will not purchase or use any East-India tea whatever; nor will we, nor shall any person for or under us, purchase or use any of those goods, wares, or merchandise, we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of December, except such as come under the rules and directions of the tenth article hereafter mentioned.

4. The earnest desire we have not to injure our fellow-subjects in Great-Britain, Ireland, or the West-Indies, induces us to suspend a non-exportation, until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the British parliament herein after mentioned, are not repealed, we will not directly or indirectly, export any merchandise or commodity whatsoever to Great-Britain, Ireland, or the West-Indies, except rice to Europe.

5. Such as are merchants, and use the British and Irish trade, will give orders, as soon as possible, to their factors, agents and correspondents, in Great-Britain and Ireland, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in America; and if any merchant, residing in Great-Britain or Ireland, shall directly or indirectly ship any goods, wares or merchandize, for America, in order to break the said non-importation agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not, from thenceforth, have any commercial connexion with such merchant.

6. That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said non-importation agreement, on pain of immediate dismissal from their service.

7. We will use our utmost endeavours to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as seldom as may be, especially those of the most profitable kind; nor will we export any to the West-Indies or elsewhere; and those of us, who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, on moderate terms.

8. We will, in our several stations, encourage frugality, economy, and industry, and promote agriculture, arts and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of games, cock fighting, exhibitions of shews, plays, and other expensive diversions and entertainments; and on the death of any relation or friend, none of us, or any of our families will go into any further mourning-dress, than a black crepe or ribbon on the arm or hat, for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarves at funerals.

9. Such as are venders of goods or merchandize will not take advantage of the scarcity of goods, that may be occasioned by this association, but will sell the same at the rates we have been respectively accustomed to do, for twelve months last past. -And if any vender of goods or merchandise shall sell such goods on higher terms, or shall, in any manner, or by any device whatsoever, violate or depart from this agreement, no person ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

10. In case any merchant, trader, or other person, shall import any goods or merchandize, after the first day of December, and before the first day of February next, the same ought forthwith, at the election of the owner, to be either re-shipped or delivered up to the committee of the country or town, wherein they shall be imported, to be stored at the risque of the importer, until the non-importation agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last-mentioned case, the owner or owners of such goods shall be reimbursed out of the sales, the first cost and charges, the profit, if any, to be applied towards relieving and employing such poor inhabitants of the town of Boston, as are immediate sufferers by the Boston port-bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandizes shall be imported after the said first day of February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty; and thenceforth we respectively will break off all dealings with him or her.

12. That the committee of correspondence, in the respective colonies, do frequently inspect the entries of their customhouses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this association.

13. That all manufactures of this country be sold at reasonable prices, so- that no undue advantage be taken of a future scarcity of goods.

14. And we do further agree and resolve that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country.

And we do solemnly bind ourselves and our constituents, under the ties aforesaid, to adhere to this association, until such parts of the several acts of parliament passed since the close of the

last war, as impose or continue duties on tea, wine, molasses, syrups paneles, coffee, sugar, pimento, indigo, foreign paper, glass, and painters' colours, imported into America, and extend the powers of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judge's certificate to indemnify the prosecutor from damages, that he might otherwise be liable to from a trial by his peers, require oppressive security from a claimant of ships or goods seized, before he shall be allowed to defend his property, are repealed.-And until that part of the act of the 12 G. 3. ch. 24, entitled "An act for the better securing his majesty's dock-yards magazines, ships, ammunition, and stores," by which any persons charged with committing any of the offenses therein described, in America, may be tried in any shire or county within the realm, is repealed-and until the four acts, passed the last session of parliament, viz. that for stopping the port and blocking up the harbour of Boston-that for altering the charter and government of the Massachusetts-Bay-and that which is entitled "An act for the better administration of justice, &c."-and that "for extending the limits of Quebec, &c." are repealed. And we recommend it to the provincial conventions, and to the committees in the respective colonies, to establish such farther regulations as they may think proper, for carrying into execution this association.

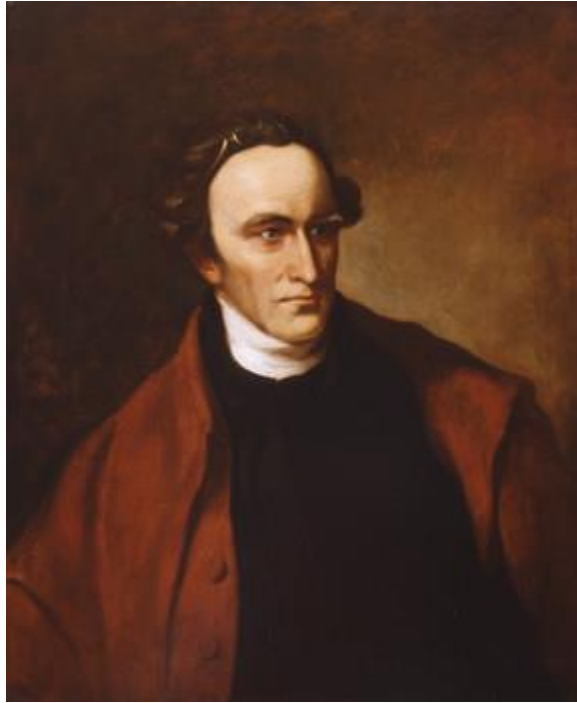
The foregoing association being determined upon by the Congress, was ordered to be subscribed by the several members thereof; and thereupon, we have hereunto set our respective names accordingly.

IN CONGRESS, PHILADELPHIA, October 20, 1774.

Signed, PEYTON RANDOLPH, President.

Source:

Journals of the Continental Congress 1774-1779
Edited from the original records in the Library of Congress
by Worthington Chauncey Ford; Chief, Division of Manuscripts.
Washington, DC : Government Printing Office, 1905.



Patrick Henry's speech to the Virginia Convention, on March 23, 1775, was intended to persuade Virginia to raise troops in anticipation of all-out war. Many Virginians were loyal to the Crown and were adamantly opposed to a military confrontation. Public opinion, however, was slowly shifting throughout the colonies in the favor of Henry's position, due in large part to the heavy handed economic, political and military actions of the King and Parliament.

Patrick Henry, March 23, 1775.

No man thinks more highly than I do of the patriotism, as well as abilities, of the very worthy gentlemen who have just addressed the House. But different men often see the same subject in different lights; and, therefore, I hope it will not be thought disrespectful to those gentlemen if, entertaining as I do opinions of a character very opposite to theirs, I shall speak forth my sentiments freely and without reserve. This is no time for ceremony. The question before the House is one of awful moment to this country. For my own part, I consider it as nothing less than a question of freedom or slavery; and in proportion to the magnitude of the subject ought to be the freedom of the debate. It is only in this way that we can hope to arrive at truth and fulfill the great responsibility which we hold to God and our country. Should I keep back my opinions at such a time, through fear of giving offense, I should consider myself as guilty of treason towards my country, and of an act of disloyalty toward the Majesty of Heaven, which I revere above all earthly kings.

Mr. President, it is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth and listen to the song of that siren till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and, having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst, and to provide for it.

I have but one lamp by which my feet are guided, and that is the lamp of experience. I know of no way of judging of the future but by the past. And judging by the past, I wish to know what there has been in the conduct of the British ministry for the last ten years to justify those hopes with which gentlemen have been pleased to solace themselves and the House. Is it that insidious smile with which our petition has been lately received? Trust it not, sir; it will prove a snare to your feet. Suffer not yourselves to be betrayed with a kiss. Ask yourselves how this gracious reception of our petition comports with those warlike preparations which cover our waters and darken our land. Are fleets and armies necessary to a work of love and reconciliation? Have we shown ourselves so unwilling to be reconciled that force must be called in to win back our love? Let us not deceive ourselves, sir. These are the implements of war and subjugation; the last arguments to which kings resort. I ask gentlemen, sir, what means this martial array, if its purpose be not to force us to submission? Can gentlemen assign any other possible motive for it? Has Great Britain any enemy, in this quarter of the world, to call for all this accumulation of navies and armies? No, sir, she has none. They are meant for us: they can be meant for no other. They are sent over to bind and rivet upon us those chains which the British ministry have been so long forging. And what have we to oppose to them? Shall we try argument? Sir, we have been trying that for the last ten years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable; but it has been all in vain. Shall we resort to entreaty and humble supplication? What terms shall we find which have not been already exhausted?

Let us not, I beseech you, sir, deceive ourselves. Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne! In vain, after these things, may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope. If we wish to be free—if we mean to preserve inviolate those inestimable privileges for which we have been so long contending—if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained—we must fight! I repeat it, sir, we must fight! An appeal to arms and to the God of hosts is all that is left us!

They tell us, sir, that we are weak; unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally

disarmed, and when a British guard shall be stationed in every house? Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? Sir, we are not weak if we make a proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us. Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave. Besides, sir, we have no election. If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery! Our chains are forged! Their clanking may be heard on the plains of Boston! The war is inevitable—and let it come! I repeat it, sir, let it come.

It is in vain, sir, to extenuate the matter. Gentlemen may cry, Peace, Peace—but there is no peace. The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!



On July 5, 1775, the Second Continental Congress issued the Olive Branch Petition, in the attempt to win King George III over to the Americans side against the British Parliament. On July 6, 1775, the day following adoption of the Olive Branch Petition, the Second Continental Congress approved the Declaration of the Causes and Necessity of Taking up Arms. King George responded to the Olive Branch Petition by declaring his own Proclamation of Rebellion on August 23, in which he declared certain elements of the American colonies in a state of “open and avowed rebellion”. He ordered a blockade to cut off the trade and supplies to the colonies and increased the deployment of troops in an attempt to repress the escalating rebellion. When the Continental Congress learned that the king was disinterested in a peaceful resolution, it decided to throw down the gauntlet and replaced the Declaration of Arms with the Declaration of Independence.

A Declaration by the Representatives of the United Colonies of North-America, Now Met in Congress at Philadelphia, Setting Forth the Causes and Necessity of Their Taking Up Arms. [July 6, 1775](1)

If it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desperate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms. - Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to sight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike barbarians. -- Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies. --Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. -- From that fatal movement, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations. -- The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and then subduing her faithful friends.

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder. -- The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations. -- Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such

decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our control or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure; we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty. -- This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho' we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned with it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects

in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to enforce due obedience to the laws and authority of the supreme legislature." -- Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their coasts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and strenuously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. -- equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favor. Parliament adopted an insidious manoeuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation. -- The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismissal, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrate, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial." -- His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that general Carelton[Carleton], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword and famine. We(2) are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. -- The latter is our choice. -- We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. -- Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. -- We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, declare, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. -- Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. -- We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any

imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it -- for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

(1) Primarily the work of Thomas Jefferson and John Dickinson.p.168 Morison, Samuel Eliot and Henry Steele Commager, William E. Leuchtenburg. The Growth of the American Republic : Volume 1. Seventh Edition. New York : Oxford University Press; 1980. (Note added by the Avalon Project). Back

(2) From this point the declaration follows Jefferson's draft. Back.

Source:

Documents Illustrative of the Formation of the Union of the American States.

Government Printing Office, 1927.

House Document No. 398.

Selected, Arranged and Indexed by Charles C. Tansill

(Copy of the first Draught by G. Me.)

A Declaration of Rights made by the
Representatives of the good People of Virginia,
assembled in full and free Convention; which
Rights do pertain to them and their posterity,
as the Basis and Foundation of Government;

1. That all men are created equally free & independent, & have
certain inherent natural Rights, of which they can not, by
any compact, deprive or divest their posterity; among which
are the Enjoyment of Life & Liberty, with the Means of acquiring &
possessing Property, & pursuing & obtaining Happiness & Safety.

2. That all Power is by God & Nature vested in, & consequently
derived from the People; That Magistrates are their Trustees &
Servants, and at all Times amenable to them.

3. That Government is or ought to be, instituted for the
common Benefit, Protection & Security of the People, Nation
or Community. Of all the various Modes & Forms of Govern-
ment that is best, which is capable of producing the greatest
Degree of Happiness & Safety, & is most effectually secured against
the Danger of mis Administration; and that whenever any Go-
vernment shall be found inadequate or contrary to these Pur-
poses, a Majority of the Community hath an insubstitutable unalien-
able & inalienable Right, to reform, alter, or abolish it, in
such

The 1776 Virginia Declaration of Rights recognizes the inherent rights of men, including the right to reform or abolish "inadequate" government.

Virginia Bill of Rights, June 1776

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

SECTION 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

SEC. 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

SEC. 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

SEC. 3. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

SEC. 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assembled, for the public good.

SEC. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

SEC. 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

SEC. 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

SEC. 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

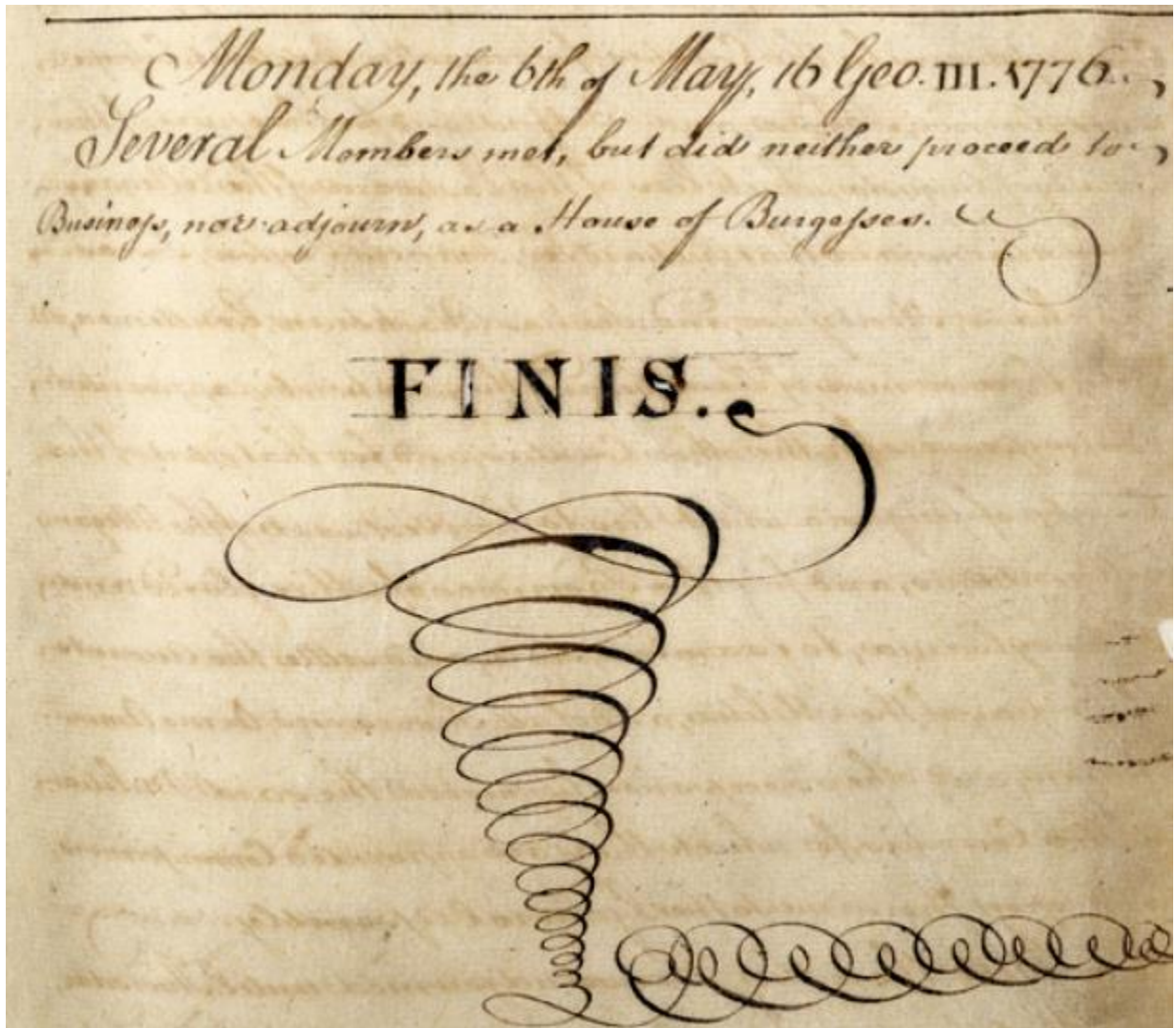
SEC. 12. That the freedom of the press is one of the great bulwarks of liberty and can never be restrained but by despotic governments.

SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

SEC. 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

SEC. 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SEC. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.



The 1776 Virginia Constitution had a twofold purpose; first, it functioned as a declaration of independence, and, second, it established the newly formed State's system of governance.

Virginia Constitution, June 1776

THE CONSTITUTION OR FORM OF GOVERNMENT, AGREED TO AND RESOLVED UPON BY THE DELEGATES AND REPRESENTATIVES OF THE SEVERAL COUNTIES AND CORPORATIONS OF VIRGINIA

Whereas George the third, King of Great Britain and Ireland, and elector of Hanover, heretofore intrusted with the exercise of the kingly office in this government, hath endeavoured to prevent, the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good:

By denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended neglecting to attend to them for many years:

By refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature:

By dissolving legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people:

When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head:

By endeavouring to prevent the population of our country, and, for that purpose, obstructing, the laws for the naturalization of foreigners:

By keeping among us, in times of peace, standing armies and ships of war:

By effecting to render the military independent of, and superior to, the civil power:

By combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation:

For quartering large bodies of armed troops among us:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever:

By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people:

By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation:

By prompting our negroes to rise in arms against us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law:

By endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence:

By transporting, at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation:

By answering our repeated petitions for redress with a repetition of injuries: And finally, by abandoning the helm of government and declaring us out of his allegiance and protection.

By which several acts of misrule, the government of this country, as formerly exercised under the crown of Great Britain, is TOTALLY DISSOLVED.

We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the (general Congress, do ordain and declare the future form of government of Virginia to be as followeth:

The legislative, executive, and judiciary department, shall be separate and distinct, so that neither exercise the powers properly belonging to the other: nor shall any person exercise the powers of more than one of them, at the same time; except that the Justices of the County (courts shall be eligible to either House of Assembly

The legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once, or oftener, every year, and shall be called, The General Assembly of Virginia. One of these shall be called, The House of Delegates, and consist of two Representatives, to be chosen for each county, and for the district of West-Augusta, annually, of such men as actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one Delegate or Representative, to be chosen annually for the city of Williamsburgh, and one for the borough of Norfolk, and a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease, as that the number of persons, having right of suffrage therein, shall have been, for the space of seven Years successively, less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a Delegate or Representative to the Assembly.

The other shall be called The Senate, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business; for whose election, the different counties shall be divided into twenty-four districts; and each county of the respective district, at the time of

the election of its Delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the Sheriffs of each county, within five days at farthest, after the last county election in the district, shall meet at some convenient place, and from the poll, so taken in their respective counties, return, as a Senator, the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes and numbered by lot. At the end of one year after the general election, the six members, elected by the first division, shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

The right of suffrage in the election of members for both Houses shall remain as exercised at present; and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election, for the supplying intermediate vacancies.

All laws shall originate in the House of Delegates, to be approved of or rejected by the Senate, or to be amended, with consent of the House of Delegates; except money-bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

A Governor, or chief magistrate, shall be chosen annually by joint ballot of both Houses (to be taken in each House respectively) deposited in the conference room; the boxes examined jointly by a committee of each House, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses, in all cases) who shall not continue in that office longer than three years successively. nor be eligible, until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary shall be settled on him, during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government, according to the laws of this Commonwealth; and shall not, under any pretence, exercise any power or prerogative, by virtue of any law, statute or custom of England. But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct: in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

Either House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly, during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

A Privy Council, or Council of State, consisting of eight members, shall be chosen, by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose, out of their own members, a President, who, in case of death, inability, or absence of the Governor from the government, shall act as Lieutenant-Governor. Four members shall be sufficient to act, and their advice and

proceedings shall be entered on record, and signed by the members present, (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy, in such matters as he shall be directed by the board to conceal. A sum of money, appropriated to that purpose, shall be divided annually among the members' in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly. Two members shall be removed, by Joint ballot of both Houses of Assembly, at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

The Delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the meantime, by joint ballot of both Houses of Assembly.

The present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, on recommendations from the respective County Courts; but the Governor and Council shall have a power of suspending any officer, and ordering a Court Martial, on complaint of misbehavior or inability, or to supply vacancies of officers, happening when in actual service.

The Governor may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country.

The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others, holding lucrative offices, and all ministers of the gospel, of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in Virginia, and Clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed, as before directed; and the Clerks, by the respective Courts. The present and future Clerks shall hold their offices during good behaviour, to be judged of, and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective Courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor. The Justices shall appoint Constables; and all fees of the aforesaid officers be regulated by law.

The Governor, when he is out of office, and others, offending against the State, either by maladministration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney-General, or such other person or persons, as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office pro tempore, or subjected to such pains or penalties as the laws shall direct.

If all or any of the Judges of the General Court should on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences above mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

Commissions and grants shall run, "In the name of the Commonwealth of Virginia," and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the Clerks of the several Courts. Indictments shall conclude, "Against the peace and dignity of the Commonwealth."

A Treasurer shall be appointed annually, by joint ballot of both Houses.

All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I. in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the Year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

In order to introduce this government, the Representatives of the people met in the convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people to continue until the last day of March next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the Speaker of either House shall issue writs for new elections.

(1) Verified from "Ordinances passed at a General Convention of Delegates and Representatives from the Several Counties and Corporations of Virginia, Held at the Capitol in the City of Williamsburg, on Monday, the 6th of May, A. D. 1776. Reprinted by a Resolution of the House of Delegates of the 24th February, 1816. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." pp. 3-6.

"The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia, held at Richmond Town, in the County of Henrico, on the 20th of March, 1775. . Re-printed by a Resolution of the House of Delegates, of the 24th February, 1810. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." 8 pp.

"The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia held at Richmond Town, in the County of Henrico, on Monday the 17th of July 1775. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Du-Val, Printers. 1816." 116 pp.

"The Proceedings of the Convention of Delegates held at the Capitol, in the city of Williamsburg, in the Colony of Virginia, On Monday, the 6th of May, 1776. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." 86 pp.

"Ordinances passed at a General Convention of Delegates and Representatives, from the several Counties and Corporations of Virginia, held at the Capitol in the City of Williamsburg, On Monday, the 6th of May, Anno-Dom. 1776. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Du-Val, Printers. 1816." 19 pp. This Declaration of Rights was framed by a Convention, composed of forty-five members of the colonial house of burgesses, which met at Williamsburgh May 6, 1776, and adopted this Declaration June 12, 1776.

This constitution was framed by the convention which issued the preceding Declaration of Rights, and was adopted June 29, 1776. It was not submitted to the people for ratification. [Back]

Source: The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America Compiled and Edited Under the Act of Congress of June 30, 1906 by Francis Newton Thorpe Washington, DC : Government Printing Office, 1909



Richard Henry Lee's resolution was designed to have the other colonies follow Virginia's lead in seceding from Great Britain.

Resolution introduced in the Continental Congress by Richard Henry Lee (Virginia) proposing a Declaration of Independence, June 7, 1776

Resolved, That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved.

That it is expedient forthwith to take the most effectual measures for forming foreign Alliances.

That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.

Source:

Documents Illustrative of the Formation of the Union of the American States.

Government Printing Office, 1927.

House Document No. 398.

Selected, Arranged and Indexed by Charles C. Tansill

IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to this separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such Principles and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let facts be submitted to a candid world. He has refused his Assent to Laws, the most wholesome and necessary for the public good. He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained, and when so suspended, he has utterly neglected to attend to them. He has refused to pass other Laws for the accommodation of large districts of People, unless those People would assent to the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of irritating the minds of those in whom a compliance with his measures was required. He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the People. He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise, the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. He has endeavored to prevent the Population of these States, for that purpose obstructing the Law for Naturalization of Strangers; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. He has created a multitude of new Offices, and sent hither swarms of Officers to harass our People, and eat out their substance. He has kept among us in times of peace, Standing Armies without the Consent of our Legislatures. He has affected to render the Military independent of and superior to the civil Power. He has combined with us to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation: For quartering large bodies of armed troops among us; For keeping us in a long time, in a state of unwarlike Armies, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States; For cutting off our Trade with all parts of the world; For imposing Taxes on us without our Consent; For depriving us in many cases, of the benefits of Trial by Jury; For transporting us beyond Seas to be tried for pretended offences; For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies; For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments; For suspending our own Legislatures, and declaring themselves invested with powers to legislate for us in all cases whatsoever. He has abdicated Government here, by declaring us out of his Protection and waging War against us. He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our People. He is at this time transporting large Armies of foreign Mercenaries to combat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. He has constrained our fellow Citizens taken Captive on the high seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. He has excited domestic insurrections amongst us, and has endeavored to bring on the Inhabitants of one part, the merciless and insatiable Savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered by insult and injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People. Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their Legislature to extend an unwarrantable Jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native Justice and Magnanimity, and we have conjured them by the ties of our common Kindred to disavow these usurpations, which would interrupt our connections and correspondence. They too have been deaf to the voice of Justice and of Consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be, Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the state of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Boston Gwinnett Lynch Morton	John Hooper	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
	Joseph Bowers	John Penn	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
John Hancock	Edward Rutledge	George Washington	John Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
	John Jay	John Jay	John Jay	John Jay	John Jay	John Jay	John Jay
George Wythe	Richard Henry Lee	Thomas Jefferson	Benjamin Franklin	John Adams	Samuel Adams	Samuel Adams	Samuel Adams
	Thomas Jefferson	Benjamin Franklin	John Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
Walter Taylor	James Wilson	John Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
	John Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
John Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams

The Declaration of Independence was an official act taken by all 13 American colonies in declaring independence from British rule. Its purpose was to explain the reasons why independence justified.

Declaration of Independence, July 4, 1776

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:

That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasions from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in our attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations which would inevitably interrupt our connections and correspondence. They too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do,

in the name and by the authority of the good people of these colonies solemnly publish and declare, That these United Colonies are, and of right ought to be, **FREE AND INDEPENDENT STATES**; that they are absolved from all allegiance to the British crown and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

[Signed by] JOHN HANCOCK [President]

New Hampshire
JOSIAH BARTLETT,
WM. WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay
SAML. ADAMS,
JOHN ADAMS,
ROBT. TREAT PAINE,
ELBRIDGE GERRY

Rhode Island
STEP. HOPKINS,
WILLIAM ELLERY.

Connecticut
ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

New York
WM. FLOYD,
PHIL. LIVINGSTON,
FRANS. LEWIS,
LEWIS MORRIS.

New Jersey
RICHD. STOCKTON,
JNO. WITHERSPOON,
FRAS. HOPKINSON,

JOHN HART,
ABRA. CLARK.

Pennsylvania
ROBT. MORRIS
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,
JAS. SMITH,
GEO. TAYLOR,
JAMES WILSON,
GEO. ROSS.

Delaware
CAESAR RODNEY,
GEO. READ,
THO. M'KEAN.

Maryland
SAMUEL CHASE,
WM. PACA,
THOS. STONE,
CHARLES CARROLL of Carrollton.

Virginia
GEORGE WYTHE,
RICHARD HENRY LEE,
TH. JEFFERSON,
BENJA. HARRISON,
THS. NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina
WM. HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina
EDWARD RUTLEDGE,
THOS. HAYWARD, JUNR.,
THOMAS LYNCH, JUNR.,
ARTHUR MIDDLETON.

Georgia
BUTTON GWINNETT,
LYMAN HALL,
GEO. WALTON.

NOTE.-Mr. Ferdinand Jefferson, Keeper of the Rolls in the Department of State, at Washington, says: " The names of the signers are spelt above as in the facsimile of the original, but the punctuation of them is not always the same; neither do the names of the States appear in the facsimile of the original. The names of the signers of each State are grouped together in the facsimile of the original, except the name of Matthew Thornton, which follows that of Oliver Wolcott."-Revised Statutes of the United States, 2d edition, 1878, p. 6.

Source:

Documents Illustrative of the Formation of the Union of the American States.

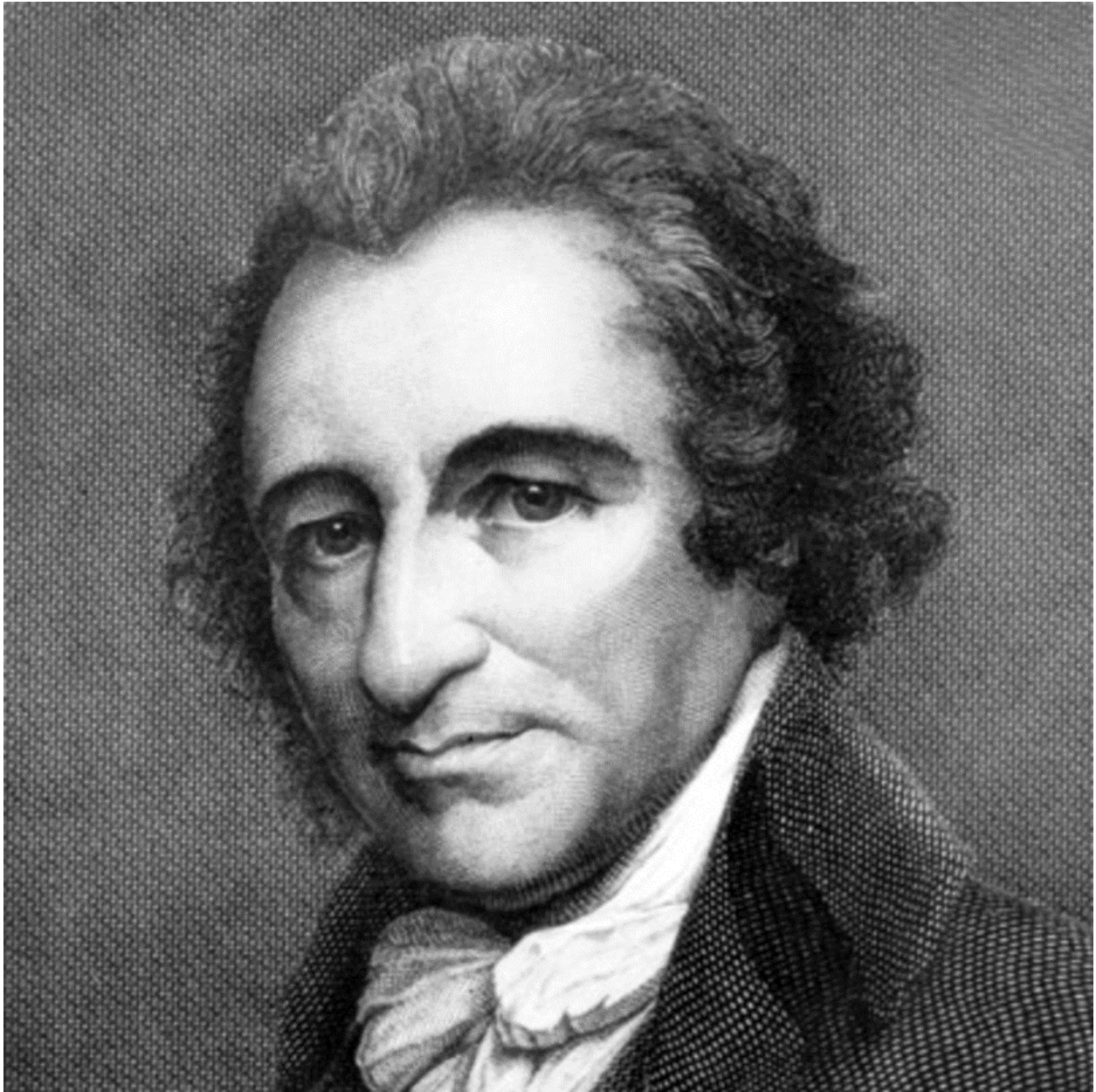
Government Printing Office, 1927.

House Document No. 398.

Selected, Arranged and Indexed by Charles C. Tansill

Part 5: Common Sense v. Plain Truth

“Common Sense” is one of the most influential pamphlets in shaping public opinion towards supporting independence. Paine came from humble origins. He was born in England, 1737, and arrived in Philadelphia in 1774. He worked as a corset maker in his teens, then as a sailor and then as a schoolteacher.



By Thomas Paine
[Published in January 1776]

Of the Origin and Design of Government in General, with Concise Remarks on the English Constitution
SOME writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness POSITIVELY by uniting our affections, the latter NEGATIVELY by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher.

Society in every state is a blessing, but Government, even in its best state, is but a necessary evil; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries BY A GOVERNMENT, which we might expect in a country WITHOUT GOVERNMENT, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform and irresistibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him, out of two evils to choose the least. Wherefore, security being the true design and end of government, it unanswerably follows that whatever form thereof appears most likely to ensure it to us, with the least expense and greatest benefit, is preferable to all others.

In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest; they will then represent the first peopling of any country, or of the world. In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto; the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but one man might labour out the common period of life without accomplishing anything; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the meantime would urge him to quit his work, and every different want would call him a different way. Disease, nay even misfortune, would be death; for, though neither might be mortal, yet either would disable him from living, and reduce him to a state in which he might rather be said to perish than to die.

Thus necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each other; but as nothing but Heaven is impregnable to vice, it will unavoidably happen that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other: and this remissness will point out the necessity of establishing some form of government to supply the defect of moral virtue.

Some convenient tree will afford them a State House, under the branches of which the whole Colony may assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of Regulations and be enforced by no other penalty than public disesteem. In this first parliament every man by natural right will have a seat.

But as the Colony increases, the public concerns will increase likewise, and the distance at which the members may be separated, will render it too inconvenient for all of them to meet on every occasion as

at first, when their number was small, their habitations near, and the public concerns few and trifling. This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those have who appointed them, and who will act in the same manner as the whole body would act were they present. If the colony continue increasing, it will become necessary to augment the number of representatives, and that the interest of every part of the colony may be attended to, it will be found best to divide the whole into convenient parts, each part sending its proper number: and that the ELECTED might never form to themselves an interest separate from the ELECTORS, prudence will point out the propriety of having elections often: because as the ELECTED might by that means return and mix again with the general body of the ELECTORS in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves. And as this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this, (not on the unmeaning name of king,) depends the STRENGTH OF GOVERNMENT, AND THE HAPPINESS OF THE GOVERNED.

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here too is the design and end of government, viz. Freedom and security. And however our eyes may be dazzled with show, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and reason will say, 'tis right.

I draw my idea of the form of government from a principle in nature which no art can overturn, viz. that the more simple any thing is, the less liable it is to be disordered, and the easier repaired when disordered; and with this maxim in view I offer a few remarks on the so much boasted constitution of England. That it was noble for the dark and slavish times in which it was erected, is granted. When the world was overrun with tyranny the least remove therefrom was a glorious rescue. But that it is imperfect, subject to convulsions, and incapable of producing what it seems to promise is easily demonstrated.

Absolute governments, (tho' the disgrace of human nature) have this advantage with them, they are simple; if the people suffer, they know the head from which their suffering springs; know likewise the remedy; and are not bewildered by a variety of causes and cures. But the constitution of England is so exceedingly complex, that the nation may suffer for years together without being able to discover in which part the fault lies; some will say in one and some in another, and every political physician will advise a different medicine.

I know it is difficult to get over local or long standing prejudices, yet if we will suffer ourselves to examine the component parts of the English Constitution, we shall find them to be the base remains of two ancient tyrannies, compounded with some new Republican materials.

First. — The remains of Monarchical tyranny in the person of the King.

Secondly. — The remains of Aristocratical tyranny in the persons of the Peers.

Thirdly. — The new Republican materials, in the persons of the Commons, on whose virtue depends the freedom of England.

The two first, by being hereditary, are independent of the People; wherefore in a CONSTITUTIONAL SENSE they contribute nothing towards the freedom of the State.

To say that the constitution of England is an UNION of three powers, reciprocally CHECKING each other, is farcical; either the words have no meaning, or they are flat contradictions.

First. — That the King it not to be trusted without being looked after; or in other words, that a thirst for absolute power is the natural disease of monarchy.

Secondly. — That the Commons, by being appointed for that purpose, are either wiser or more worthy of confidence than the Crown.

But as the same constitution which gives the Commons a power to check the King by withholding the supplies, gives afterwards the King a power to check the Commons, by empowering him to reject their other bills; it again supposes that the King is wiser than those whom it has already supposed to be wiser than him. A mere absurdity!

There is something exceedingly ridiculous in the composition of Monarchy; it first excludes a man from the means of information, yet empowers him to act in cases where the highest judgment is required. The state of a king shuts him from the World, yet the business of a king requires him to know it thoroughly; wherefore the different parts, by unnaturally opposing and destroying each other, prove the whole character to be absurd and useless.

Some writers have explained the English constitution thus: the King, say they, is one, the people another; the Peers are a house in behalf of the King, the commons in behalf of the people; but this hath all the distinctions of a house divided against itself; and though the expressions be pleasantly arranged, yet when examined they appear idle and ambiguous; and it will always happen, that the nicest construction that words are capable of, when applied to the description of something which either cannot exist, or is too incomprehensible to be within the compass of description, will be words of sound only, and though they may amuse the ear, they cannot inform the mind: for this explanation includes a previous question, viz. HOW CAME THE KING BY A POWER WHICH THE PEOPLE ARE AFRAID TO TRUST, AND ALWAYS OBLIGED TO CHECK? Such a power could not be the gift of a wise people, neither can any power, WHICH NEEDS CHECKING, be from God; yet the provision which the constitution makes supposes such a power to exist.

But the provision is unequal to the task; the means either cannot or will not accomplish the end, and the whole affair is a *Felo de se*: for as the greater weight will always carry up the less, and as all the wheels of a machine are put in motion by one, it only remains to know which power in the constitution has the most weight, for that will govern: and tho' the others, or a part of them, may clog, or, as the phrase is, check the rapidity of its motion, yet so long as they cannot stop it, their endeavours will be ineffectual: The first moving power will at last have its way, and what it wants in speed is supplied by time.

That the crown is this overbearing part in the English constitution needs not be mentioned, and that it derives its whole consequence merely from being the giver of places and pensions is self-evident; wherefore, though we have been wise enough to shut and lock a door against absolute Monarchy, we at the same time have been foolish enough to put the Crown in possession of the key.

The prejudice of Englishmen, in favour of their own government, by King, Lords and Commons, arises as much or more from national pride than reason. Individuals are undoubtedly safer in England than in some other countries: but the will of the king is as much the law of the land in Britain as in France, with this difference, that instead of proceeding directly from his mouth, it is handed to the people under the formidable shape of an act of parliament. For the fate of Charles the First hath only made kings more subtle — not more just.

Wherefore, laying aside all national pride and prejudice in favour of modes and forms, the plain truth is that IT IS WHOLLY OWING TO THE CONSTITUTION OF THE PEOPLE, AND NOT TO THE CONSTITUTION OF THE GOVERNMENT that the crown is not as oppressive in England as in Turkey.

An inquiry into the CONSTITUTIONAL ERRORS in the English form of government, is at this time highly necessary; for as we are never in a proper condition of doing justice to others, while we continue under the influence of some leading partiality, so neither are we capable of doing it to ourselves while we remain fettered by any obstinate prejudice. And as a man who is attached to a prostitute is unfitted to choose or judge of a wife, so any prepossession in favour of a rotten constitution of government will disable us from discerning a good one.

Of Monarchy and Hereditary Succession

MANKIND being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance: the distinctions of rich and poor may in a great measure be accounted for, and that without having recourse to the harsh ill-sounding names of oppression and avarice. Oppression is often the CONSEQUENCE, but seldom or never the MEANS of riches; and tho' avarice will preserve a man from being necessitously poor, it generally makes him too timorous to be wealthy.

But there is another and great distinction for which no truly natural or religious reason can be assigned, and that is the distinction of men into KINGS and SUBJECTS. Male and female are the distinctions of nature, good and bad the distinctions of Heaven; but how a race of men came into the world so exalted above the rest, and distinguished like some new species, is worth inquiring into, and whether they are the means of happiness or of misery to mankind.

In the early ages of the world, according to the scripture chronology there were no kings; the consequence of which was, there were no wars; it is the pride of kings which throws mankind into confusion. Holland, without a king hath enjoyed more peace for this last century than any of the monarchical governments in Europe. Antiquity favours the same remark; for the quiet and rural lives of the first Patriarchs have a snappy something in them, which vanishes when we come to the history of Jewish royalty.

Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom. It was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. The Heathens paid divine honours to their deceased kings, and the Christian World hath improved on the plan by doing the same to their living ones. How impious is the title of sacred Majesty applied to a worm, who in the midst of his splendor is crumbling into dust!

As the exalting one man so greatly above the rest cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture; for the will of the Almighty as declared by Gideon, and the prophet Samuel, expressly disapproves of government by Kings.

All anti-monarchical parts of scripture have been very smoothly glossed over in monarchical governments, but they undoubtedly merit the attention of countries which have their governments yet to form. "Render unto Cesar the things which are Cesar's" is the scripture doctrine of courts, yet it is no support of monarchical government, for the Jews at that time were without a king, and in a state of vassalage to the Romans.

Near three thousand years passed away, from the Mosaic account of the creation, till the Jews under a national delusion requested a king. Till then their form of government (except in extraordinary cases where the Almighty interposed) was a kind of Republic, administered by a judge and the elders of the tribes. Kings they had none, and it was held sinful to acknowledge any being under that title but the Lord of Hosts. And when a man seriously reflects on the idolatrous homage which is paid to the persons of kings, he need not wonder that the Almighty, ever jealous of his honour, should disapprove a form of government which so impiously invades the prerogative of Heaven.

Monarchy is ranked in scripture as one of the sins of the Jews, for which a curse in reserve is denounced against them. The history of that transaction is worth attending to.

The children of Israel being oppressed by the Midianites, Gideon marched against them with a small army, and victory thro' the divine interposition decided in his favour. The Jews, elate with success, and attributing it to the generalship of Gideon, proposed making him a king, saying, "Rule thou over us, thou and thy son, and thy son's son." Here was temptation in its fullest extent; not a kingdom only, but an hereditary one; but Gideon in the piety of his soul replied, "I will not rule over you, neither shall my son rule over you. THE LORD SHALL RULE OVER YOU." Words need not be more explicit: Gideon doth not decline the honour, but denieth their right to give it; neither doth he compliment them with invented declarations of his thanks, but in the positive style of a prophet charges them with disaffection to their proper Sovereign, the King of Heaven.

About one hundred and thirty years after this, they fell again into the same error. The hankering which the Jews had for the idolatrous customs of the Heathens, is something exceedingly unaccountable; but so it was, that laying hold of the misconduct of Samuel's two sons, who were intrusted with some secular concerns, they came in an abrupt and clamorous manner to Samuel, saying, "Behold thou art old, and they sons walk not in thy ways, now make us a king to judge us like all the other nations." And here we cannot observe but that their motives were bad, viz. that they might be LIKE unto other nations, i. e. the Heathens, whereas their true glory lay in being as much UNLIKE them as possible. "But the thing displeased Samuel when they said, give us a King to judge us; and Samuel prayed unto the Lord, and the Lord said unto Samuel, hearken unto the voice of the people in all that they say unto thee, for they have not rejected thee, but they have rejected me, THAT I SHOULD NOT REIGN OVER THEM. According to all the works which they have done since the day that I brought them up out of Egypt even unto this day, wherewith they have forsaken me, and served other Gods: so do they also unto thee. Now therefore hearken unto their voice, howbeit, protest solemnly unto them and show them the manner of the King that shall reign over them," i.e. not of any particular King, but the general manner of the Kings of the earth whom Israel was so eagerly copying after. And notwithstanding the great distance of time and difference of manners, the character is still in fashion. "And Samuel told all the words of the Lord unto the people, that asked of him a King. And he said, This shall be the manner of the King that shall reign over you. He will take your sons and appoint them for himself for his chariots and to be his horsemen, and some shall run before his chariots" (this description agrees with the present mode of impressing men) "and he will appoint him captains over thousands and captains over fifties, will set them to clear his ground and to reap his harvest, and to make his instruments of war, and instruments

of his chariots, And he will take your daughters to be confectionaries, and to be cooks, and to be bakers” (this describes the expense and luxury as well as the oppression of Kings) “and he will take your fields and your vineyards, and your olive yards, even the best of them, and give them to his servants. And he will take the tenth of your seed, and of your vineyards, and give them to his officers and to his servants” (by which we see that bribery, corruption, and favouritism, are the standing vices of Kings) “and he will take the tenth of your men servants, and your maid servants, and your goodliest young men, and your asses, and put them to his work: and he will take the tenth of your sheep, and ye shall be his servants, and ye shall cry out in that day because of your king which ye shall have chosen, AND THE LORD WILL NOT HEAR YOU IN THAT DAY.” This accounts for the continuation of Monarchy; neither do the characters of the few good kings which have lived since, either sanctify the title, or blot out the sinfulness of the origin; the high encomium of David takes no notice of him OFFICIALLY AS A KING, but only as a MAN after God’s own heart. “Nevertheless the people refused to obey the voice of Samuel, and they said, Nay, but we will have a king over us, that we may be like all the nations, and that our king may judge us, and go out before us and fight our battles.” Samuel continued to reason with them but to no purpose; he set before them their ingratitude, but all would not avail; and seeing them fully bent on their folly, he cried out, “I will call unto the Lord, and he shall send thunder and rain” (which was then a punishment, being in the time of wheat harvest) “that ye may perceive and see that your wickedness is great which ye have done in the sight of the Lord, IN ASKING YOU A KING. So Samuel called unto the Lord, and the Lord sent thunder and rain that day, and all the people greatly feared the Lord and Samuel. And all the people said unto Samuel, Pray for thy servants unto the Lord thy God that we die not, for WE HAVE ADDED UNTO OUR SINS THIS EVIL, TO ASK A KING.” These portions of scripture are direct and positive. They admit of no equivocal construction. That the Almighty hath here entered his protest against monarchical government is true, or the scripture is false. And a man hath good reason to believe that there is as much of kingcraft as priestcraft in withholding the scripture from the public in popish countries. For monarchy in every instance is the popery of government.

To the evil of monarchy we have added that of hereditary succession; and as the first is a degradation and lessening of ourselves, so the second, claimed as a matter of right, is an insult and imposition on posterity. For all men being originally equals, no one by birth could have a right to set up his own family in perpetual preference to all others for ever, and tho’ himself might deserve some decent degree of honours of his contemporaries, yet his descendants might be far too unworthy to inherit them. One of the strongest natural proofs of the folly of hereditary right in Kings, is that nature disapproves it, otherwise she would not so frequently turn it into ridicule, by giving mankind an ASS FOR A LION.

Secondly, as no man at first could possess any other public honors than were bestowed upon him, so the givers of those honors could have no power to give away the right of posterity, and though they might say “We choose you for our head,” they could not without manifest injustice to their children say “that your children and your children’s children shall reign over ours forever.” Because such an unwise, unjust, unnatural compact might (perhaps) in the next succession put them under the government of a rogue or a fool. Most wise men in their private sentiments have ever treated hereditary right with contempt; yet it is one of those evils which when once established is not easily removed: many submit from fear, others from superstition, and the more powerful part shares with the king the plunder of the rest.

This is supposing the present race of kings in the world to have had an honorable origin: whereas it is more than probable, that, could we take off the dark covering of antiquity and trace them to their first rise, we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners of pre-eminence in subtilty obtained him the title of chief among plunderers;

and who by increasing in power and extending his depredations, overawed the quiet and defenseless to purchase their safety by frequent contributions. Yet his electors could have no idea of giving hereditary right to his descendants, because such a perpetual exclusion of themselves was incompatible with the free and restrained principles they professed to live by. Wherefore, hereditary succession in the early ages of monarchy could not take place as a matter of claim, but as something casual or complemental; but as few or no records were extant in those days, the traditionary history stuff'd with fables, it was very easy, after the lapse of a few generations, to trump up some superstitious tale conveniently timed, Mahomet-like, to cram hereditary right down the throats of the vulgar. Perhaps the disorders which threatened, or seemed to threaten, on the decease of a leader and the choice of a new one (for elections among ruffians could not be very orderly) induced many at first to favour hereditary pretensions; by which means it happened, as it hath happened since, that what at first was submitted to as a convenience was afterwards claimed as a right.

England since the conquest hath known some few good monarchs, but groaned beneath a much larger number of bad ones: yet no man in his senses can say that their claim under William the Conqueror is a very honourable one. A French bastard landing with an armed Banditti and establishing himself king of England against the consent of the natives, is in plain terms a very paltry rascally original. It certainly hath no divinity in it. However it is needless to spend much time in exposing the folly of hereditary right; if there are any so weak as to believe it, let them promiscuously worship the Ass and the Lion, and welcome. I shall neither copy their humility, nor disturb their devotion.

Yet I should be glad to ask how they suppose kings came at first? The question admits but of three answers, viz. either by lot, by election, or by usurpation. If the first king was taken by lot, it establishes a precedent for the next, which excludes hereditary succession. Saul was by lot, yet the succession was not hereditary, neither does it appear from that transaction that there was any intention it ever should. If the first king of any country was by election, that likewise establishes a precedent for the next; for to say, that the right of all future generations is taken away, by the act of the first electors, in their choice not only of a king but of a family of kings for ever, hath no parallel in or out of scripture but the doctrine of original sin, which supposes the free will of all men lost in Adam; and from such comparison, and it will admit of no other, hereditary succession can derive no glory. for as in Adam all sinned, and as in the first electors all men obeyed; as in the one all mankind were subjected to Satan, and in the other to sovereignty; as our innocence was lost in the first, and our authority in the last; and as both disable us from re-assuming some former state and privilege, it unanswerably follows that original sin and hereditary succession are parallels. Dishonourable rank! inglorious connection! yet the most subtle sophist cannot produce a juster simile.

As to usurpation, no man will be so hardy as to defend it; and that William the Conqueror was an usurper is a fact not to be contradicted. The plain truth is, that the antiquity of English monarchy will not bear looking into.

But it is not so much the absurdity as the evil of hereditary succession which concerns mankind. Did it ensure a race of good and wise men it would have the seal of divine authority, but as it opens a door to the FOOLISH, the WICKED, and the IMPROPER, it hath in it the nature of oppression. Men who look upon themselves born to reign, and others to obey, soon grow insolent. Selected from the rest of mankind, their minds are early poisoned by importance; and the world they act in differs so materially from the world at large, that they have but little opportunity of knowing its true interests, and when they succeed in the government are frequently the most ignorant and unfit of any throughout the dominions.

Another evil which attends hereditary succession is, that the throne is subject to be possessed by a minor at any age; all which time the regency acting under the cover of a king have every opportunity and inducement to betray their trust. The same national misfortune happens when a king worn out with age and infirmity enters the last stage of human weakness. In both these cases the public becomes a prey to every miscreant who can tamper successfully with the follies either of age or infancy.

The most plausible plea which hath ever been offered in favor of hereditary succession is, that it preserves a nation from civil wars; and were this true, it would be weighty; whereas it is the most bare-faced falsity ever imposed upon mankind. The whole history of England disowns the fact. Thirty kings and two minors have reigned in that distracted kingdom since the conquest, in which time there has been (including the revolution) no less than eight civil wars and nineteen Rebellions. Wherefore instead of making for peace, it makes against it, and destroys the very foundation it seems to stand upon.

The contest for monarchy and succession, between the houses of York and Lancaster, laid England in a scene of blood for many years. Twelve pitched battles besides skirmishes and sieges were fought between Henry and Edward. Twice was Henry prisoner to Edward, who in his turn was prisoner to Henry. And so uncertain is the fate of war and the temper of a nation, when nothing but personal matters are the ground of a quarrel, that Henry was taken in triumph from a prison to a palace, and Edward obliged to fly from a palace to a foreign land; yet, as sudden transitions of temper are seldom lasting, Henry in his turn was driven from the throne, and Edward re-called to succeed him. The parliament always following the strongest side.

This contest began in the reign of Henry the Sixth, and was not entirely extinguished till Henry the Seventh, in whom the families were united. Including a period of 67 years, viz. from 1422 to 1489.

In short, monarchy and succession have laid (not this or that kingdom only) but the world in blood and ashes. 'Tis a form of government which the word of God bears testimony against, and blood will attend it.

If we enquire into the business of a King, we shall find that in some countries they may have none; and after sauntering away their lives without pleasure to themselves or advantage to the nation, withdraw from the scene, and leave their successors to tread the same idle round. In absolute monarchies the whole weight of business civil and military lies on the King; the children of Israel in their request for a king urged this plea, "that he may judge us, and go out before us and fight our battles." But in countries where he is neither a Judge nor a General, as in England, a man would be puzzled to know what IS his business.

The nearer any government approaches to a Republic, the less business there is for a King. It is somewhat difficult to find a proper name for the government of England. Sir William Meredith calls it a Republic; but in its present state it is unworthy of the name, because the corrupt influence of the Crown, by having all the places in its disposal, hath so effectually swallowed up the power, and eaten out the virtue of the House of Commons (the Republican part in the constitution) that the government of England is nearly as monarchical as that of France or Spain. Men fall out with names without understanding them. For 'tis the Republican and not the Monarchical part of the Constitution of England which Englishmen glory in, viz. the liberty of choosing an House of Commons from out of their own body — and it is easy to see that when Republican virtues fail, slavery ensues. Why is the constitution of England sickly, but because monarchy hath poisoned the Republic; the Crown hath engrossed the Commons.

In England a King hath little more to do than to make war and give away places; which, in plain terms, is to empoverish the nation and set it together by the ears. A pretty business indeed for a man to be allowed eight hundred thousand sterling a year for, and worshipped into the bargain! Of more worth is one honest man to society, and in the sight of God, than all the crowned ruffians that ever lived.

Thoughts on the Present State of American Affairs

IN the following pages I offer nothing more than simple facts, plain arguments, and common sense: and have no other preliminaries to settle with the reader, than that he will divest himself of prejudice and prepossession, and suffer his reason and his feelings to determine for themselves that he will put on, or rather that he will not put off, the true character of a man, and generously enlarge his views beyond the present day.

Volumes have been written on the subject of the struggle between England and America. Men of all ranks have embarked in the controversy, from different motives, and with various designs; but all have been ineffectual, and the period of debate is closed. Arms as the last resource decide the contest; the appeal was the choice of the King, and the Continent has accepted the challenge.

It hath been reported of the late Mr. Pelham (who tho' an able minister was not without his faults) that on his being attacked in the House of Commons on the score that his measures were only of a temporary kind, replied, "THEY WILL LAST MY TIME." Should a thought so fatal and unmanly possess the Colonies in the present contest, the name of ancestors will be remembered by future generations with detestation.

The Sun never shined on a cause of greater worth. 'Tis not the affair of a City, a County, a Province, or a Kingdom; but of a Continent — of at least one-eighth part of the habitable Globe. 'Tis not the concern of a day, a year, or an age; posterity are virtually involved in the contest, and will be more or less affected even to the end of time, by the proceedings now. Now is the seed-time of Continental union, faith and honour. The least fracture now will be like a name engraved with the point of a pin on the tender rind of a young oak; the wound would enlarge with the tree, and posterity read in it full grown characters.

By referring the matter from argument to arms, a new era for politics is struck — a new method of thinking hath arisen. All plans, proposals, &c. prior to the nineteenth of April, i.e. to the commencement of hostilities, are like the almanacks of the last year; which tho' proper then, are superseded and useless now. Whatever was advanced by the advocates on either side of the question then, terminated in one and the same point, viz. a union with Great Britain; the only difference between the parties was the method of effecting it; the one proposing force, the other friendship; but it hath so far happened that the first hath failed, and the second hath withdrawn her influence.

As much hath been said of the advantages of reconciliation, which, like an agreeable dream, hath passed away and left us as we were, it is but right that we should examine the contrary side of the argument, and enquire into some of the many material injuries which these Colonies sustain, and always will sustain, by being connected with and dependent on Great Britain. To examine that connection and dependence, on the principles of nature and common sense, to see what we have to trust to, if separated, and what we are to expect, if dependent.

I have heard it asserted by some, that as America has flourished under her former connection with Great Britain, the same connection is necessary towards her future happiness, and will always have the same effect. Nothing can be more fallacious than this kind of argument. We may as well assert that because a child has thrived upon milk, that it is never to have meat, or that the first twenty years of our lives is to become a precedent for the next twenty. But even this is admitting more than is true; for I answer roundly that America would have flourished as much, and probably much more, had no European power taken any notice of her. The commerce by which she hath enriched herself are the necessaries of life, and will always have a market while eating is the custom of Europe.

But she has protected us, say some. That she hath engrossed us is true, and defended the Continent at our expense as well as her own, is admitted; and she would have defended Turkey from the same motive, viz. — for the sake of trade and dominion.

Alas! we have been long led away by ancient prejudices and made large sacrifices to superstition. We have boasted the protection of Great Britain, without considering, that her motive was INTEREST not ATTACHMENT; and that she did not protect us from OUR ENEMIES on OUR ACCOUNT; but from HER ENEMIES on HER OWN ACCOUNT, from those who had no quarrel with us on any OTHER ACCOUNT, and who will always be our enemies on the SAME ACCOUNT. Let Britain waive her pretensions to the Continent, or the Continent throw off the dependence, and we should be at peace with France and Spain, were they at war with Britain. The miseries of Hanover last war ought to warn us against connections.

It hath lately been asserted in parliament, that the Colonies have no relation to each other but through the Parent Country, i.e. that Pennsylvania and the Jerseys and so on for the rest, are sister Colonies by the way of England; this is certainly a very roundabout way of proving relationship, but it is the nearest and only true way of proving enmity (or enemyship, if I may so call it.) France and Spain never were, nor perhaps ever will be, our enemies as AMERICANS, but as our being the SUBJECTS OF GREAT BRITAIN.

But Britain is the parent country, say some. Then the more shame upon her conduct. Even brutes do not devour their young, nor savages make war upon their families. Wherefore, the assertion, if true, turns to her reproach; but it happens not to be true, or only partly so, and the phrase PARENT OR MOTHER COUNTRY hath been jesuitically adopted by the King and his parasites, with a low papistical design of gaining an unfair bias on the credulous weakness of our minds. Europe, and not England, is the parent country of America. This new World hath been the asylum for the persecuted lovers of civil and religious liberty from EVERY PART of Europe. Hither have they fled, not from the tender embraces of the mother, but from the cruelty of the monster; and it is so far true of England, that the same tyranny which drove the first emigrants from home, pursues their descendants still.

In this extensive quarter of the globe, we forget the narrow limits of three hundred and sixty miles (the extent of England) and carry our friendship on a larger scale; we claim brotherhood with every European Christian, and triumph in the generosity of the sentiment.

It is pleasant to observe by what regular gradations we surmount the force of local prejudices, as we enlarge our acquaintance with the World. A man born in any town in England divided into parishes, will naturally associate most with his fellow parishioners (because their interests in many cases will be common) and distinguish him by the name of NEIGHBOR; if he meet him but a few miles from home, he drops the narrow idea of a street, and salutes him by the name of TOWNSMAN; if he travel out of the county and meet him in any other, he forgets the minor divisions of street and town, and calls him

COUNTRYMAN, i.e. COUNTYMAN; but if in their foreign excursions they should associate in France, or any other part of EUROPE, their local remembrance would be enlarged into that of ENGLISHMEN. And by a just parity of reasoning, all Europeans meeting in America, or any other quarter of the globe, are COUNTRYMEN; for England, Holland, Germany, or Sweden, when compared with the whole, stand in the same places on the larger scale, which the divisions of street, town, and county do on the smaller ones; Distinctions too limited for Continental minds. Not one third of the inhabitants, even of this province, [Pennsylvania], are of English descent. Wherefore, I reprobate the phrase of Parent or Mother Country applied to England only, as being false, selfish, narrow and ungenerous.

But, admitting that we were all of English descent, what does it amount to? Nothing. Britain, being now an open enemy, extinguishes every other name and title: and to say that reconciliation is our duty, is truly farcical. The first king of England, of the present line (William the Conqueror) was a Frenchman, and half the peers of England are descendants from the same country; wherefore, by the same method of reasoning, England ought to be governed by France.

Much hath been said of the united strength of Britain and the Colonies, that in conjunction they might bid defiance to the world. But this is mere presumption; the fate of war is uncertain, neither do the expressions mean anything; for this continent would never suffer itself to be drained of inhabitants, to support the British arms in either Asia, Africa, or Europe.

Besides, what have we to do with setting the world at defiance? Our plan is commerce, and that, well attended to, will secure us the peace and friendship of all Europe; because it is the interest of all Europe to have America a free port. Her trade will always be a protection, and her barrenness of gold and silver secure her from invaders.

I challenge the warmest advocate for reconciliation to show a single advantage that this continent can reap by being connected with Great Britain. I repeat the challenge; not a single advantage is derived. Our corn will fetch its price in any market in Europe, and our imported goods must be paid for buy them where we will.

But the injuries and disadvantages which we sustain by that connection, are without number; and our duty to mankind at large, as well as to ourselves, instruct us to renounce the alliance: because, any submission to, or dependence on, Great Britain, tends directly to involve this Continent in European wars and quarrels, and set us at variance with nations who would otherwise seek our friendship, and against whom we have neither anger nor complaint. As Europe is our market for trade, we ought to form no partial connection with any part of it. It is the true interest of America to steer clear of European contentions, which she never can do, while, by her dependence on Britain, she is made the makeweight in the scale of British politics.

Europe is too thickly planted with Kingdoms to be long at peace, and whenever a war breaks out between England and any foreign power, the trade of America goes to ruin, BECAUSE OF HER CONNECTION WITH BRITAIN. The next war may not turn out like the last, and should it not, the advocates for reconciliation now will be wishing for separation then, because neutrality in that case would be a safer convoy than a man of war. Every thing that is right or reasonable pleads for separation. The blood of the slain, the weeping voice of nature cries, 'TIS TIME TO PART. Even the distance at which the Almighty hath placed England and America is a strong and natural proof that the authority of the one over the other, was never the design of Heaven. The time likewise at which the Continent was discovered, adds weight to the argument, and the manner in which it was peopled, increases the force

of it. The Reformation was preceded by the discovery of America: As if the Almighty graciously meant to open a sanctuary to the persecuted in future years, when home should afford neither friendship nor safety.

The authority of Great Britain over this continent, is a form of government, which sooner or later must have an end: And a serious mind can draw no true pleasure by looking forward, under the painful and positive conviction that what he calls "the present constitution" is merely temporary. As parents, we can have no joy, knowing that this government is not sufficiently lasting to ensure any thing which we may bequeath to posterity: And by a plain method of argument, as we are running the next generation into debt, we ought to do the work of it, otherwise we use them meanly and pitifully. In order to discover the line of our duty rightly, we should take our children in our hand, and fix our station a few years farther into life; that eminence will present a prospect which a few present fears and prejudices conceal from our sight.

Though I would carefully avoid giving unnecessary offence, yet I am inclined to believe, that all those who espouse the doctrine of reconciliation, may be included within the following descriptions. Interested men, who are not to be trusted, weak men who CANNOT see, prejudiced men who will not see, and a certain set of moderate men who think better of the European world than it deserves; and this last class, by an ill-judged deliberation, will be the cause of more calamities to this Continent than all the other three.

It is the good fortune of many to live distant from the scene of present sorrow; the evil is not sufficiently brought to their doors to make them feel the precariousness with which all American property is possessed. But let our imaginations transport us a few moments to Boston; that seat of wretchedness will teach us wisdom, and instruct us for ever to renounce a power in whom we can have no trust. The inhabitants of that unfortunate city who but a few months ago were in ease and affluence, have now no other alternative than to stay and starve, or turn out to beg. Endangered by the fire of their friends if they continue within the city and plundered by the soldiery if they leave it, in their present situation they are prisoners without the hope of redemption, and in a general attack for their relief they would be exposed to the fury of both armies.

Men of passive tempers look somewhat lightly over the offences of Great Britain, and, still hoping for the best, are apt to call out, "Come, come, we shall be friends again for all this." But examine the passions and feelings of mankind: bring the doctrine of reconciliation to the touchstone of nature, and then tell me whether you can hereafter love, honour, and faithfully serve the power that hath carried fire and sword into your land? If you cannot do all these, then are you only deceiving yourselves, and by your delay bringing ruin upon posterity. Your future connection with Britain, whom you can neither love nor honour, will be forced and unnatural, and being formed only on the plan of present convenience, will in a little time fall into a relapse more wretched than the first. But if you say, you can still pass the violations over, then I ask, hath your house been burnt? Hath your property been destroyed before your face? Are your wife and children destitute of a bed to lie on, or bread to live on? Have you lost a parent or a child by their hands, and yourself the ruined and wretched survivor? If you have not, then are you not a judge of those who have. But if you have, and can still shake hands with the murderers, then are you unworthy the name of husband, father, friend or lover, and whatever may be your rank or title in life, you have the heart of a coward, and the spirit of a sycophant.

This is not inflaming or exaggerating matters, but trying them by those feelings and affections which nature justifies, and without which, we should be incapable of discharging the social duties of life, or

enjoying the felicities of it. I mean not to exhibit horror for the purpose of provoking revenge, but to awaken us from fatal and unmanly slumbers, that we may pursue determinately some fixed object. It is not in the power of Britain or of Europe to conquer America, if she do not conquer herself by delay and timidity. The present winter is worth an age if rightly employed, but if lost or neglected, the whole continent will partake of the misfortune; and there is no punishment which that man will not deserve, be he who, or what, or where he will, that may be the means of sacrificing a season so precious and useful.

It is repugnant to reason, to the universal order of things to all examples from former ages, to suppose, that this continent can longer remain subject to any external power. The most sanguine in Britain does not think so. The utmost stretch of human wisdom cannot, at this time, compass a plan short of separation, which can promise the continent even a year's security. Reconciliation is now a falacious dream. Nature hath deserted the connexion, and Art cannot supply her place. For, as Milton wisely expresses, "never can true reconcilment grow where wounds of deadly hate have pierced so deep."

Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and only tended to convince us, that nothing flatters vanity, or confirms obstinacy in Kings more than repeated petitioning — and nothing hath contributed more than that very measure to make the Kings of Europe absolute: Witness Denmark and Sweden. Wherefore, since nothing but blows will do, for God's sake, let us come to a final separation, and not leave the next generation to be cutting throats, under the violated unmeaning names of parent and child.

To say, they will never attempt it again is idle and visionary, we thought so at the repeal of the stamp act, yet a year or two undeceived us; as well may we suppose that nations, which have been once defeated, will never renew the quarrel.

As to government matters, it is not in the power of Britain to do this continent justice: The business of it will soon be too weighty, and intricate, to be managed with any tolerable degree of convenience, by a power, so distant from us, and so very ignorant of us; for if they cannot conquer us, they cannot govern us. To be always running three or four thousand miles with a tale or a petition, waiting four or five months for an answer, which when obtained requires five or six more to explain it in, will in a few years be looked upon as folly and childishness — There was a time when it was proper, and there is a proper time for it to cease.

Small islands not capable of protecting themselves, are the proper objects for kingdoms to take under their care; but there is something very absurd, in supposing a continent to be perpetually governed by an island. In no instance hath nature made the satellite larger than its primary planet, and as England and America, with respect to each other, reverses the common order of nature, it is evident they belong to different systems: England to Europe, America to itself.

I am not induced by motives of pride, party, or resentment to espouse the doctrine of separation and independence; I am clearly, positively, and conscientiously persuaded that it is the true interest of this continent to be so; that every thing short of that is mere patchwork, that it can afford no lasting felicity, — that it is leaving the sword to our children, and shrinking back at a time, when, a little more, a little farther, would have rendered this continent the glory of the earth.

As Britain hath not manifested the least inclination towards a compromise, we may be assured that no terms can be obtained worthy the acceptance of the continent, or any ways equal to the expense of blood and treasure we have been already put to.

The object, contended for, ought always to bear some just proportion to the expense. The removal of North, or the whole detestable junto, is a matter unworthy the millions we have expended. A temporary stoppage of trade, was an inconvenience, which would have sufficiently balanced the repeal of all the acts complained of, had such repeals been obtained; but if the whole continent must take up arms, if every man must be a soldier, it is scarcely worth our while to fight against a contemptible ministry only. Dearly, dearly, do we pay for the repeal of the acts, if that is all we fight for; for in a just estimation, it is as great a folly to pay a Bunker-hill price for law, as for land. As I have always considered the independency of this continent, as an event, which sooner or later must arrive, so from the late rapid progress of the continent to maturity, the event could not be far off. Wherefore, on the breaking out of hostilities, it was not worth the while to have disputed a matter, which time would have finally redressed, unless we meant to be in earnest; otherwise, it is like wasting an estate on a suit at law, to regulate the trespasses of a tenant, whose lease is just expiring. No man was a warmer wisher for reconciliation than myself, before the fatal nineteenth of April 1775, but the moment the event of that day was made known, I rejected the hardened, sullen tempered Pharaoh of England for ever; and disdain the wretch, that with the pretended title of FATHER OF HIS PEOPLE, can unfeelingly hear of their slaughter, and composedly sleep with their blood upon his soul.

But admitting that matters were now made up, what would be the event? I answer, the ruin of the continent. And that for several reasons.

First. The powers of governing still remaining in the hands of the king, he will have a negative over the whole legislation of this continent. And as he hath shewn himself such an inveterate enemy to liberty, and discovered such a thirst for arbitrary power; is he, or is he not, a proper man to say to these colonies, "You shall make no laws but what I please." And is there any inhabitant in America so ignorant, as not to know, that according to what is called the present constitution, that this continent can make no laws but what the king gives it leave to; and is there any man so unwise, as not to see, that (considering what has happened) he will suffer no law to be made here, but such as suit his purpose. We may be as effectually enslaved by the want of laws in America, as by submitting to laws made for us in England. After matters are made up (as it is called) can there be any doubt, but the whole power of the crown will be exerted, to keep this continent as low and humble as possible? Instead of going forward we shall go backward, or be perpetually quarrelling or ridiculously petitioning. — We are already greater than the king wishes us to be, and will he not hereafter endeavour to make us less? To bring the matter to one point. Is the power who is jealous of our prosperity, a proper power to govern us? Whoever says No to this question is an independent, for independency means no more, than, whether we shall make our own laws, or, whether the king, the greatest enemy this continent hath, or can have, shall tell us, "there shall be no laws but such as I like."

But the king you will say has a negative in England; the people there can make no laws without his consent. In point of right and good order, there is something very ridiculous, that a youth of twenty-one (which hath often happened) shall say to several millions of people, older and wiser than himself, I forbid this or that act of yours to be law. But in this place I decline this sort of reply, though I will never cease to expose the absurdity of it, and only answer, that England being the King's residence, and America not so, make quite another case. The king's negative here is ten times more dangerous and fatal than it can be in England, for there he will scarcely refuse his consent to a bill for putting England

into as strong a state of defence as possible, and in America he would never suffer such a bill to be passed.

America is only a secondary object in the system of British politics, England consults the good of this country, no farther than it answers her own purpose. Wherefore, her own interest leads her to suppress the growth of ours in every case which doth not promote her advantage, or in the least interferes with it. A pretty state we should soon be in under such a second-hand government, considering what has happened! Men do not change from enemies to friends by the alteration of a name: And in order to shew that reconciliation now is a dangerous doctrine, I affirm, that it would be policy in the king at this time, to repeal the acts for the sake of reinstating himself in the government of the provinces; in order that HE MAY ACCOMPLISH BY CRAFT AND SUBTILITY, IN THE LONG RUN, WHAT HE CANNOT DO BY FORCE AND VIOLENCE IN THE SHORT ONE. Reconciliation and ruin are nearly related.

Secondly. That as even the best terms, which we can expect to obtain, can amount to no more than a temporary expedient, or a kind of government by guardianship, which can last no longer than till the colonies come of age, so the general face and state of things, in the interim, will be unsettled and unpromising. Emigrants of property will not choose to come to a country whose form of government hangs but by a thread, and who is every day tottering on the brink of commotion and disturbance; and numbers of the present inhabitants would lay hold of the interval, to dispose of their effects, and quit the continent.

But the most powerful of all arguments, is, that nothing but independence, i. e. a continental form of government, can keep the peace of the continent and preserve it inviolate from civil wars. I dread the event of a reconciliation with Britain now, as it is more than probable, that it will followed by a revolt somewhere or other, the consequences of which may be far more fatal than all the malice of Britain.

Thousands are already ruined by British barbarity; (thousands more will probably suffer the same fate.) Those men have other feelings than us who have nothing suffered. All they now possess is liberty, what they before enjoyed is sacrificed to its service, and having nothing more to lose, they disdain submission. Besides, the general temper of the colonies, towards a British government, will be like that of a youth, who is nearly out of his time; they will care very little about her. And a government which cannot preserve the peace, is no government at all, and in that case we pay our money for nothing; and pray what is it that Britain can do, whose power will be wholly on paper, should a civil tumult break out the very day after reconciliation? I have heard some men say, many of whom I believe spoke without thinking, that they dreaded an independence, fearing that it would produce civil wars. It is but seldom that our first thoughts are truly correct, and that is the case here; for there are ten times more to dread from a patched up connexion than from independence. I make the sufferers case my own, and I protest, that were I driven from house and home, my property destroyed, and my circumstances ruined, that as a man, sensible of injuries, I could never relish the doctrine of reconciliation, or consider myself bound thereby.

The colonies have manifested such a spirit of good order and obedience to continental government, as is sufficient to make every reasonable person easy and happy on that head. No man can assign the least pretence for his fears, on any other grounds, that such as are truly childish and ridiculous, viz. that one colony will be striving for superiority over another.

Where there are no distinctions there can be no superiority, perfect equality affords no temptation. The republics of Europe are all (and we may say always) in peace. Holland and Swisserland are without wars,

foreign or domestic: Monarchical governments, it is true, are never long at rest; the crown itself is a temptation to enterprising ruffians at home; and that degree of pride and insolence ever attendant on regal authority, swells into a rupture with foreign powers, in instances, where a republican government, by being formed on more natural principles, would negotiate the mistake.

If there is any true cause of fear respecting independence, it is because no plan is yet laid down. Men do not see their way out — Wherefore, as an opening into that business, I offer the following hints; at the same time modestly affirming, that I have no other opinion of them myself, than that they may be the means of giving rise to something better. Could the straggling thoughts of individuals be collected, they would frequently form materials for wise and able men to improve into useful matter.

Let the assemblies be annual, with a President only. The representation more equal. Their business wholly domestic, and subject to the authority of a Continental Congress.

Let each colony be divided into six, eight, or ten, convenient districts, each district to send a proper number of delegates to Congress, so that each colony send at least thirty. The whole number in Congress will be least 390. Each Congress to sit and to choose a president by the following method. When the delegates are met, let a colony be taken from the whole thirteen colonies by lot, after which, let the whole Congress choose (by ballot) a president from out of the delegates of that province. In the next Congress, let a colony be taken by lot from twelve only, omitting that colony from which the president was taken in the former Congress, and so proceeding on till the whole thirteen shall have had their proper rotation. And in order that nothing may pass into a law but what is satisfactorily just, not less than three fifths of the Congress to be called a majority. — He that will promote discord, under a government so equally formed as this, would have joined Lucifer in his revolt.

But as there is a peculiar delicacy, from whom, or in what manner, this business must first arise, and as it seems most agreeable and consistent that it should come from some intermediate body between the governed and the governors, that is, between the Congress and the people, let a CONTINENTAL CONFERENCE be held, in the following manner, and for the following purpose.

A committee of twenty-six members of Congress, viz. two for each colony. Two members for each House of Assembly, or Provincial Convention; and five representatives of the people at large, to be chosen in the capital city or town of each province, for, and in behalf of the whole province, by as many qualified voters as shall think proper to attend from all parts of the province for that purpose; or, if more convenient, the representatives may be chosen in two or three of the most populous parts thereof. In this conference, thus assembled, will be united, the two grand principles of business, knowledge and power. The members of Congress, Assemblies, or Conventions, by having had experience in national concerns, will be able and useful counsellors, and the whole, being empowered by the people, will have a truly legal authority.

The conferring members being met, let their business be to frame a CONTINENTAL CHARTER, or Charter of the United Colonies; (answering to what is called the Magna Charta of England) fixing the number and manner of choosing members of Congress, members of Assembly, with their date of sitting, and drawing the line of business and jurisdiction between them: (Always remembering, that our strength is continental, not provincial:) Securing freedom and property to all men, and above all things, the free exercise of religion, according to the dictates of conscience; with such other matter as is necessary for a charter to contain. Immediately after which, the said Conference to dissolve, and the bodies which shall

be chosen conformable to the said charter, to be the legislators and governors of this continent for the time being: Whose peace and happiness, may God preserve, Amen.

Should any body of men be hereafter delegated for this or some similar purpose, I offer them the following extracts from that wise observer on governments Dragonetti. "The science" says he "of the politician consists in fixing the true point of happiness and freedom. Those men would deserve the gratitude of ages, who should discover a mode of government that contained the greatest sum of individual happiness, with the least national expense."

"Dragonetti on virtue and rewards."

But where says some is the King of America? I'll tell you Friend, he reigns above, and doth not make havoc of mankind like the Royal Brute of Britain. Yet that we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve as monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is.

A government of our own is our natural right: And when a man seriously reflects on the precariousness of human affairs, he will become convinced, that it is infinitely wiser and safer, to form a constitution of our own in a cool deliberate manner, while we have it in our power, than to trust such an interesting event to time and chance. If we omit it now, some, Massanello may hereafter arise, who laying hold of popular disquietudes, may collect together the desperate and discontented, and by assuming to themselves the powers of government, may sweep away the liberties of the continent like a deluge. Should the government of America return again into the hands of Britain, the tottering situation of things, will be a temptation for some desperate adventurer to try his fortune; and in such a case, what relief can Britain give? Ere she could hear the news, the fatal business might be done; and ourselves suffering like the wretched Britons under the oppression of the Conqueror. Ye that oppose independence now, ye know not what ye do; ye are opening a door to eternal tyranny, by keeping vacant the seat of government. There are thousands, and tens of thousands, who would think it glorious to expel from the continent, that barbarous and hellish power, which hath stirred up the Indians and Negroes to destroy us, the cruelty hath a double guilt, it is dealing brutally by us, and treacherously by them.

To talk of friendship with those in whom our reason forbids us to have faith, and our affections wounded through a thousand pores instruct us to detest, is madness and folly. Every day wears out the little remains of kindred between us and them, and can there be any reason to hope, that as the relationship expires, the affection will increase, or that we shall agree better, when we have ten times more and greater concerns to quarrel over than ever?

Ye that tell us of harmony and reconciliation, can ye restore to us the time that is past? Can ye give to prostitution its former innocence? Neither can ye reconcile Britain and America. The last cord now is broken, the people of England are presenting addresses against us. There are injuries which nature cannot forgive; she would cease to be nature if she did. As well can the lover forgive the ravisher of his mistress, as the continent forgive the murders of Britain. The Almighty hath implanted in us these unextinguishable feelings for good and wise purposes. They are the guardians of his image in our hearts.

They distinguish us from the herd of common animals. The social compact would dissolve, and justice be extirpated from the earth, or have only a casual existence were we callous to the touches of affection. The robber, and the murderer, would often escape unpunished, did not the injuries which our tempers sustain, provoke us into justice.

O ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her. — Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind.

Of the Present Ability of America: with some Miscellaneous Reflections

I HAVE never met with a man, either in England or America, who hath not confessed his opinion, that a separation between the countries would take place one time or other: And there is no instance in which we have shown less judgment, than in endeavoring to describe, what we call, the ripeness or fitness of the continent for independence.

As all men allow the measure, and vary only in their opinion of the time, let us, in order to remove mistakes, take a general survey of things, and endeavor if possible to find out the VERY time. But I need not go far, the inquiry ceases at once, for the TIME HATH FOUND US. The general concurrence, the glorious union of all things, proves the fact.

'Tis not in numbers but in unity that our great strength lies: yet our present numbers are sufficient to repel the force of all the world. The Continent hath at this time the largest body of armed and disciplined men of any power under Heaven: and is just arrived at that pitch of strength, in which no single colony is able to support itself, and the whole, when united, is able to do any thing. Our land force is more than sufficient, and as to Naval affairs, we cannot be insensible that Britain would never suffer an American man of war to be built, while the Continent remained in her hands. Wherefore, we should be no forwarder an hundred years hence in that branch than we are now; but the truth is, we should be less so, because the timber of the Country is every day diminishing, and that which will remain at last, will be far off or difficult to procure.

Were the Continent crowded with inhabitants, her sufferings under the present circumstances would be intolerable. The more seaport-towns we had, the more should we have both to defend and to lose. Our present numbers are so happily proportioned to our wants, that no man need be idle. The diminution of trade affords an army, and the necessities of an army create a new trade.

Debts we have none: and whatever we may contract on this account will serve as a glorious memento of our virtue. Can we but leave posterity with a settled form of government, an independent constitution of its own, the purchase at any price will be cheap. But to expend millions for the sake of getting a few vile acts repealed, and routing the present ministry only, is unworthy the charge, and is using posterity with the utmost cruelty; because it is leaving them the great work to do, and a debt upon their backs from which they derive no advantage. Such a thought's unworthy a man of honour, and is the true characteristic of a narrow heart and a piddling politician.

The debt we may contract doth not deserve our regard if the work be but accomplished. No nation ought to be without a debt. A national debt is a national bond; and when it bears no interest, is in no case a grievance. Britain is oppressed with a debt of upwards of one hundred and forty millions sterling, for which she pays upwards of four millions interest. And as a compensation for her debt, she has a large

navy; America is without a debt, and without a navy; yet for the twentieth part of the English national debt, could have a navy as large again. The navy of England is not worth at this time more than three millions and a half sterling. . .

No country on the globe is so happily situated, or so internally capable of raising a fleet as America. Tar, timber, iron, and cordage are her natural produce. We need go abroad for nothing. Whereas the Dutch, who make large profits by hiring out their ships of war to the Spaniards and Portuguese, are obliged to import most of the materials they use. We ought to view the building a fleet as an article of commerce, it being the natural manufactory of this country. 'Tis the best money we can lay out. A navy when finished is worth more than it cost: And is that nice point in national policy, in which commerce and protection are united. Let us build; if we want them not, we can sell; and by that means replace our paper currency with ready gold and silver.

In point of manning a fleet, people in general run into great errors; it is not necessary that one-fourth part should be sailors. The Terrible privateer, captain Death, stood the hottest engagement of any ship last war, yet had not twenty sailors on board, though her complement of men was upwards of two hundred. A few able and social sailors will soon instruct a sufficient number of active landmen in the common work of a ship. Wherefore we never can be more capable of beginning on maritime matters than now, while our timber is standing, our fisheries blocked up, and our sailors and shipwrights out of employ. Men of war, of seventy and eighty guns, were built forty years ago in New England, and why not the same now? Ship building is America's greatest pride, and in which she will, in time, excel the whole world. The great empires of the east are mainly inland, and consequently excluded from the possibility of rivalling her. Africa is in a state of barbarism; and no power in Europe hath either such an extent of coast, or such an internal supply of materials. Where nature hath given the one, she hath withheld the other; to America only hath she been liberal to both. The vast empire of Russia is almost shut out from the sea; wherefore her boundless forests, her tar, iron and cordage are only articles of commerce.

In point of safety, ought we to be without a fleet? We are not the little people now which we were sixty years ago; at that time we might have trusted our property in the streets, or fields rather, and slept securely without locks or bolts to our doors and windows. The case is now altered, and our methods of defence ought to improve with our increase of property. A common pirate, twelve months ago, might have come up the Delaware, and laid the city of Philadelphia under contribution for what sum he pleased; and the same might have happened to other places. Nay, any daring fellow, in a brig of fourteen or sixteen guns, might have robbed the whole Continent, and carried off half a million of money. These are circumstances which demand our attention, and point out the necessity of naval protection.

Some perhaps will say, that after we have made it up with Britain, she will protect us. Can they be so unwise as to mean that she will keep a navy in our harbors for that purpose? Common sense will tell us that the power which hath endeavoured to subdue us, is of all others the most improper to defend us. Conquest may be effected under the pretence of friendship; and ourselves, after a long and brave resistance, be at last cheated into slavery. And if her ships are not to be admitted into our harbours, I would ask, how is she going to protect us? A navy three or four thousand miles off can be of little use, and on sudden emergencies, none at all. Wherefore if we must hereafter protect ourselves, why not do it for ourselves? Why do it for another?

The English list of ships of war is long and formidable, but not a tenth part of them are at any time fit for service, numbers of them are not in being; yet their names are pompously continued in the list; if only a

plank be left of the ship; and not a fifth part of such as are fit for service can be spared on any one station at one time. The East and West Indies, Mediterranean, Africa, and other parts, over which Britain extends her claim, make large demands upon her navy. From a mixture of prejudice and inattention we have contracted a false notion respecting the navy of England, and have talked as if we should have the whole of it to encounter at once, and for that reason supposed that we must have one as large; which not being instantly practicable, has been made use of by a set of disguised Tories to discourage our beginning thereon. Nothing can be further from truth than this; for if America had only a twentieth part of the naval force of Britain, she would be by far an over-match for her; because, as we neither have, nor claim any foreign dominion, our whole force would be employed on our own coast, where we should, in the long run, have two to one the advantage of those who had three or four thousand miles to sail over before they could attack us, and the same distance to return in order to refit and recruit. And although Britain, by her fleet, hath a check over our trade to Europe, we have as large a one over her trade to the West Indies, which, by laying in the neighborhood of the Continent, lies entirely at its mercy.

Some method might be fallen on to keep up a naval force in time of peace, if we should judge it necessary to support a constant navy. If premiums were to be given to merchants to build and employ in their service ships mounted with twenty, thirty, forty, or fifty guns (the premiums to be in proportion to the loss of bulk to the merchant), fifty or sixty of those ships, with a few guardships on constant duty, would keep up a sufficient navy, and that without burdening ourselves with the evil so loudly complained of in England, of suffering their fleet in time of peace to lie rotting in the docks. To unite the sinews of commerce and defence is sound policy; for when our strength and our riches play into each other's hand, we need fear no external enemy.

In almost every article of defence we abound. Hemp flourishes even to rankness so that we need not want cordage. Our iron is superior to that of other countries. Our small arms equal to any in the world. Cannon we can cast at pleasure. Saltpetre and gunpowder we are every day producing. Our knowledge is hourly improving. Resolution is our inherent character, and courage hath never yet forsaken us. Wherefore, what is it that we want? Why is it that we hesitate? From Britain we can expect nothing but ruin. If she is once admitted to the government of America again, this Continent will not be worth living in. Jealousies will be always arising; insurrections will be constantly happening; and who will go forth to quell them? Who will venture his life to reduce his own countrymen to a foreign obedience? The difference between Pennsylvania and Connecticut, respecting some unlocated lands, shows the insignificance of a British government, and fully proves that nothing but Continental authority can regulate Continental matters.

Another reason why the present time is preferable to all others is, that the fewer our numbers are, the more land there is yet unoccupied, which, instead of being lavished by the king on his worthless dependents, may be hereafter applied, not only to the discharge of the present debt, but to the constant support of government. No nation under Heaven hath such an advantage as this.

The infant state of the Colonies, as it is called, so far from being against, is an argument in favour of independence. We are sufficiently numerous, and were we more so we might be less united. 'Tis a matter worthy of observation that the more a country is peopled, the smaller their armies are. In military numbers, the ancients far exceeded the moderns; and the reason is evident, for trade being the consequence of population, men became too much absorbed thereby to attend to anything else. Commerce diminishes the spirit both of patriotism and military defence. And history sufficiently informs us that the bravest achievements were always accomplished in the non-age of a nation. With the

increase of commerce England hath lost its spirit. The city of London, notwithstanding its numbers, submits to continued insults with the patience of a coward. The more men have to lose, the less willing are they to venture. The rich are in general slaves to fear, and submit to courtly power with the trembling duplicity of a spaniel.

Youth is the seed-time of good habits as well in nations as in individuals. It might be difficult, if not impossible, to form the Continent into one government half a century hence. The vast variety of interests, occasioned by an increase of trade and population, would create confusion. Colony would be against colony. Each being able would scorn each other's assistance; and while the proud and foolish gloried in their little distinctions the wise would lament that the union had not been formed before. Wherefore the present time is the true time for establishing it. The intimacy which is contracted in infancy, and the friendship which is formed in misfortune, are of all others the most lasting and unalterable. Our present union is marked with both these characters; we are young, and we have been distressed; but our concord hath withstood our troubles, and fixes a memorable era for posterity to glory in.

The present time, likewise, is that peculiar time which never happens to a nation but once, viz., the time of forming itself into a government. Most nations have let slip the opportunity, and by that means have been compelled to receive laws from their conquerors, instead of making laws for themselves. First, they had a king, and then a form of government; whereas the articles or charter of government should be formed first, and men delegated to execute them afterwards; but from the errors of other nations let us learn wisdom, and lay hold of the present opportunity — TO BEGIN GOVERNMENT AT THE RIGHT END.

When William the Conqueror subdued England, he gave them law at the point of the sword; and, until we consent that the seat of government in America be legally and authoritatively occupied, we shall be in danger of having it filled by some fortunate ruffian, who may treat us in the same manner, and then, where will be our freedom? Where our property?

As to religion, I hold it to be the indispensable duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith. Let a man throw aside that narrowness of soul, that selfishness of principle, which the niggards of all professions are so unwilling to part with, and he will be at once delivered of his fears on that head. Suspicion is the companion of mean souls, and the bane of all good society. For myself, I fully and conscientiously believe that it is the will of the Almighty that there should be a diversity of religious opinions among us. It affords a larger field for our Christian kindness; were we all of one way of thinking, our religious dispositions would want matter for probation; and on this liberal principle I look on the various denominations among us to be like children of the same family, differing only in what is called their Christian names.

In page [97] I threw out a few thoughts on the propriety of a Continental Charter (for I only presume to offer hints, not plans) and in this place I take the liberty of re-mentioning the subject, by observing that a charter is to be understood as a bond of solemn obligation, which the whole enters into, to support the right of every separate part, whether of religion, professional freedom, or property. A firm bargain and a right reckoning make long friends.

I have heretofore likewise mentioned the necessity of a large and equal representation; and there is no political matter which more deserves our attention. A small number of electors, or a small number of

representatives, are equally dangerous. But if the number of the representatives be not only small, but unequal, the danger is increased. As an instance of this, I mention the following: when the petition of the associators was before the House of Assembly of Pennsylvania, twenty-eight members only were present; all the Bucks county members, being eight, voted against it, and had seven of the Chester members done the same, this whole province had been governed by two counties only; and this danger it is always exposed to. The unwarrantable stretch likewise, which that house made in their last sitting, to gain an undue authority over the delegates of that province, ought to warn the people at large how they trust power out of their own hands. A set of instructions for their delegates were put together, which in point of sense and business would have dishonoured a school-boy, and after being approved by a few, a very few, without doors, were carried into the house, and there passed IN BEHALF OF THE WHOLE COLONY; whereas, did the whole colony know with what ill will that house had entered on some necessary public measures, they would not hesitate a moment to think them unworthy of such a trust.

Immediate necessity makes many things convenient, which if continued would grow into oppressions. Expedience and right are different things. When the calamities of America required a consultation, there was no method so ready, or at that time so proper, as to appoint persons from the several houses of assembly for that purpose; and the wisdom with which they have proceeded hath preserved this Continent from ruin. But as it is more than probable that we shall never be without a CONGRESS, every well wisher to good order must own that the mode for choosing members of that body deserves consideration. And I put it as a question to those who make a study of mankind, whether representation and election is not too great a power for one and the same body of men to possess? When we are planning for posterity, we ought to remember that virtue is not hereditary.

It is from our enemies that we often gain excellent maxims, and are frequently surprised into reason by their mistakes. Mr. Cornwall (one of the Lords of the Treasury) treated the petition of the New York Assembly with contempt, because THAT house, he said, consisted but of twenty-six members, which trifling number, he argued, could not with decency be put for the whole. We thank him for his involuntary honesty.

To CONCLUDE, however strange it may appear to some, or however unwilling they may be to think so, matters not, but many strong and striking reasons may be given to show that nothing can settle our affairs so expeditiously as an open and determined declaration for independence. Some of which are,

First. — It is the custom of Nations, when any two are at war, for some other powers, not engaged in the quarrel, to step in as mediators, and bring about the preliminaries of a peace; But while America calls herself the subject of Great Britain, no power, however well disposed she may be, can offer her mediation. Wherefore, in our present state we may quarrel on for ever.

Secondly. — It is unreasonable to suppose that France or Spain will give us any kind of assistance, if we mean only to make use of that assistance for the purpose of repairing the breach, and strengthening the connection between Britain and America; because, those powers would be sufferers by the consequences.

Thirdly. — While we profess ourselves the subjects of Britain, we must, in the eyes of foreign nations, be considered as Rebels. The precedent is somewhat dangerous to their peace, for men to be in arms under the name of subjects; we, on the spot, can solve the paradox; but to unite resistance and subjection requires an idea much too refined for common understanding.

Fourthly. — Were a manifesto to be published, and despatched to foreign Courts, setting forth the miseries we have endured, and the peaceful methods which we have ineffectually used for redress; declaring at the same time that not being able longer to live happily or safely under the cruel disposition of the British Court, we had been driven to the necessity of breaking off all connections with her; at the same time, assuring all such Courts of our peaceable disposition towards them, and of our desire of entering into trade with them; such a memorial would produce more good effects to this Continent than if a ship were freighted with petitions to Britain.

Under our present denomination of British subjects, we can neither be received nor heard abroad; the custom of all Courts is against us, and will be so, until by an independence we take rank with other nations.

These proceedings may at first seem strange and difficult, but like all other steps which we have already passed over, will in a little time become familiar and agreeable; and until an independence is declared, the Continent will feel itself like a man who continues putting off some unpleasant business from day to day, yet knows it must be done, hates to set about it, wishes it over, and is continually haunted with the thoughts of its necessity.

James Chalmers was born in Scotland in 1727. At the age of thirteen immigrated to the British West Indies and became wealthy. In 1760 he arrived in Maryland, purchased land and continued to amass wealth and exerted economic, social and political influence. One year after writing "Plain Truth", he became a Lieutenant Colonel of the First Battalion of Maryland Loyalists.



Plain Truth
[a response to Thomas Paine's
"Common Sense."]

March 1776
by James Chalmers (Candidus)

INTRODUCTION

IF indignant at the Doctrine contained in the Pamphlet, entitled COMMON SENSE: I have expressed myself, in the following Observations, with some ardor; I entreat the Reader to impute my indignation, to honest zeal against the Author's Insidious Tenets. Animated and

impelled by every inducement of the Human Heart; I love, and (if I dare so express myself,) I adore my Country. Passionately devoted to true Liberty; I glow with the purest flame of Patriotism. Silver'd with age as I am, if I know myself, my humble Sword shall not be wanting to my Country; (if the most Honorable Terms are not tendered by the British Nation) to whose Sacred Cause, I am most fervently devoted. The judicious Reader, will not impute my honest, tho' bold Remarks, to unfriendly designs against my Children ---- against my Country; but to abhorrence of Independency; which if effected, would inevitably plunge our once pre-eminently envied Country into Ruin, Horror, and Desolation.

I HAVE now before me the Pamphlet, entitled COMMON SENSE; on which I shall remark with freedom and candour.

His [Paine's] first indecent attack is against the English constitution; which with all its imperfections, is, and ever will be the pride and envy of mankind. To this panegyric involuntarily our author subscribes, by granting individuals to be safer in England, than in any other part of Europe. He indeed insidiously attributes this pre-eminent excellency, to the constitution of the people, rather than to our excellent constitution. To such contemptible subterfuge is our Author reduced. I would ask him, why did not the constitution of the people afford them superior safety, in the reign of Richard the Third, Henry the Eighth, and other tyrannic princes? Many pages might indeed be filled with encomiums bestowed on our excellent constitution, by illustrious authors of different nations.

This beautiful system (according to MONTESQUIEU) our constitution is a compound of Monarchy, Aristocracy, and Democracy. But it is often said, that the Sovereign, by honours and appointments, influences the Commons. The profound and elegant HUME agitating this question, thinks, to this circumstance, we are in part indebted for our supreme felicity; since without such controul in the Crown, our Constitution would immediately degenerate into Democracy; a Government, which in the sequel, I hope to prove ineligible. Were I asked marks of the best government, and the purpose of political society, I would reply, the increase, preservation, and prosperity of its members, in no quarter of the Globe, are those marks so certainly to be found, as in Great Britain, and her dependencies. After our Author has employed several pages, to break the mounds of society by debasing Monarchs: He says, "The plain truth is, that the antiquity of English Monarchy will not bear looking into." HUME treating of the original contract, has the following melancholy, but sensible observation, "Yet reason tells us, that there is no property in durable objects, such as lands, and houses, when carefully examined, in passing from hand to hand, but must in some period, have been founded in fraud and injustice. The necessities of human society, neither in private or public life, will allow of such an accurate enquiry; and there is no virtue or moral duty, but what may, with facility, be refined away, if we indulge a false philosophy, in sifting and scrutinizing, by every captious rule of logic, in every light or position in which it may be placed."

I will humbly attempt to describe good Kings by the following unerring rule. The best Princes are constantly calumniated by the envenomed tongues and pens of the most worthless of their subjects. For this melancholy truth, do I appeal to the testimony of impartial historians, and long experience. The many unmerited insults offered to our gracious Sovereign; by the unprincipled [John] Wilkes, and others down to this late Author;

will forever disgrace humanity. For he says, "that monarchy was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. It is the pride of Kings which throws mankind into confusion: In short, continues this Author, monarchy and succession, have laid not this or that kingdom only, but the world in blood and ashes." How deplorably wretched the condition of mankind, could they believe such execrable flagitious jargon. Unhappily indeed, mankind in every age are susceptible of delusion; but surely our Author's poison carries its antidote with it. Attentive to the spirit of his publication, we fancy ourselves in the barbarous fifteenth century: in which period our Author would have figured with his "Common Sense ---- and blood will attend it."

After his terrible anathema against our venerable constitution, and monarchy; let us briefly examine a democratical state; and see whether or not it is a government less sanguinary. This government is extremely plausible, and indeed flattering to the pride of mankind. The demagogues therefore, to seduce the people into their criminal designs ever hold up democracy to them: although conscious it never did, nor ever will answer in practice. If we believe a great Author, "There never existed, nor ever will exist a real democracy in the World." If we examine the republics of Greece and Rome, we ever find them in a state of war domestic or foreign. Our Author therefore makes no mention of these ancient States. The excellent Montesquieu declares, "that a democracy supposes the concurrence of a number of circumstances rarely united. In the first place, it is requisite that the state itself should be of small extent; so that the people might be easily assembled and personally known to each other. Secondly, the simplicity of their manners, should be such as to prevent a multiplicity of affairs, and perplexity in discussing them: And thirdly, there should subsist a great degree of equality between them, in point of right and authority: Lastly, there should be little or no luxury, for luxury must either be the effect of wealth, or it must make it necessary. It corrupts at once, both rich and poor: The one, by the possession, and the other, by the want of it." To this may be added continues the same Author, "that no government is so subject to CIVIL WARS, and INTESTINE COMMOTIONS, as that of the democratical or popular form; because, no other tends so strongly and so constantly to alter, nor requires so much vigilance, and fortitude to preserve it from alteration. It is indeed, in such a constitution, particularly, that a Citizen should always be armed with fortitude, constancy; and should every day, in the sincerity of his heart, guard against corruption, arising either from selfishness in himself, or in his compatriots; for if it once enters into public transactions, to root it out afterwards would be miraculous.

After impotently attacking our Sovereign; and the constitution: He contradicts the voice of all mankind, by declaring, that America "would have flourished as much, and probably much more, had no European power taken any notice of her."

If he means, that had this Continent been unexplored, the original inhabitants would have been happier: For once, I agree with him. Previous to the settlement of these Provinces by our Ancestors, the kingdom of France was convulsed by religious phrenzy. This, and Sebastian Cabot's prior discovery, perhaps, happily afforded the people of England, an opportunity of locating these Provinces. At length, peace being restored to France, by her Hero, Henry the Fourth: His nation in turn, were seized with the rage of colonizing. Finding the English claimed the Provinces on the Atlantic; they appropriated the snowbanks of Canada, which we dare not suppose, they would have preferred to these fertile provinces, had not the prior occupancy, and power of England interfered. I hope it will not be denied,

that the notice taken of us, at this time by an European Power, was rather favourable for us. -- Certain it is, had not England then taken notice of us, these delectable Provinces would now appertain to France; and the people of New England, horrid to think, would now be counting their beads. Some years after the era in question, the civil wars intervening in England, afforded to the Swedes and Dutch, a footing on this Continent. Charles the Second being restored; England reviving her claim, rendered abortive the Swedish pretensions; and by conquest, and granting Surinam to the Dutch, procured the cession of their usurpation, now New York. I do indeed confess, my incapacity to discern the injury sustained by this second "notice taken of us, by an European Power;" in default of which intervention, the Swedes, to this hour, would have retained their settlement, now the famed Pennsylvania; and the Dutch, consequently, had retained theirs. Sometime after this period, the people of New England were employed, in framing and executing laws, so intolerant and sanguinary, that to us, they seem adapted for devils, not men.

Indeed it is worthy of note, that the inhabitants of Jamaica, Barbadoes, and Virginia, at that very time, enacted laws, breathing the spirit of humanity, and such as men could bear. Soon after the period in question, arrived the great and good WILLIAM PENN, with his philosophic people called Quakers; together with toleration, industry, and permanent credit. The people of England, encouraged by the extension of their laws and commerce to those colonies, powerfully assisted our merchants and planters, insomuch, that our settlements increased rapidly, and thrived apace. It may be affirmed, that from this period, until the present unhappy hour; no part of humankind, ever experienced more perfect felicity. Voltaire indeed says, that if ever the Golden Age existed, it was in Pennsylvania.

France disgusted with the unhappy situation of her American Colonies, had long meditated the conquest of one of our middle provinces. To accomplish this purpose, she extended a line of forts on our frontiers, and actually fortified the place now called Pittsburgh. Justly alarmed by these encroachments in the hour of our distress, we called aloud on Great Britain for assistance, nor was she deaf to our cries.

I shall humbly endeavour to shew, that our author shamefully misrepresents facts, is ignorant of the true state of Great Britain and her Colonies, utterly unqualified for the arduous task, he has presumptuously assumed; and ardently intent on seducing us to that precipice on which himself stands trembling. To elucidate my strictures, I must with fidelity expose the circumstances of Great Britain and her colonies. If therefore, in the energy of description, I unfold certain bold and honest truths with simplicity, the judicious reader will remember, that true knowledge of our situation, is as essential to our safety, as ignorance thereof may endanger it. In the English provinces, exclusive of negroe and other slaves, we have one hundred and sixty thousand; or one hundred and seventy thousand men capable of bearing arms. If we deduct the people called Quakers, Anabaptists, and other religionists averse to arms; a considerable part of the emigrants, and those having a grateful predilection for the ancient constitution and parent state, we shall certainly reduce the first number to sixty or seventy thousand men. Now admitting those equal to the Roman legions, can we suppose them capable of defending against the power of Britain, a country nearly twelve hundred miles extending on the ocean. Suppose our troops assembled in New England, if the Britons see not fit to assail them, they haste to and desolate our other provinces, which eventually would reduce New England. If by dividing our forces, we pretend to defend our provinces, we also are infallibly undone. Our most

fertile provinces, filled with unnumbered domestic enemies, slaves, intersected by navigable rivers, everywhere accessible to the fleets and armies of Britain, can make no defence. If without the medium of passion and prejudice, we view our other provinces, half armed, destitute of money and a navy: We must confess, that no power ever engaged such POTENT ANTAGONISTS, under such peculiar circumstances of infelicity. In the better days of Rome, she permitted no regular troops to defend her. Men destitute of property she admitted not into her militia, (her only army). I have been extremely concerned at the separation of the Connecticut men from our army. It augur'd not an ardent enthusiasm for liberty and glory. We still have an army before Boston, and I should be extremely happy to hear substantial proofs of their glory. I am still hopeful of great things from our army before Boston, when joined by the regiments now forming, which WANT OF BREAD will probably soon fill. Notwithstanding the predilection I have for my countrymen, I remark with grief, that hitherto our troops have displayed but few marks of Spartan or Roman enthusiasm. In the sincerity of my heart, I adjure the reader to believe, that no person is more sensibly afflicted by hearing the enemies of America remark, that no General ever fell singly and so ingloriously unrevenged before the inauspicious affair of Quebec. I am under no doubt, however, that we shall become as famed for martial courage, as any nation ever the sun beheld.

With the utmost deference to the honorable Congress, I do not view the most distant gleam of aid from foreign powers. The princes alone, capable of succouring us, are the Sovereigns of France and Spain. If according to our Author, we possess an eighth part of the habitable globe, and actually have a check on the West India commerce of England; the French indigo and other valuable West India commodities, and the Spanish galeons, are in great jeopardy from our power. The French and Spaniards are therefore wretched politicians, if they do not assist England, in reducing her colonies to obedience. ---Pleasantry apart! Can we be so deluded, to expect aid from those princes, which inspiring their subjects with a relish for liberty, might eventually shake their arbitrary thrones.--Natural avowed enemies to our sacred cause: Will they cherish, will they support the flame of liberty in America? Ardently intent on extinguishing its latent dying sparks in their respective dominions. Can we believe that those princes will offer an example so dangerous to their subjects and colonies, by aiding those provinces to independence? If independent, aggrandized by infinite numbers from every part of Europe, this Continent would rapidly attain power astonishing to imagination. Soon, very soon would we be conditioned to conquer Mexico, and all their West India settlements, which to annoy, or possess, we indeed are most happily situated. Simple and obvious as these truths are, can they be unknown to the people and princes of Europe? Say, ye friends of liberty and mankind, would no danger accrue from an army of French and Spaniards in the bosom of America?

Let us now briefly view the pre-eminently envied state of Great Britain. If we regard the power of Britain, unembarrassed with Continental connections, and the political balance, we may justly pronounce her what our author does, AMERICA; -- "A match for all Europe." Amazing were the efforts of England, in the war of Queen Ann, when little benefitted by colony commerce, and e'er she had availed herself of the courage, good sense, and numbers of the people of Scotland and Ireland.

That England then prescribed laws to Europe, will be long remembered. Last war, her glory was, if possible, more eminently exalted; in every quarter of the globe did victory hover

round her armies and navies, and her fame re-echoed from pole to pole. At present Great Britain is the umpire of Europe.

Can a reasonable being for a moment believe that Great Britain, whose political existence depends on our constitutional obedience, who but yesterday made such prodigious efforts to save us from France, will not exert herself as powerfully to preserve us from our frantic schemes of independency. Can we a moment doubt, that the Sovereign of Great Britain and his ministers, whose glory as well as personal safety depends on our obedience, will not exert every nerve of the British power, to save themselves and us from ruin.

I am perfectly satisfied, that we are in no condition to set the world at defiance, that commerce and the protection of Great Britain will secure us peace, and the friendship of all Europe; but I deny it is the interest of all Europe to have America a free port, unless they are desirous of depopulating their dominions. His assertions, that barrenness of gold and silver will secure us from invaders, is indeed highly pleasant. Have we not a much better security from invasions, viz. the most numerous and best disciplined army under heaven; or has our author already disbanded it. Pray how much gold and silver do the mines of Flanders produce? And what country so often has seen its unhappy fields drenched with blood, and fertilized with human gore. The princes of Europe have long dreaded the migration of their subjects to America; and we are sensible, that the king of Prussia is said more than once to have hanged Newlanders, or those who seduced his subjects to emigrate.

I also humbly apprehend, that Britain is a part of Europe. Now, old gentleman, as you have clearly shewn, that we have a check upon her West India trade, is it her interest to give us a greater check upon it, by permitting America (as you express it,) to become a free port. Can we suppose it to be her interest to lose her valuable commerce to the Colonies, which effectually she would do, by giving up America to become your free port. If therefore it is the interest of all Europe, to have America a free port: The people of Britain are extremely simple to expend so many millions sterling to prevent it. "It is repugnant to the nature of things, to all examples from former ages, to suppose that this Continent can long remain subject to any external power." Antiquity affords us no elucidation respecting the future government of America. I see no reason to doubt, that Great Britain, may not long retain us in constitutional obedience.

Time, the destroyer of human affairs, may indeed, end her political life by a gentle decay. Like Rome, she may be constrained to defend herself from the Huns, and Alaricks of the North. Ingratefully should we endeavour to precipitate her political demise, she will devise every expedient to retain our obedience; and rather than fail, will participate those provinces amongst the potent states of Europe.

"Every quiet method of peace has been ineffectual; our prayers have been rejected with disdain." I do not indeed agree with the people of England in saying, that those, who so successfully laboured to widen the breach -- desired nothing less than peace. That they who shortly were to command the most numerous and best disciplined army under Heaven, and a navy fit to contend with the fleets of England, imagining the time had found us, disdained to be just. I highly venerate a majority of the Delegates. I have not indeed the honour of knowing all the worthy members; however, I wish the Gentlemen of the Congress, e'er they entered on their important charge, had been better acquainted with the strength of our

friends in parliament. I sincerely lament, that the King did not receive the last excellent petition from the Congress; and I as sincerely wish, the Gentlemen of the Congress had not addressed themselves at that juncture, to the people of Ireland. "As to government matters," (continues our Author,) "it is not in the power of Britain to do this Continent justice: The business of it will soon be too weighty and intricate to be managed with any tolerable degree of convenience, by a power so very distant from us, and so very ignorant of us; for if they cannot conquer us, they cannot govern us. The difference between Pennsylvania, and Connecticut, respecting some unlocated lands, shews the insignificance of a British government, and fully proves, that nothing but Continental authority can regulate Continental matters."

Until the present unhappy period, Great Britain has afforded to all mankind, the most perfect proof of her wise, lenient, and magnanimous government of the Colonies -- The proofs to which we already have alluded, viz. Our supreme felicity, and amazing increase. Than the affair of the Connecticut invaders; Omnipotence only could grant us stronger reasons for praying a continuance of our former beneficent government. Most certainly, every dispassionate person, as well as the plundered Pennsylvanians, must confess, that the Arm of Great Britain alone detained those Free-booters aforesaid, from seizing the city of Philadelphia, to which without all doubt, they have as just a claim, as to those fertile regions in Pennsylvania, which they surreptitiously have possessed themselves of. In wrath to mankind, should Heaven permit our Author's newfangled government to exist; I, as a friend to Pennsylvanians, advise them to explore new settlements, and avoid the cruel mortification of being expelled by the Saints from their delicious abodes and pleasing field. -- "But (says the Author) the most powerful argument is, that nothing but independence, (that is a Continental form of government) can keep the peace of the Continent, and preserve it inviolate from civil wars. I dread the event of a reconciliation now with Britain as it is more than probable, that it will be followed by revolt somewhere; the consequences of which may be far more fatal than all the malice of Britain. Thousands are already ruined by British barbarity, thousands more will probably share the same fate. These men have other feelings, than those who have nothing suffered: All they now possess is liberty, what they before enjoyed is sacrificed to its service, and having nothing more to lose, they disdain all submission."

Here we cannot mistake our author's meaning, that if one or more of the middle or southern Colonies reconcile with Great Britain, they will have war to sustain with New England; "the consequences of which may be more detrimental, than all the malice of Britain." This terrible denunciation, fortunately for such Colonies, is as futile as its author. Should Great Britain re-establish her authority in the said Colonies by negotiation, surely it is not temerity to add, that the weight of Britain, in the scale of those provinces, would preponderate against the power of New England. If Britain should reduce the Colonies by arms, (which may Heaven avert!) The New England provinces will have as little inclination, as ability, to disturb the peace of their neighbours. I do indeed most sincerely compassionate those unhappy men, who are ruined by our unfortunate distractions. I do fervently pray, that Britain, and the Colonies may most effectually consider their peculiar infelicity. Such attention will do infinite honour to the parent state; who cannot view them as enemies, but as men unhappily irritated by the impolitic measures of Great Britain.

Innumerable are the advantages of our connection with Britain; and a just dependence on

her, is a sure way to avoid the horrors and calamities of war. Wars in Europe, will probably than heretofore become less frequent; religious rancour, which formerly animated princes to arms, is succeeded by a spirit of philosophy extremely friendly to peace. The princes of Europe are or ought to be convinced by sad experience, that the objects of conquest, are vastly inadequate to the immense charge of their armaments. Prudential motives, therefore, in future, will often dictate negotiation, instead of war. Be it however admitted, that our speculations are nugatory, and that as usual, we are involved in war. In this case we really do not participate a twentieth part of the misery and hardships of war, experienced by the other subjects of the empire. As future wars will probably be carried on by Britain in her proper element, her success will hardly be doubtful, nor can this be thought audacity, if we remember the great things effected by Britain in her naval wars, then secondary objects to her Germanic connections, to which she now politically seems indifferent. Our sailors navigating our vessels to the West Indies during war, are exempted from impressment, and if our trade to any part of Europe is then stagnated, it flows with uncommon rapidity in the West Indies, nor is the object of captures inconsiderable.

Our author surely forgets, that when independent, we cannot trade with Europe, without political connections, and that all treaties made by England or other commercial states are, or ought to be, ultimately subservient to their commerce. "But (says our author,) admitting that matters were made up, what would be the event? I answer the ruin of the Continent, and that for several reasons." Reconciliation would conduct us to our former happy state. The happiness of the governed is without doubt the true interest of the governors, and if we aim not at independence, there cannot be a doubt, of receiving every advantage relative to laws and commerce that we can desire.

This Continent fifty years hence, infallibly will be richer, and much better peopled than at present; consequently abler to effect a revolution. But alas! e'er that period, our author will forever be forgotten; impelled therefore by his villainous ambition, he would rashly precipitate his country into every species of horror, misery, and desolation, rather than forego his fancied protectorship. "But if you have, (says our author) and still can shake hands with the murderers, then are ye unworthy the name of husband, father, friend, or lover, and whatever may be your rank or title in life, you have the heart of a coward, and the spirit of a sycophant, &c. To talk of friendship with those in whom our reason forbids us to have faith, and our affections wounded through a thousand pores, instructs us to detest is madness and folly."

Ye that are not drunk with fanaticism answer me? Are these words dictated by peace, or base foul revenge, the constant attendant on cowards and sycophants? Does our author so perfectly versed in scripture, mean to conduct us to peace or desolation? or is he fit to legislate for men or devils? Nations after desolating each other, (happily for mankind,) forgive, forget, and reconcile; like individuals who quarrel, reconcile, and become friends. Following the laudable example of the CONGRESS; we lately have most readily shaken hands with our inveterate enemies the Canadians, who have scalped nearly as many of our people as the British troops have done: Why therefore may we not forgive and reconcile -- By no means, it blasts our author's ambitious purposes. The English and Scotch, since the first Edward's time, have alternately slaughtered each other, (in the field of Bannockburn, more men fell, than are now in the New-England provinces) to the amount of several hundred thousand: And now view each other as subjects, despising the efforts of certain

turbulent spirits, tending to rekindle the ancient animosity.

Nations, like individuals, in the hour of passion attend to no mediation. But when heartily drubbed, and tired of war, are very readily reconciled, without the intervention of mediators; by whom, belligerents were never reconciled, until their interests or passions dictated the pacification. If we may use our author's elegant language, mediation is "farsical." I grant however, that the idea of our forcing England by arms to treat with us is brilliant. "It is unreasonable continues (our author) to suppose that France and Spain will give us any kind of assistance, if we mean only to make use of that assistance for the purpose of repairing the breach, and strengthening the connection between Britain and America; because those powers would be sufferers by the consequences."

Considering "we have the most numerous, and best disciplined army under Heaven; and a fleet fit to contend with the navy of Britain;" we must suppose our Author's brain affected by dwelling constantly on his beloved independency, else he would not have the imbecility to require the assistance of France and Spain. The manner of his prevailing on France and Spain to assist us, is also a strong proof of his insanity. Did those powers, hesitate to succour the Scotch rebels in 1745, because they did not declare themselves independent. It then was their interest to create a diversion, alas! too serious in the sequel for the deluded rebels in that kingdom; and were they now interested in aiding us, they undoubtedly would do it in spite of quibbles. In such case, e'er this time, their armies and navies had joined us without interruption: For we must confess, that the efforts of Britain hitherto, would not have precluded the republic of Genoa from aiding us.

Suppose our author, had a son or an apprentice eloped to his intimate acquaintance, and desired to enter into his service: If this person replied to the youth; I know your apprenticeship is unexpired, notwithstanding declare yourself a freeman, and I will hire and protect you. I demand, would such odious, ridiculous duplicity, render our supposed person, less criminal in the eyes of our Author, or render the example less dangerous to his own apprentice. "Were a manifesto (says our author) dispatched to foreign courts, &c." This also is a conclusive proof of our author's maniacum delirium. Our author "challenges the warmest advocate for reconciliation to shew a single advantage this Continent can reap, by being connected with Great Britain. I repeat the challenge, not a single advantage is derived: Our corn will fetch its price in any market in Europe:" Were the author's assertions respecting our power, as real as delusive, a reconciliation on liberal principles with Great Britain, would be most excellent policy. I wave similarity of manners, laws, and customs, most friendly indeed to perpetual alliance. The greatest part of our plank, staves, shingles, hoops, corn, beef, pork herrings, and many other articles, could find no vent, but in the English Islands. The demand for our flour would also be considerably lessened. The Spaniards have no demand for these articles; and the French little or none. Britain would be a principal mart for our lumber, part of our grain, naval stores, tobacco, and many other articles, which perhaps are not generally wanted in any kingdom in Europe.

Notwithstanding our Author's fine words about toleration: Ye sons of peace and true christainity; believe me, it were folly supreme, madness, to expect angelic toleration from New England, where she has constantly been detested, persecuted and execrated. Even in vain would our Author: or our CROMWELL cherish toleration; for the people of New England, not yet arrived in the seventeenth or eighteenth century, would reprobate her.-- It

is more than probable to suppose, that the New England governments would have no objection to an Agrarian law; nor is it unreasonable to suppose, that such division of property would be very agreeable to the soldiers. Indeed their General could not perhaps with safety to his existence as a General, refute them so reasonable a gratification, particularly, as he will have more than one occasion for their services. Let us however admit that our General and troops, contradicting the experience of ages; do not assume the sovereignty. Released from foreign war; we would probably be plunged into all the misery of anarchy and intestine war. Can we suppose that the people of the south, would submit to have the seat of Empire at Philadelphia, or in New England; or that the people oppressed by a change of government, contrasting their misery with their former happy state, would not invite Britain to reassume the sovereignty.

Volumes were insufficient to describe the horror, misery and desolation, awaiting the people at large in the Syren form of American independence. In short, I affirm that it would be most excellent policy in those who wish for TRUE LIBERTY to submit by an advantageous reconciliation to the authority of Great Britain; "to accomplish in the long run, what they cannot do by hypocrisy, fraud and force in the short one."

INDEPENDENCE AND SLAVERY ARE SYNONYMOUS TERMS.

FINIS

Thoughts on Government

John Adams

1776

My dear Sir,

If I was equal to the task of forming a plan for the government of a colony, I should be flattered with your request, and very happy to comply with it; because, as the divine science of politics is the science of social happiness, and the blessings of society depend entirely on the constitutions of government, which are generally institutions that last for many generations, there can be no employment more agreeable to a benevolent mind than a research after the best.

Pope flattered tyrants too much when he said,
"For forms of government let fools contest, That which is best administered is best."

Nothing can be more fallacious than this. But poets read history to collect flowers, not fruits; they attend to fanciful images, not the effects of social institutions. Nothing is more certain, from the history of nations and nature of man, than that some forms of government are better fitted for being well administered than others.

We ought to consider what is the end of government, before we determine which is the best form. Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best.

All sober inquirers after truth, ancient and modern, pagan and Christian, have declared that the happiness of man, as well as his dignity, consists in virtue. Confucius, Zoroaster, Socrates, Mahomet, not to mention authorities really sacred, have agreed in this. If there is a form of government, then, whose principle and foundation is virtue, will not every sober man acknowledge it better calculated to promote the general happiness than any other form?

Fear is the foundation of most governments; but it is so sordid and brutal a passion, and renders men in whose breasts it predominates so stupid and miserable, that Americans will not be likely to approve of any political institution which is founded on it.

Honor is truly sacred, but holds a lower rank in the scale of moral excellence than virtue. Indeed, the former is but a part of the latter, and consequently has not equal pretensions to support a frame of government productive of human happiness. The foundation of every government is some principle or passion in the minds of the people. The noblest principles and most generous affections in our nature, then, have the fairest chance to support the noblest and most generous models of government.

A man must be indifferent to the sneers of modern Englishmen, to mention in their company the names of Sidney, Harrington, Locke, Milton, Nedham, Neville, Burnet, and

Hoadly. No small fortitude is necessary to confess that one has read them. The wretched condition of this country, however, for ten or fifteen years past, has frequently reminded me of their principles and reasonings. They will convince any candid mind, that there is no good government but what is republican. That the only valuable part of the British constitution is so; because the very definition of a republic is "an empire of laws, and not of men." That, as a republic is the best of governments, so that particular arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics.

Of republics there is an inexhaustible variety, because the possible combinations of the powers of society are capable of innumerable variations.

As good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step, then, is to depute power from the many to a few of the most wise and good. But by what rules shall you choose your representatives? Agree upon the number and qualifications of persons who shall have the benefit of choosing, or annex this privilege to the inhabitants of a certain extent of ground.

The principle difficulty lies, and the greatest care should be employed in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them. That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it. Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections. Such regulations, however, may be better made in times of greater tranquility than the present; and they will spring up themselves naturally, when all the powers of government come to be in the hands of the people's friends. At present, it will be safest to proceed in all established modes, to which the people have been familiarized by habit.

A representation of the people in one assembly being obtained, a question arises, whether all the powers of government, legislative, executive, and judicial, shall be left in this body? I think a people cannot be long free, nor ever happy, whose government is in one assembly.

My reasons for this opinion are as follow:—

1. A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments. And all these errors ought to be corrected and defects supplied by some controlling power.
2. A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents.
3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. This was one fault of the Long Parliament; but more remarkably of Holland, whose assembly first voted themselves from annual to septennial, then for life, and after a course of years, that all vacancies happening by death or otherwise, should be filled by

themselves, without any application to constituents at all.

4. A representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch.

5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.

6. Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

But shall the whole power of legislation rest in one assembly? Most of the foregoing reasons apply equally to prove that the legislative power ought to be more complex; to which we may add, that if the legislative power is wholly in one assembly, and the executive in another, or in a single person, these two powers will oppose and encroach upon each other, until the contest shall end in war, and the whole power, legislative and executive, be usurped by the strongest.

The judicial power, in such case, could not mediate, or hold the balance between the two contending powers, because the legislative would undermine it. And this shows the necessity, too, of giving the executive power a negative upon the legislative, otherwise this will be continually encroaching upon that.

To avoid these dangers, let a distinct assembly be constituted, as a mediator between the two extreme branches of the legislature, that which represents the people, and that which is vested with the executive power.

Let the representative assembly then elect by ballot, from among themselves or their constituents, or both, a distinct assembly, which, for the sake of perspicuity, we will call a council. It may consist of any number you please, say twenty or thirty, and should have a free and independent exercise of its judgment, and consequently a negative voice in the legislature.

These two bodies, thus constituted, and made integral parts of the legislature, let them unite, and by joint ballot choose a governor, who, after being stripped of most of those badges of domination, called prerogatives, should have a free and independent exercise of his judgment, and be made also an integral part of the legislature. This, I know, is liable to objections; and, if you please, you may make him only president of the council, as in Connecticut. But as the governor is to be invested with the executive power, with consent of council, I think he ought to have a negative upon the legislative. If he is annually elective, as he ought to be, he will always have so much reverence and affection for the people, their representatives and counselors, that, although you give him an independent exercise of his judgment, he will seldom use it in opposition to the two houses, except in cases the public utility of which would be conspicuous; and some such cases would happen.

In the present exigency of American affairs, when, by an act of Parliament, we are put out

of the royal protection, and consequently discharged from our allegiance, and it has become necessary to assume government for our immediate security, the governor, lieutenant governor, secretary, treasurer, commissary, attorney-general, should be chosen by joint ballot of both houses. And these and all other elections, especially of representatives and counselors, should be annual, there not being in the whole circle of the sciences a maxim more infallible than this, "where annual elections end, there slavery begins."

These great men, in this respect, should be, once a year,
"Like bubbles on the sea of matter borne, They rise, they break, and to that sea return."
This will teach them the great political virtues of humility, patience, and moderation, without which every man in power becomes a ravenous beast of prey.

This mode of constituting the great offices of state will answer very well for the present; but if by experiment it should be found inconvenient, the legislature may, at its leisure, devise other methods of creating them, by elections of the people at large, as in Connecticut, or it may enlarge the term for which they shall be chosen to seven years, or three years, or for life, or make any other alterations which the society shall find productive of its ease, its safety, its freedom, or, in one word, its happiness.

A rotation of all offices, as well as of representatives and counselors, has many advocates, and is contended for with many plausible arguments. It would be attended, no doubt, with many advantages; and if the society has a sufficient number of suitable characters to supply the great number of vacancies which would be made by such a rotation, I can see no objection to it. These persons may be allowed to serve for three years, and then be excluded three years, or for any longer or shorter term.

Any seven or nine of the legislative council may be made a quorum, for doing business as a privy council, to advise the governor in the exercise of the executive branch of power, and in all acts of state.

The governor should have the command of the militia and of all your armies. The power of pardons should be with the governor and council.

Judges, justices, and all other officers, civil and military, should be nominated and appointed by the governor, with the advice and consent of council, unless you choose to have a government more popular; if you do, all officers, civil and military, may be chosen by joint ballot of both houses; or, in order to preserve the independence and importance of each house, by ballot of one house, concurred in by the other. Sheriffs should be chosen by the freeholders of counties; so should registers of deeds and clerks of counties.

All officers should have commissions, under the hand of the governor and seal of the colony. The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any

man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law. For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them before the governor and council, where they should have time and opportunity to make their defense; but, if convicted, should be removed from their offices, and subjected to such other punishment as shall be proper.

A militia law, requiring all men, or with very few exceptions besides cases of conscience, to be provided with arms and ammunition, to be trained at certain seasons; and requiring counties, towns, or other small districts, to be provided with public stocks of ammunition and entrenching utensils, and with some settled plans for transporting provisions after the militia, when marched to defend their country against sudden invasions; and requiring certain districts to be provided with field-pieces, companies of matrosses, and perhaps some regiments of light-horse, is always a wise institution, and, in the present circumstances of our country, indispensable.

Laws for liberal education of youth, especially of the lower class of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

The very mention of sumptuary laws will excite a smile. Whether our countrymen have wisdom and virtue enough to submit to them, I know not; but the happiness of the people might be greatly promoted by them, and a revenue saved sufficient to carry on this war forever. Frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues.

But must not all commissions run in the name of a king? No. Why may they not as well run thus, "The colony of to A.B. greeting," and be tested by the governor?

Why may not writs, instead of running in the name of the king, run thus, "The colony of — to the sheriff," &c., and be tested by the chief justice?

Why may not indictments conclude, "against the peace of the colony of — and the dignity of the same?"

A constitution founded on these principles introduces knowledge among the people, and inspires them with a conscious dignity becoming freemen; a general emulation takes place, which causes good humor, sociability, good manners, and good morals to be general. That elevation of sentiment inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it makes them sober, industrious, and frugal. You will find among them some elegance, perhaps, but more solidity; a little pleasure, but a great deal of business; some politeness, but more civility. If you compare such a country with the regions of domination, whether monarchical or aristocratical, you will fancy yourself in Arcadia or Elysium.

If the colonies should assume governments separately, they should be left entirely to their own choice of the forms; and if a continental constitution should be formed, it should be a congress, containing a fair and adequate representation of the colonies, and its authority

should sacredly be confined to those cases, namely, war, trade, disputes between colony and colony, the post-office, and the unappropriated lands of the crown, as they used to be called.

These colonies, under such forms of government, and in such a union, would be unconquerable by all the monarchies of Europe.

You and I, my dear friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children! When, before the present epocha, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive? I hope you will avail yourself and your country of that extensive learning and indefatigable industry which you possess, to assist her in the formation of the happiest governments and the best character of a great people. For myself, I must beg you to keep my name out of sight; for this feeble attempt, if it should be known to be mine, would oblige me to apply to myself those lines of the immortal John Milton, in one of his sonnets:—

"I did but prompt the age to quit their clogs
By the known rules of ancient liberty,
When straight a barbarous noise environs me
Of owls and cuckoos, asses, apes, and dogs."

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Part Six:



John Adams was one of the more notable leaders of the American Revolution. The following was originally written as a letter to two North Carolina delegates in the First Continental Congress and subsequently revised and reproduced in pamphlet form and distributed to the States in the process of writing their respective constitutions.

“Thoughts on Government”

John Adams

1776

My dear Sir,

If I was equal to the task of forming a plan for the government of a colony, I should be flattered with your request, and very happy to comply with it; because, as the divine science of politics is the science of social happiness, and the blessings of society depend entirely on the constitutions of government, which are generally institutions that last for many generations, there can be no employment more agreeable to a benevolent mind than

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This will teach them the great political virtues of humility, patience, and moderation, without which every man in power becomes a ravenous beast of prey.

This mode of constituting the great offices of state will answer very well for the present; but if by experiment it should be found inconvenient, the legislature may, at its leisure, devise other methods of creating them, by elections of the people at large, as in Connecticut, or it may enlarge the term for which they shall be chosen to seven years, or three years, or for life, or make any other alterations which the society shall find productive of its ease, its safety, its freedom, or, in one word, its happiness.

A rotation of all offices, as well as of representatives and counselors, has many advocates, and is contended for with many plausible arguments. It would be attended, no doubt, with many advantages; and if the society has a sufficient number of suitable characters to supply the great number of vacancies which would be made by such a rotation, I can see no objection to it. These persons may be allowed to serve for three years, and then be excluded three years, or for any longer or shorter term.

Any seven or nine of the legislative council may be made a quorum, for doing business as a privy council, to advise the governor in the exercise of the executive branch of power, and in all acts of state.

The governor should have the command of the militia and of all your armies. The power of pardons should be with the governor and council.

Judges, justices, and all other officers, civil and military, should be nominated and appointed by the governor, with the advice and consent of council, unless you choose to have a government more popular; if you do, all officers, civil and military, may be chosen by joint ballot of both houses; or, in order to preserve the independence and importance of each house, by ballot of one house, concurred in by the other. Sheriffs should be chosen by the freeholders of counties; so should registers of deeds and clerks of counties.

All officers should have commissions, under the hand of the governor and seal of the colony.

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law. For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them before the governor and council, where they should have time and opportunity to make their defense; but, if convicted, should be

removed from their offices, and subjected to such other punishment as shall be proper.

A militia law, requiring all men, or with very few exceptions besides cases of conscience, to be provided with arms and ammunition, to be trained at certain seasons; and requiring counties, towns, or other small districts, to be provided with public stocks of ammunition and entrenching utensils, and with some settled plans for transporting provisions after the militia, when marched to defend their country against sudden invasions; and requiring certain districts to be provided with field-pieces, companies of matrosses, and perhaps some regiments of light-horse, is always a wise institution, and, in the present circumstances of our country, indispensable.

Laws for liberal education of youth, especially of the lower class of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

The very mention of sumptuary laws will excite a smile. Whether our countrymen have wisdom and virtue enough to submit to them, I know not; but the happiness of the people might be greatly promoted by them, and a revenue saved sufficient to carry on this war forever. Frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues.

But must not all commissions run in the name of a king? No. Why may they not as well run thus, "The colony of _____ to A.B. greeting," and be tested by the governor?

Why may not writs, instead of running in the name of the king, run thus, "The colony of _____ to the sheriff," &c., and be tested by the chief justice?

Why may not indictments conclude, "against the peace of the colony of _____ and the dignity of the same?"

A constitution founded on these principles introduces knowledge among the people, and inspires them with a conscious dignity becoming freemen; a general emulation takes place, which causes good humor, sociability, good manners, and good morals to be general. That elevation of sentiment inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it makes them sober, industrious, and frugal. You will find among them some elegance, perhaps, but more solidity; a little pleasure, but a great deal of business; some politeness, but more civility. If you compare such a country with the regions of domination, whether monarchical or aristocratical, you will fancy yourself in Arcadia or Elysium.

If the colonies should assume governments separately, they should be left entirely to their own choice of the forms; and if a continental constitution should be formed, it should be a congress, containing a fair and adequate representation of the colonies, and its authority should sacredly be confined to those cases, namely, war, trade, disputes between colony and colony, the post-office, and the unappropriated lands of the crown, as they used to be called.

These colonies, under such forms of government, and in such a union, would be

unconquerable by all the monarchies of Europe.

You and I, my dear friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children! When, before the present epocha, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive? I hope you will avail yourself and your country of that extensive learning and indefatigable industry which you possess, to assist her in the formation of the happiest governments and the best character of a great people. For myself, I must beg you to keep my name out of sight; for this feeble attempt, if it should be known to be mine, would oblige me to apply to myself those lines of the immortal John Milton, in one of his sonnets:

"I did but prompt the age to quit their clogs
By the known rules of ancient liberty,
When straight a barbarous noise environs me
Of owls and cuckoos, asses, apes, and dogs."

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Go all to whom

these States shall come, we the undersigned Delegates of the States
afforded to us. Now first printing, in the City of New York, in the
United States of America in Congress assembled, on the fifteenth day
of November in the Year of our Lord One Thousand Seven Hundred and
Twenty seven, and in the second Year of the Independence of America
agree to certain Articles of Confederation and perpetual Union between the
States of New Hampshire, Massachusetts, Rhode Island and Providence
Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware,
Maryland, Virginia, North Carolina, South Carolina, and Georgia
in the Words following, to wit: Articles of Confederation and perpetual
Union between the States of New Hampshire, Massachusetts, Rhode Island
and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania,
Delaware, Maryland, Virginia, North Carolina, South Carolina
and Georgia.

Article I. The Name of this Confederacy shall be The
United States of America.

Article II. Each State retains its sovereignty, freedom and
independence, and every Power, Jurisdiction and Right, which is not by
this Confederation expressly delegated to the United States, in Congress
assembled.

Article III. The said States hereby severally enter into a firm
League of Friendship with each other, for their common Defense, the Security
of their Liberties, and their mutual and general Welfare, binding them-
selves to assist each other, against all Force opposed to, or Attacks made upon
them, or any of them, on account of Religion, Sovereignty, Trade, or any other
pretence whatever.

Article IV. The better to secure and perpetuate mutual Friendship
and Intercourse among the People of the adjacent States in this Union, the
free Inhabitants of each of these States, paupers, vagabonds and fugitives
from Justice excepted, shall be entitled to all Privileges and Immunities of
free Citizens in the several States; and the People of each State shall have
free Import and Export to and from any other State, and shall enjoy within
all the Privileges of Trade and Commerce, subject to the same Duties, Impo-
sitions and Restrictions as the Inhabitants thereof respectively, provided
that such Restrictions shall not extend so far as to prevent the removal of
Property imported into any State, to any other State, of which the Owner
is an Inhabitant; provided also that no Impostion, Duties or Restrictions
shall be laid by any State, on the Property of the United States or either of
them.

If any Person guilty of, or charged with Treason, Felony, or
other high Misdemeanor in any State, shall flee from Justice, and be found
in any of the United States, he shall upon Demand of the Governour or
executive Power, of the State from which he fled, be delivered up, and re-
moved to the State having Jurisdiction of his offence.

All Suite and
credit shall be given in each of these States to the records, acts and judicial
proceedings of the Courts and Magistrates of every other State.

Article V. For the more convenient Management of the general

Part Seven: Foundational Constitutions

The Articles of Confederation and Perpetual Union, the first constitution of the United States, was drafted in 1777 by the Second Continental Congress and ratified on March 1, 1781, after being ratified by all thirteen States. On December 16, 1777, Virginia was the first State to ratify; on February 2, 1781, Maryland was the last State to ratify it.

Articles of Confederation and Perpetual Union

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

I.

The Stile of this Confederacy shall be "The United States of America".

II.

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

III.

The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

V.

For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance in Congress, except for treason, felony, or breach of the peace.

VI.

No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for

use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

VII.

When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

VIII.

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article -- of sending and receiving ambassadors -- entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever -- of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated -- of granting letters of marque and reprisal in times of peace -- appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning

boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgement and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States -- fixing the standards of weights and measures throughout the United States -- regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated -- establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office -- appointing all officers of the land forces, in the service of the United States, excepting regimental officers -- appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States -- making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'A Committee of the States', and to consist of one delegate from

each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction -- to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses -- to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted -- to build and equip a navy -- to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and clothe, arm and equip them in a solid-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of each State, unless the legislature of such State shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

X.

The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.

XI.

Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

XII.

All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

XIII.

Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

Agreed to by Congress 15 November 1777; In force after ratification by Maryland, 1 March 1781

Source:

Documents Illustrative of the Formation of the Union of the American States.

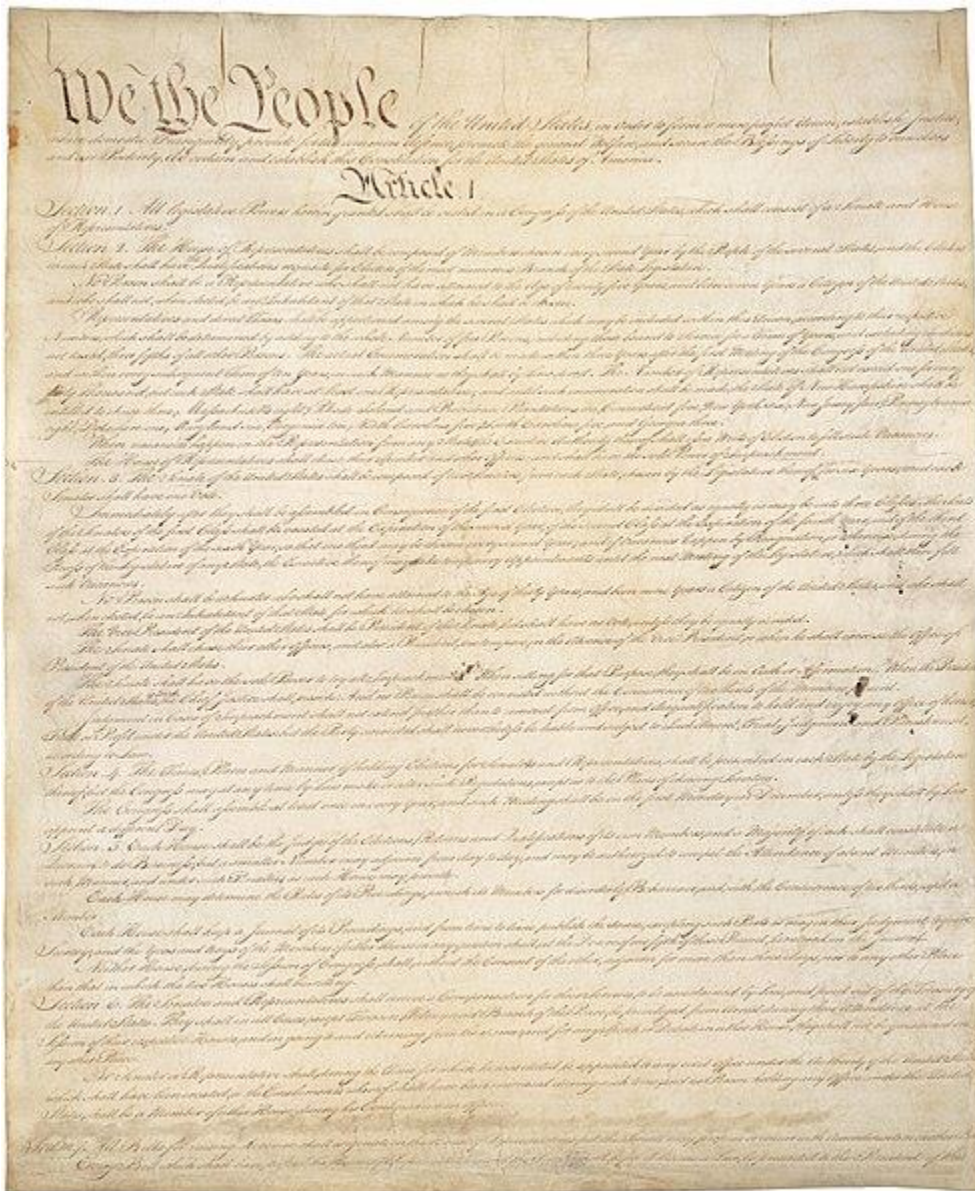
Government Printing Office, 1927.

House Document No. 398.

Selected, Arranged and Indexed by Charles C. Tansill

The Constitution of the United States

On December 7, 1787, Delaware was the first state to ratify the Constitution, followed by Pennsylvania, New Jersey, Georgia, and Connecticut. Some states voiced opposition to the Constitution on the grounds that it did not provide protection for rights such as freedom of speech, religion, and press. The Massachusetts Compromise, passed on February 1788, stipulated that amendments to secure basic rights be a top priority of the new government. The constitution was subsequently ratified by Massachusetts, Maryland, South Carolina, and, finally, New Hampshire on June 21, 1788. Virginia, New York, North Carolina and Rhode Island had all ratified the Constitution by May 29, 1790.



Handwritten text in a cursive script, likely a legal or historical document. The text is dense and covers most of the page. At the bottom center, the word "Article II" is written in a larger, bolder script. Below "Article II", there is a section of text starting with "Article I" and "Article II" which appears to be the beginning of a list of articles or sections. The handwriting is consistent throughout, suggesting a single scribe.

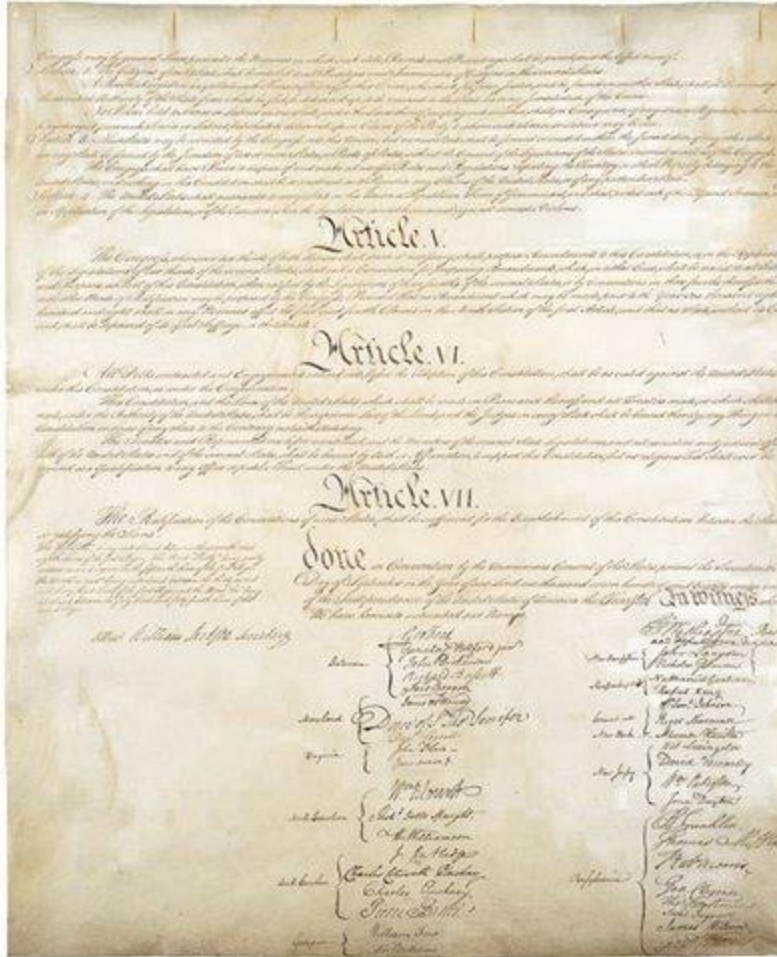
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Article III.

[Faint, illegible handwritten text.]

Article IV.

[Faint, illegible handwritten text.]



(Preamble)

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I (Article 1 - Legislative)

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2

1: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2: No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3: Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.² The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4: When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5: The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3

1: The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,³ for six Years; and each Senator shall have one Vote.

2: Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

3: No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4: The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5: The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6: The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7: Judgment in Cases of impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the

Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4

1: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2: The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December,⁵ unless they shall by Law appoint a different Day.

Section 5

1: Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2: Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

3: Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4: Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6

1: The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.⁶ They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2: No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7

1: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2: Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the

other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3: Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8

1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2: To borrow Money on the credit of the United States;

3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4: To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

5: To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6: To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7: To establish Post Offices and post Roads;

8: To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9: To constitute Tribunals inferior to the supreme Court;

10: To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13: To provide and maintain a Navy;

14: To make Rules for the Government and Regulation of the land and naval Forces;

15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9

1: The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2: The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3: No Bill of Attainder or ex post facto Law shall be passed.

4: No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.⁷

5: No Tax or Duty shall be laid on Articles exported from any State.

6: No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7: No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8: No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10

1: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2: No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3: No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II (Article 2 - Executive)

Section 1

1: The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

2: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3: The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.⁸

4: The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

5: No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

6: In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office,⁹ the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

7: The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

8: Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2

1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

2: He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3: The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III (Article 3 - Judicial)

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

1: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;¹⁰ —between Citizens of different States, —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3: The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3

1: Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2: The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV (Article 4 - States' Relations)

Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2

1: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2: A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

3: No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.¹¹

Section 3

1: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V (Article 5 - Mode of Amendment)

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI (Article 6 - Prior Debts, National Supremacy, Oaths of Office)

1: All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

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; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII (Article 7 - Ratification)

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Word "the", being interlined between the seventh and eight Lines of the first Page, The Word "Thirty" being partly written on an Erasure in the fifteenth Line of the first Page. The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Attest William Jackson Secretary

Go: Washington -Presidt. and deputy from Virginia Showing George Washington's signature.

Delaware

Geo: Read

Gunning Bedford jun

John Dickinson

Richard Bassett

Jaco: Broom

Maryland

James McHenry

Dan of St Thos. Jenifer

Danl Carroll.

Virginia

John Blair—

James Madison Jr.

North Carolina

Wm Blount

Richd. Dobbs Spaight.

Hu Williamson

South Carolina

J. Rutledge

Charles Cotesworth Pinckney

Charles Pinckney

Pierce Butler.

Georgia

William Few

Abr Baldwin

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
Wm. Saml. Johnson
Roger Sherman

New York
Alexander Hamilton

New Jersey
Wil. Livingston
David Brearley.
Wm. Paterson.
Jona: Dayton

Pennsylvania
B Franklin
Thomas Mifflin
Robt Morris
Geo. Clymer
Thos. FitzSimons
Jared Ingersoll
James Wilson.
Gouv Morris

Letter of Transmittal

skip to Letter of Transmittal to Congress up to the Constitution
In Convention. Monday September 17th 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania,
Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved, That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the unanimous Order of the Convention

W. Jackson Secretary.

Go: Washington -Presidt.

Letter of Transmittal to the President of Congress
skip to Amendments up to Letter of Transmittal
In Convention. Monday September 17th 1787.
SIR:

We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident: hence results the necessity of a different organization.

It is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be preserved; and, on the present occasion, this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety—perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus, the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not, perhaps, to be expected; but each will, doubtless, consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that Country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect,
we have the honor to be,
SIR,
your excellency's most obedient and humble servants:
GEORGE WASHINGTON, President.
By the unanimous order of the convention.

His Excellency
the President of Congress.

PART EIGHT: ANTIFEDERALISTS

Brutus was the pseudonym of New York Antifederalists opposed to the ratification of the Constitution. Brutus published 16 essays in the New-York Journal, and Weekly Register from October 1787, through April 1788. The essays were published throughout the States.

Brutus: Essay I, October 1787

To the Citizens of the State of New-York

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United-States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, [chosen] specially for this purpose. If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the [invaluable blessings] of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will [full] advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be [shut] up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a

wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

With these few introductory remarks I shall proceed to a consideration of this constitution.

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontroulable power, legislative, executive and judicial, with respect to every object to which it extend, for by, the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.—The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states [must] very soon be annihilated, except so far a [s they are]

barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance—there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;—there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation; but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare: this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect tax is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late governments, on this article of raising money. No state can emit paper money—lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States. The only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxes, when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states shall find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

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

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between

citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding.—By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

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

several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. 1. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing 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.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [as] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate casts, will obey: but, where this is not the case, the government must test for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet—a government of all others the most to be dreaded.

In a republic of such vast extent as the United States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and

oppressing them. The trust committed to the executive offices, in a country of the extent of the United States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen, while I state these objections—they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice—perfection is not to be expected in any thing that is the production of man—and if I did not in my conscience believe that this scheme was defective in the fundamental principles—in the foundation upon which a free and equal government must rest, I would hold my peace.

Source: [*The American Republic: Primary Sources*, ed. Bruce Frohnen \(Indianapolis: Liberty Fund, 2002\).](#)

Brutus: Essay II, November, 1787

Addressed to “The People of the State of New York,” the essays of “Brutus” appeared in Thomas Greenleaf’s *New York Journal* between October 1787 and April 1788, contemporaneously with the appearance of *The Federalist*, whose authors sometimes engaged “Brutus” in direct debates. As is true of the “Federal Farmer,” the authorship remains in doubt, although the candidate most often mentioned is Robert Yates, one of New York’s three delegates to the Constitutional Convention. The second number was among the most able explanations of the most common anti-Federalist fear of all.

... When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

If we may collect the sentiments of the people of America from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. The mutual wants of men at first dictated the propriety of forming societies; and when they were established, protection and defense pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest therefore directed that government should be established, in which the force of the whole community should be collected, and under such directions as to protect and defend everyone who composed it. The common good, therefore, is the end of civil government, and common consent the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order that what remained should be preserved. How great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not now inquire. So much, however, must be given up as will be sufficient to enable those to whom the administration of the government is committed to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned in order to attain the end for which government is instituted. These, therefore, ought not to be given up. To surrender them would counteract the very end of government, to wit, the common good. From these observations it appears that, in forming a government on its true principles, the foundation should be laid in the

manner I before stated, by expressly reserving to the people such of their essential natural rights as are not necessary to be parted with. The same reasons which at first induced mankind to associate and institute government will operate to influence them to observe this precaution. If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other that men came together and agreed that certain rules should be formed to regulate the conduct of all and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority as that government should have at first been instituted to restrain private injuries.

This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation. I need say no more, I presume, to an American, than that this principle is a fundamental one in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights or has certain express reservation of rights interwoven in the body of them. From this it appears that, at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense that such declarations should make a part of their frames of government. It is therefore the more astonishing that this grand security to the rights of the people is not to be found in this constitution.

It has been said, in answer to this objection, that such declaration of rights, however requisite they might be in the constitutions of the states, are not necessary in the general constitution, because, "in the former case, everything which is not reserved is given, but in the latter the reverse of the proposition prevails, and everything which is not given is reserved." It requires but little attention to discover that this mode of reasoning is rather specious than solid. The powers, rights, and authority granted to the general government by this constitution are as complete, with respect to every object to which they extend, as that of any state government—It reaches to everything which concerns human happiness—Life, liberty, and property are under its control. There is the same reason, therefore, that the exercise of power in this case should be restrained within proper limits as in that of the state governments. To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual states, and apply them to the case in question.

For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared that no man shall be held to answer for a crime until he is made fully acquainted with

the charge brought against him; he shall not be compelled to accuse or furnish evidence against himself—The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorized to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save only that “the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the state where the said crimes shall have been committed.” No man is secure of a trial in the county where he is charged to have committed a crime; he may be brought from Niagara to New York or carried from Kentucky to Richmond for trial for an offense supposed to be committed. What security is there that a man shall be furnished with a full and plain description of the charges against him? That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses against him face to face, or that he shall be fully heard in his own defense by himself or counsel?

For the security of liberty it has been declared, “that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted—That all warrants, without oath or affirmation, to search suspected places or seize any person, his papers or property, are grievous and oppressive.”

These provisions are as necessary under the general government as under that of the individual states; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property, in certain cases, as the other.

For the purpose of securing the property of the citizens, it is declared by all the states, “that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.”

Does not the same necessity exist of reserving this right, under this national compact, as in that of this state? Yet nothing is said respecting it. In the bills of rights of the states it is declared that a well regulated militia is the proper and natural defense of a free government—That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to and controlled by the civil power.

The same security is as necessary in this constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no control in the exercise of it; yet nothing of this is to be found in this new system.

I might proceed to instance a number of other rights which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced are sufficient to prove that this argument is without foundation.—Besides, it is evident that the reason here assigned was not the true one why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain

reservations while they totally omitted others of more importance. We find they have, in the 9th section of the 1st article, declared that the writ of habeas corpus shall not be suspended, unless in cases of rebellion—that no bill of attainder, or ex post facto law, shall be passed—that no title of nobility shall be granted by the United States, etc. If everything which is not given is reserved, what propriety is there in these exceptions? Does this constitution anywhere grant the power of suspending the habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is that these are implied in the general powers granted. With equal truth it may be said that all the powers which the bills of right guard against the abuse of are contained or implied in the general ones granted by this constitution.

So far it is from being true that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact.—This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms which are in existence at the time of its adoption must yield to it. This is expressed in positive and unequivocal terms in the 6th article, “That 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; and the judges in every state shall be bound thereby, anything in the *constitution*, or laws of any state, *to the contrary* notwithstanding.

“The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound, by oath or affirmation, to support this constitution.”

It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States. Of what avail will the constitutions of the respective states be to preserve the rights of its citizens? Should they be pleaded, the answer would be, the Constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the general or state governments, are bound by oath to support it. No privilege reserved by the bills of rights or secured by the state government can limit the power granted by this, or restrain any laws made in pursuance of it. It stands therefore on its own bottom, and must receive a construction by itself without any reference to any other—And hence it was of the highest importance that the most precise and express declarations and reservations of rights should have been made.

This will appear the more necessary when it is considered that not only the constitution and laws made in pursuance thereof, but all treaties made, or which shall be made, under the authority of the United States, are the supreme law of the land, and supersede the constitutions of all the states. The power to make treaties is vested in the president, by and with the advice and consent of two thirds of the senate. I do not find any limitation, or restriction, to the exercise of this

power. The most important article in any constitution may therefore be repealed, even without a legislative act. Ought not a government vested with such extensive and indefinite authority to have been restricted by a declaration of rights? It certainly ought.

So clear a point is this that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this constitution than under those of the states are willfully endeavoring to deceive, and to lead you into an absolute state of vassalage.

Source: [*Liberty and Order: The First American Party Struggle*, ed. and with a Preface by Lance Banning \(Indianapolis: Liberty Fund, 2004\).](#)



George Mason, (1725-1792) was an American planter, politician and delegate to the [U.S. Constitutional Convention](#) of 1787, and refused to sign the [Constitution](#).

Addressed to the Citizens of Virginia.

THERE is no declaration of rights: and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights, in the separate states, are no security. Nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.

In the House of Representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people.—The laws will, therefore, be generally made by men little concerned in, and unacquainted with their effects and consequences.

The Senate have the power of altering all money-bills, and of originating appropriations of money, and the salaries of the officers of their appointment, in conjunction with the President of the United States—Although they are not the representatives of the people, or amenable to them. These, with their other great powers, (viz. their powers in the appointment of ambassadors, and all public officers, in making treaties, and in trying all impeachments) their influence upon, and connection with, the supreme executive from these causes, their duration of office, and their being a constant existing body, almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please, upon the rights and liberties of the people.

The judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several states; thereby rendering laws as tedious, intricate, and expensive, and justice as unattainable by a great part of the community, as in England; and enabling the rich to oppress and ruin the poor.

The President of the United States has no constitutional council (a thing unknown in any safe and regular government.) he will therefore be unsupported by proper information and advice; and will generally be directed by minions and favorites—or he will become a tool to the Senate—or a council of state will grow out of the principal officers of the great departments—the worst and most dangerous of all ingredients for such a council, in a free country; for they may be induced to join in any dangerous or oppressive measures, to shelter themselves, and prevent an inquiry into their own misconduct in office. Whereas, had a constitutional council been formed (as was proposed) of six members, viz., two from the eastern, two from the middle, and two from the southern states, to be appointed by vote of the states in the House of Representatives with the same duration and rotation of office as the Senate, the executive would always have had safe and proper information and advice; the president of such a council might have acted as Vice-President of the United States, *pro tempore*, upon any vacancy or disability of the chief magistrate; and long continued sessions of the Senate, would in a great measure have been prevented. From this fatal defect of a constitutional council, has arisen the improper power of the Senate, in the appointment of the public officers, and the alarming dependence and connexion between that branch of the legislature and the supreme executive. Hence, also, sprung that unnecessary officer, the Vice-President, who, for want of other employment, is made President of the Senate; thereby dangerously blending the executive and legislative powers; besides always giving to some one of the states an unnecessary and unjust pre-eminence over the others.

The President of the United States has the unrestrained power of granting pardon for treason; which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt. By declaring all treaties supreme laws of the land, the executive and the Senate have, in many cases, an exclusive power of legislation, which might have been avoided, by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

By requiring only a majority to make all commercial and navigation laws, the five southern states (whose produce and circumstances are totally different from those of the eight northern and eastern states) will be ruined: for such rigid and premature regulations may be made, as will enable the merchants of the northern and eastern states not only to demand an exorbitant freight, but to monopolize the purchase of the commodities, at their own price, for many years, to the great injury of the landed interest, and the impoverishment of the people: and the danger is the greater, as the gain on one side will be in proportion to the loss on the other. Whereas, requiring two-thirds of the members present in both houses, would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of the government.

Under their own construction of the general clause at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them; or the people for their rights. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

The state legislatures are restrained from laying export duties on their own produce—the general legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importations render the United States weaker, more vulnerable, and less capable of defence. Both the general legislature, and the state legislatures are expressly prohibited making *ex post facto* laws, though there never was, nor can be, a legislature, but must and will make, such laws, when necessity and the public safety require them, which will hereafter be a breach of all the constitutions in the union, and afford precedents for other innovations.

This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.

GEO. MASON.

[*]This objection has been in some degree lessened, by an amendment, often before refused, and at last made by an erasure, after the engrossment upon parchment, of the word forty, and inserting thirty, in the third clause of the second section of the first article.

Source: [*Pamphlets on the Constitution of the United States, published during its Discussion by the People, 1787-1788*, edited with notes and a bibliography by Paul Leicester Ford \(Brooklyn, N.Y., 1888\).](#)

Centinel

The "Centinel" wrote a series of 24 articles that appeared in the Philadelphia Independent Gazetteer and the Philadelphia Freeman's Journal between October 5, 1787, and November 24, 1788. The identity of the author or authors is open to debate.

October 1787

To the Freemen of Pennsylvania

Friends, Countrymen and Fellow Citizens,

Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government, secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property, not particularly described in such warrant, shall not be granted. Your constitution further provides "that in controversies respecting property, and in suits between man and man, the parties have a right to *trial by jury, which ought to be held sacred.*" It also provides and declares, "*that the people have a right of FREEDOM OF SPEECH, and of WRITING and PUBLISHING their sentiments, therefore THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED.*" The constitution of Pennsylvania is *yet* in existence, as *yet* you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say, whether your *houses* shall continue to be your *castles*; whether your *papers*, your *persons* and your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the *trial by jury* is to continue as your birthright, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

Without presuming upon my own judgement, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for their's; and if I use my pen with the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated*, and *juries yet are judges*.

The late Convention have submitted to your consideration on a plan of a new, federal government—The subject is highly interesting to your future welfare—Whether it be calculated to promote the great ends of civil society, *viz.* the happiness and prosperity of the community; it behoves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its

principles; it ought to be dispassionately and deliberately examined, and its own intrinsic merit the only criterion of your patronage. If ever free and unbiassed discussion was proper or necessary, it is on such an occasion.—All the blessings of liberty and the dearest privileges of freemen, are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves; without such assistance the people are too apt to yield an implicit assent to the opinions of those characters, whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities, and superior acquirements; and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the *artful and designing*. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation.

The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to resist innovation.

The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves, very successfully, of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government; all the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandisement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one, has been imposed on, in a subject of which he must be necessarily inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practised on in the other.

I am fearful that the principles of government inculcated in Mr. Adams's treatise, and enforced in the numerous essays and paragraphs in the news-papers, have misled some well designing members of the late Convention.—But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams's *sine qua non* of a good government is three balancing powers, whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administrators of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third. This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government; he indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equality of power and distinction of interests, in the three orders of government, they exist but in name; the only operative and efficient check, upon the conduct of administration, is the sense of the people at large.

Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society; If the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

Therefore, as different orders in government will not produce the good of the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided, in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained, in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on.—If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered

imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility, for then, whenever the people feel a grievance they can-not mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having promised thus much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government, that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people; but on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed.

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government.

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated *Montesquieu* establishes it as a maxim, that legislation necessarily follows the power of taxation. By sect. 8, of the first article of the proposed plan of government, “the Congress are to have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises, shall be uniform throughout the United States.” Now what can be more comprehensive than these words; not content by other sections of this plan, to grant all the great executive powers of a confederation, and a STANDING ARMY IN TIME OF PEACE, that grand engine of oppression, and moreover the absolute controul over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, &c.—they are to be vested with every species of *internal* taxation;—whatever taxes, duties and excises that they may deem requisite for the *general welfare*, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the state legislatures now lay taxes, to be for the general welfare, and thereby seize upon every object of revenue.

The judicial power by 1st sect. of article 3 [“]shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming

lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”

The judicial power to be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.

The objects of jurisdiction recited above, are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the state judicatories would be wholly superceded, for in contests about jurisdiction, the federal court, as the most powerful, would ever prevail. Every person acquainted with the history of the courts in England, knows by what ingenious sophisms they have, at different periods, extended the sphere of their jurisdiction over objects out of the line of their institution, and contrary to their very nature; courts of a criminal jurisdiction obtaining cognizance in civil causes.

To put the omnipotency of Congress over the state government and judicatories out of all doubt, the 6th article ordains that “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*, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.”

By these sections the all prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and that such was in the contemplation of the framers of it, will appear from the provision made for such event, in another part of it; (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind). By sect. 4th of the 1st article, “the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law, make or alter such regulations, except as to the place of chusing senators.*” The plain construction of which is, that when the state legislatures drop out of sight, from the necessary operation of this government, then Congress are to provide for the election and appointment of representatives and senators.

If the foregoing be a just comment—if the United States are to be melted down into one empire, it becomes you to consider, whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan, than a confederation of a number of small republics, possessing all the powers of internal government, but united in the management of their foreign and general concerns.

It would not be difficult to prove, that any thing short of despotism, could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a despotism.

If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district; as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information, besides, if the business of the *whole* union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniencies and disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions.

Having taken a review of the powers, I shall now examine the construction of the proposed general government.

Art. 1 sect. 1. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives." By another section, the president (the principal executive officer) has a conditional controul over their proceedings.

Sec. 2. "The house of representatives shall be composed of members chosen every second year, by the people of the several states. The number of representatives shall not exceed one for every 30,000 inhabitants."

The senate, the other constituent branch of the legislature, is formed by the legislature of each state appointing two senators, for the term of six years.

The executive power by Art. 2, Sec. 1. is to be vested in a president of the United States of America, elected for four years: Sec. 2. gives him power, by and with the consent of the senate to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, &c. And by another section he has the absolute power of granting reprieves and pardons for treason and all other high crimes and misdemeanors, except in case of impeachment.

The foregoing are the outlines of the plan.

Thus we see, the house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the *better sort*, the *well born*, &c. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information, of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the controul over both, they may govern the choice, by ordering the *representatives* of a *whole* state, to be *elected* in *one* place, and that too may be the most *inconvenient*.

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great States of Virginia, Massachusetts, or Pennsylvania.—The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment, will lead to permanency; the members are chosen for six years, the mode is under the controul of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state, unless he coincides with the views of the Senate, would either become the head of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re election to office. And from his power of granting pardons, he might screen from punishment the most reasonable attempts on the liberties of the people, when instigated by the Senate.

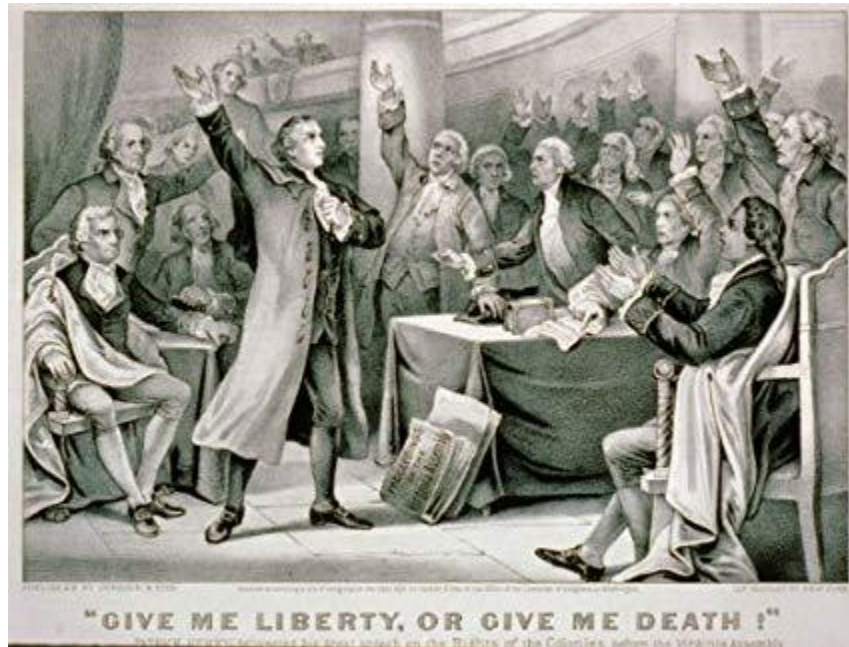
From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY.

The framers of it; actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the *liberty of the press*, that grand *palladium of freedom*, and *scourge of tyrants*; but observed a total silence on that head. It is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered *sacred*, even in *Turkey*, that despotism would fly before it. And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by *jury* in *civil* cases is taken away; for what other construction can be put on the following, viz. Article III. Sect. 2d. “In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have *original* jurisdiction. In all the other cases above mentioned, the Supreme Court shall have *appellate* jurisdiction, both as to *law and fact*?” It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismissal of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expressly stipulated for, but not in civil cases.

But our situation is represented to be so *critically* dreadful, that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative, between the adoption of it and absolute ruin.—My fellow citizens, things are not at that crisis, it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissensions, we have not so much to fear from them, as to precipitate us into this form of government; without it is a safe and a proper one. For remember, of all *possible* evils, that of *despotism* is the *worst* and the most to be *dreaded*.

Source: [*The American Republic: Primary Sources*, ed. Bruce Frohnen \(Indianapolis: Liberty Fund, 2002\).](#)

Patrick Henry



Patrick Henry (1736-1799) was an American attorney, planter, and orator best known for his declaration to the Second Virginia Convention: "Give me liberty or give me death!" A Founding Father, he served as the first and sixth post-colonial Governor of Virginia, from 1776 to 1779 and from 1784 to 1786.

5 June 1788

Mr. HENRY. Mr. Chairman, I am much obliged to the {44} very worthy gentleman for his encomium. I wish I was possessed with talents, or possessed of any thing that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts. I rose yesterday to ask a question which arose in my own mind. When I asked that question, I thought the meaning of my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederation. It is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing — the expression, We, the people, instead of the states, of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous. Is this a monarchy,

like England — a compact between prince and people, with checks on the former to secure the liberty of the latter? Is this a confederacy, like Holland — an association of a number of independent states, each of which retains its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a confederacy to a consolidated government. We have no detail of these great consideration, which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a resolution as radical as that which separated us from Great Britain. It is radical in this transition; our rights and privileges are endangered, and the sovereignty of the states will be relinquished: and cannot we plainly see that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and inconsiderately by others. Is this tame relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans? It is said eight states have adopted this plan. I declare that if twelve states and a half had adopted it, I would, with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful {45} people, but how your liberties can be secured; for liberty ought to be the direct end of your government.

Having premised these things, I shall, with the aid of my judgment and information, which, I confess, are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury and the liberty of the press necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty, the greatest of all earthly blessing — give us that precious jewel, and you may take every thing else! But I am fearful I have lived long enough to become an old—fashioned fellow. Perhaps an invincible attachment to the dearest rights of man may, in these refined, enlightened days, be deemed old—fashioned; if so, I am contented to be so. I say, the time has been when every pulse of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American; but suspicions have gone forth —’ suspicions of my integrity — publicly reported that my professions are not real. Twenty—three years ago was I supposed a traitor to my country? I was then said to be the bane of sedition, because I supported the rights of my country. I may be thought suspicious when I say our privileges and rights are in danger. But, sir, a number of the people of this country are weak enough to think these things are too true. I am happy to find that the gentleman on the other side declares they are groundless. But, sir, suspicion is a virtue as long as its object is the preservation of the public good, and as long as it stays within proper bounds: should it fall on me, I am contented: conscious rectitude is a powerful consolation. I trust there are many who think my professions for the public good to be real. Let your suspicion look to both sides. There are many on the other side, who possibly may have been persuaded to the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined. I am answered by gentlemen, that, though I might speak of terrors, yet the fact was, that we were surrounded by none of the {46} dangers I apprehended. I

conceive this new government to be one of those dangers: it has produced those horrors which distress many of our best citizens. We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The Confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war; it rendered us victorious in that bloody conflict with a powerful nation; it has secured us a territory greater than any European monarch possesses: and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do before you part with the government. Take longer time in reckoning things; revolutions like this have happened in almost every country in Europe; similar examples are to be found in ancient Greece and ancient Rome — instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the honorable gentleman, who presides, against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge, also, the new form of government may effectually prevent it: yet there is another thing it will as effectually do — it will oppress and ruin the people.

There are sufficient guards placed against sedition and licentiousness; for, when power is given to this government to suppress these, or for any other purpose, the language it assumes is clear, express, and unequivocal; but when this Constitution speaks of privileges, there is an ambiguity, sir, a fatal ambiguity — an ambiguity which is very astonishing. In the clause under consideration, there is the strangest language that I can conceive. I mean, when it says that there shall not be more representatives than one for every thirty thousand. Now, sir, how easy is it to evade this privilege! “The number shall not exceed one for every thirty thousand.” This may be satisfied by one representative from each state. Let our numbers be ever so great, this immense continent may, by this artful expression, be reduced to have but thirteen representatives. I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally {47} expressed, that they should be entitled to have one for every thirty thousand? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a state shall send representatives in this proportion, Congress may remand them, because the right of having one for every thirty thousand is not clearly expressed. This possibility of reducing the number to one for each state approximates to probability by that other expression — “but each state shall at least have one representative.” Now, is it not clear that, from the first expression, the number might be reduced so much that some states should have no representatives at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they may restrain the number to one from each state. Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: but, sir, I have strong cause of apprehension. In some parts of the plan before you, the great rights of freemen are endangered; in other parts, absolutely taken away. How does your trial by jury stand? In civil cases gone — not sufficiently secured in criminal — this best privilege is gone. But we are told that we need not fear; because those in power, being our representatives, will not abuse the powers we put in their hands. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people,

or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism! Most of the human race are now in this deplorable condition; and those nations who have gone in search of grandeur, power, and splendor, have also fallen a sacrifice, and been the victims of their own folly. While they acquired those visionary blessings, they lost their freedom. My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen, that this new plan will bring us an acquisition of strength — an army, and the militia of the states. This is an idea extremely ridiculous: gentlemen cannot be earnest. This acquisition {48} will trample on our fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress? The honorable gentleman said that great danger would ensue if the Convention rose without adopting this system. I ask, Where is that danger? I see none. Other gentlemen have told us, within these walls, that the union is gone, or that the union will be gone. Is not this trifling with the judgment of their fellow—citizens? Till they tell us the grounds of their fears, I will consider them as imaginary. I rose to make inquiry where those dangers were; they could make no answer: I believe I never shall have that answer. Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when laboring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more awful than their unanimous acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country. Yet the people of this country could not be appalled by their pompous armaments: they stopped their carer, and victoriously captured them. Where is the peril, now, compared to that? Some minds are agitated by foreign alarms. Happily for us, there is no real danger from Europe; that country is engaged in more arduous business: from that quarter there is no cause of fear: you may sleep in safety forever for them.

Where is the danger? If, sir, there was any, I would recur to the American spirit to defend us; that spirit which has enabled us to surmount the greatest difficulties: to that illustrious spirit I address my most fervent prayer to prevent our adopting a system destructive to liberty. Let not gentlemen be told that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers, but those dangers are ideal; they cannot be demonstrated. To encourage us to adopt it, they tell us that there is a plain, easy way of getting amendments. When I come to contemplate this part, I suppose that I am mad, or that my {49} countrymen are so. The way to amendment is, in my conception, shut. Let us consider this plain, easy way. “The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by the Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be

made prior to the year 1808, shall in any manner affect the 1st and 4th clauses in the 9th section of the 1st article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”

Hence it appears that three fourths of the states must ultimately agree to any amendments that may be necessary. Let us consider the consequence of this. However uncharitable it may appear, yet I must tell my opinion — that the most unworthy characters may get into power, and prevent the introduction of amendments. Let us suppose — for the case is supposable, possible, and probable that you happen to deal those powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two thirds of the Congress, or of the state legislatures, are necessary even to propose amendments. If one third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous, is, that three fourths of the state legislatures, or of the state conventions, must concur in the amendments when proposed! In such numerous bodies, there must necessarily be some designing, bad men. To suppose that so large a number as three fourths of the states will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or even in such as would bear some likeness to one another; for four of the smallest states, that do not collectively contain one tenth part of the population of the United States, may obstruct the most salutary and necessary amendments. Nay, in these four states, six tenths of the people may reject {50} these amendments; and suppose that amendments shall be opposed to amendments, which is highly probable, — is it possible that three fourths can ever agree to the same amendments? A bare majority in these four small states may hinder the adoption of amendments; so that we may fairly and justly conclude that one twentieth part of the American people may prevent the removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty It is, sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive government; for it may, in many respects, prove to be such. Is this the spirit of republicanism?

What, sir, is the genius of democracy? Let me read that clause of the bill of rights of Virginia which relates to this: 3d clause: — that government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal—administration; and that whenever any government shall be found inadequate, or contrary to those purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

This, sir, is the language of democracy — that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If, then, gentlemen, standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I

am amazed and inexpressibly astonished. If this be the opinion of the majority, I must submit; but to me, sir, it appears perilous and destructive. I cannot help thinking so. Perhaps it may be the result of my age. These may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, sir, amendments {51} are left to the twentieth, or tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practised in the House of Commons, in England, and that many of the members raise themselves to preferments by selling the rights of the whole of the people. But, sir, the tenth part of that body cannot continue oppression on the rest of the people. English liberty is, in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alteration, however judicious. The honorable gentleman who presides told us that, to prevent abuses in our government, we will assemble in Convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them. O sir, we should have fine times, indeed, if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in a nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America.

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace—bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimited, exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession. You cannot force them to receive their punishment: of what service would militia be to you, {52} when, most probably, you will not have a single musket in the state? for, as arms are to be provided by Congress, they may or may not furnish them.

Let me here call your attention to that part which gives the Congress power “to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States — reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither — this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left to the states may, at the pleasure of Congress, be rendered nugatory. Our situation

will be deplorable indeed: nor can we ever expect to get this government amended, since I have already shown that a very small minority may prevent it, and that small minority interested in the continuance of the oppression. Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example where rulers overcharged with power willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes, the oppressed have got loose by one of those bloody struggles that desolate a country; but a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of.

The honorable gentleman's observations, respecting the people's right of being the agents in the formation of this government, are not accurate, in my humble conception. The distinction between a national government and a confederacy is not sufficiently discerned. Had the delegates, who were sent to Philadelphia, a power to propose a consolidated government instead of a confederacy? Were they not deputed by states, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations; {53} they are not the proper agents for this purpose. States and foreign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business. Has it not always gone through the legislatures? I refer you to the treaties with France, Holland, and other nations. How were they made? Were they not made by the states? Are the people, therefore, in their aggregate capacity, the proper persons to form a confederacy? This, therefore, ought to depend on the consent of the legislatures, the people having never sent delegates to make any proposition for changing the government. Yet I must say, at the same time, that it was made on grounds the most pure; and perhaps I might have been brought to consent to it so far as to the change of government. But there is one thing in it which I never would acquiesce in. I mean, the changing it into a consolidated government, which is so abhorrent to my mind. [The honorable gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland; which, according to the substance of the notes, he attributes to the present feeble government.] An opinion has gone forth, we find, that we are contemptible people: the time has been when we were thought otherwise. Under the same despised government, we commanded the respect of all Europe: wherefore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions where it has never been expected; it has gone to the people of France, in search of a splendid government — a strong, energetic government. Shall we imitate the example of those nations who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government — for the loss of their liberty? If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation {54} of every thing. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We

drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope—dancing, chain—rattling, ridiculous ideal checks and contrivances? But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir: go to the poor man, and ask him what he does. He will inform you that he enjoys the fruits of his labor, under his own fig—tree, with his wife and children around him, in peace and security. Go to every other member of society, — you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. I fear I tire the patience of the committee; but I beg to be indulged with a few more observations. When I thus profess myself an advocate for the liberty of the people, I shall be told I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out: but, sir, conscious rectitude outweighs those things with me. I see great jeopardy in this new government. I see none from our present one. I hope some gentleman or other will bring forth, in full array, those {55} dangers, if there be any, that we may see and touch them. I have said that I thought this a consolidated government: I will now prove it. Will the great rights of the people be secured by this government? Suppose it should prove oppressive, how can it be altered? Our bill of rights declares, “that a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.”

I have just proved that one tenth, or less, of the people of America — a most despicable minority — may prevent this reform or alteration. Suppose the people of Virginia should wish to alter their government; can a majority of them do it? No; because they are connected with other men, or, in other words, consolidated with other states. When the people of Virginia, at a future day, shall wish to alter their government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States. The founders of your own Constitution made your government changeable: but the power of changing it is gone from you. Whither is it gone? It is placed in the same hands that hold the rights of twelve other states; and those who hold those rights have right and power to keep them. It is not the particular government of Virginia: one of the leading features of that government is, that a majority can alter it, when necessary for the public good. This government is not a Virginian, but an American government. Is it not, therefore, a consolidated government? The sixth clause of your bill of rights tells you, “that elections of members to serve as

representatives of the people in Assembly ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." But what does this Constitution say? The clause under consideration gives an unlimited and unbounded power of taxation. Suppose every delegate from Virginia opposes a law laying a tax; what will it avail? They are opposed by a majority; eleven members can destroy their efforts: {56} those feeble ten cannot prevent the passing the most oppressive tax law; so that, in direct opposition to the spirit and express language of your declaration of rights, you are taxed, not by your own consent, but by people who have no connection with you.

The next clause of the bill of rights tells you, "that all power of suspending law, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." This tells us that there can be no suspension of government or laws without our own consent; yet this Constitution can counteract and suspend any of our laws that contravene its oppressive operation; for they have the power of direct taxation, which suspends our bill of rights; and it is expressly provided that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the states. Consider how the only remaining defence we have left is destroyed in this manner. Besides the expenses of maintaining the Senate and other house in as much splendor as they please, there is to be a great and mighty President, with very extensive powers — the powers of a king. He is to be supported in extravagant magnificence; so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure. I might be thought too inquisitive, but I believe I should take up very little of your time in enumerating the little power that is left to the government of Virginia; for this power is reduced to little or nothing: their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the states; their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the states, will reduce the power of the latter to nothing.

The voice of tradition, I trust, will inform posterity of our struggles for freedom. If our descendants be worthy the name of Americans, they will preserve, and hand down to their latest posterity, the transactions of the present times; and, though I confess my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty; for I never will give up the power of direct taxation but for a scourge. I am willing to give it conditionally; {57} that is, after non—compliance with requisitions. I will do more, sir, and what I hope will convince the most skeptical man that I am a lover of the American Union — that, in case Virginia shall not make punctual payment, the control of our custom—houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing, and furnished the last soldier. Nay, sir, there is another alternative to which I would consent; — even that they should strike us out of the Union, and take away from us all federal privileges, till we comply with federal requisitions:

but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the states, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, sir, the dissolution of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty: the second thing is American union; and I hope the people of Virginia will endeavor to preserve that union. The increasing population of the Southern States is far greater than that of New England; consequently, in a short time, they will be far more numerous than the people of that country. Consider this, and you will find this state more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech gentlemen, at all hazards, not to give up this unlimited power of taxation. The honorable gentleman has told us that these powers, given to Congress, are accompanied by a judiciary which will correct all. On examination, you will find this very judiciary oppressively constructed; your jury trial destroyed, and the judges dependent on Congress.

In this scheme of energetic government, the people will find two sets of tax—gatherers — the state and the federal sheriffs. This, it seems to me, will produce such dreadful oppression as the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity; for how are you to tie his hands? Have you any sufficiently decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus thousands of your people will be most shamefully robbed: our state sheriffs, those unfeeling blood—suckers {58} have, under the watchful eye of our legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally ruining the people; a repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws: in the struggle they have generally triumphed over the legislature.

It is a fact that lands have been sold for five shillings, which were worth one hundred pounds: if sheriffs, thus immediately under the eye of our state legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New York? If they perpetrate the most unwarrantable outrage on your person or property, you cannot get redress on this side of Philadelphia or New York; and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn to support this Constitution, in opposition to that of any state, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen, who may search, at any time, your houses, and most secret recesses, will the people bear it? If you think so, you differ from me. Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told that it is safe to err on that side, because such regulations may be made by Congress as shall restrain these officers, and because laws are made by our representatives, and judged by righteous judges: but, sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not. I shall therefore be an infidel on that point till the day of my death.

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints towards monarchy; and does not this raise indignation in the breast of every true American?

Your President may easily become king. Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this government, {59} although horridly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest, that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, sir, will the American spirit solely relieve you when this happens? I would rather infinitely — and I am sure most of this Convention are of the same opinion — have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army, to carry every thing before him; or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition? Away with your {60} President! we shall have a king: the army will salute him monarch: your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue? . . .

. . . The history of Switzerland clearly proves that we might be in amicable alliance with those states without adopting this Constitution. Switzerland is a confederacy, consisting of dissimilar governments. This is an example which proves that governments of dissimilar structures may be confederated. That confederate republic has stood upwards of four hundred years; and,

although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity; for they have braved all the power of France and Germany during that long period. The Swiss spirit, sir, has kept them together; they have encountered and overcome immense difficulties with patience and fortitude. In the vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity, and valor. [Here he makes a comparison of the people of that country and those of France, and makes a quotation from Addison illustrating the subject.] Look at the peasants of that country and of France; and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether the people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Signior, alongside of our President, would put us to disgrace; but we should be as abundantly consoled for this disgrace, when our citizens have been put in contrast with the Turkish slave. The most valuable end of government is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege. Show me the reason why the American Union is to be dissolved. Who are those eight adopting states? Are they averse to give us a little time to consider, before we {63} conclude? Would such a disposition render a junction with them eligible; or is it the genius of that kind of government to precipitate people hastily into measures of the utmost importance, and grant no indulgence? If it be, sir, is it for us to accede to such a government? We have a right to have time to consider; we shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting states will doubtless accept our money and our regiments; and what is to be the consequence, if we are disunited? I believe it is yet doubtful, whether it is not proper to stand by a while, and see the effect of its adoption in other states. In forming a government, the utmost care should be taken to prevent its becoming oppressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other states have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare. Would they not, therefore, acquiesce in our taking time to deliberate — deliberate whether the measure be not perilous, not only for us, but the adopting states?

Permit me, sir, to say, that a great majority of the people, even in the adopting states, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has, perhaps, been tricked into it. If the other states who have adopted it have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people at present. Should it be oppressive, their affections will be totally estranged from it; and, sir, you know that a government, without their affections, can neither be durable nor happy. I speak as one poor individual; but when I speak, I speak the language of thousands. But, sir, I mean not to breathe the spirit, nor utter the language, of secession.

I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honorable member has said, we shall be properly represented. Remember, sir, that the number of our representatives is but ten, whereof six is a majority. Will those men be possessed

of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the continent; they must know not only the actual state of nations in Europe and America, the situations of their farmers, cottagers, and mechanics, but also the relative situations and intercourse of those nations. Virginia is as large as England. Our proportion of representatives is but ten men. In England they have five hundred and fifty—eight. The House of Commons, in England, numerous as they are, we are told, are bribed, and have bartered away the rights of their constituents: what, then, shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice.

I have, I fear, fatigued the committee; yet I have not said the one hundred thousandth part of what I have on my mind, and wish to impart. On this occasion, I conceived myself bound to attend strictly to the interest of the state, and I thought her dearest rights at stake. Having lived so long — been so much honored — my efforts, though small, are due to my country. I have found my mind hurried on, from subject to subject, on this very great occasion. We have been all out of order, from the gentleman who opened to—day to myself. I did not come prepared to speak, on so multifarious a subject, in so general a manner. I trust you will indulge me another time. Before you abandon the present system, I hope you will consider not only its defects, most maturely, but likewise those of that which you are to substitute for it. May you be fully apprized of the dangers of the latter, not by fatal experience, but by some abler advocate than I!

Part Nine: Federalists

Federalist Papers #9, by Alexander Hamilton

The Utility of the Union as a Safeguard against Domestic Faction and Insurrection

A firm union will be of the utmost moment to the peace and liberty of the states, as a barrier against domestic faction and insurrection.

It is impossible to read the history of the petty republics of Greece and Italy, without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions, by which they were kept perpetually vibrating between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrasts to the furious storms that are to succeed. If now and then intervals of felicity open themselves to view, we behold them with a mixture of regret arising from the reflection, that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament, that the vices of government should pervert the direction, and tarnish the lustre, of those bright talents and exalted endowments, for which the favoured soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics, the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government, as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have in a few glorious instances refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices not less magnificent, which will be equally permanent monuments of their error.

But it is not to be denied, that the portraits they have sketched of republican government, were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends of liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges, holding their offices during good behaviour; the representation of the people in the legislature, by deputies of their own election; these are either wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained, and its imperfections lessened or avoided. To this catalogue of circumstances, that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an

objection to the new constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single state, or to the consolidation of several smaller states into one great confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single state, which shall be attended to in another place.

The utility of a confederacy, as well to suppress faction, and to guard the internal tranquillity of states, as to increase their external force and security, is in reality not a new idea. It has been practised upon in different countries and ages, and has received the sanction of the most approved writers on the subjects of politics. The opponents of the PLAN proposed have with great assiduity cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions, far short of the limits of almost every one of these states. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia, can by any means be compared with the models from which he reasoned, and to which the terms of his description apply. If we therefore receive his ideas on this point, as the criterion of truth, we shall be driven to the alternative, either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers, who have come forward on the other side of the question, seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger states, as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men, who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue; but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here, that in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the union; but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general union of the states, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

“It is very probable, says he,* that mankind would have been obliged, at length, to live constantly under the government of a SINGLE PERSON, had they not contrived a kind of constitution, that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC.

“This form of government is a convention by which several smaller states agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

“A republic of this kind, able to withstand an external force, may support itself without any internal corruption. The form of this society prevents all manner of inconveniences.

“If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces, independent of those which he had usurped, and overpower him before he could be settled in his usurpation.

“Should a popular insurrection happen in one of the confederate states, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

“As this government is composed of small republics, it enjoys the internal happiness of each, and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies.”

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgement of the principal arguments in favour of the union, and must effectually remove the false impressions, which a misapplication of the other parts of the work was calculated to produce. They have, at the same time, an intimate connexion with the more immediate design of this paper, which is to illustrate the tendency of the union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a confederacy and a consolidation of the states. The essential characteristic of the first, is said to be the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended, that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members, has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown, in the course of this investigation, that, as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a confederate republic seems simply to be, “an assemblage of societies,” or an association of two or more states into one state. The extent, modifications, and objects, of the federal authority, are mere matters of discretion. So long as the separate organization of the members be not abolished, so long as it exists by a constitutional necessity for local purposes,

though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed constitution, so far from implying an abolition of the state governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the senate, and leaves in their possession certain exclusive, and very important, portions of the sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES, or republics, the largest were entitled to three votes in the COMMON COUNCIL, those of the middle class to two, and the smallest to one. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says, "were I to give a model of an excellent confederate republic, it would be that of Lycia." Thus we perceive, that the distinctions insisted upon, were not within the contemplation of this enlightened writer; and we shall be led to conclude, that they are the novel refinements of an erroneous theory.

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[*]Spirit of Laws, Vol. I. Book IX. Chap. I.

Federalist Papers #10, by James Madison

The same Subject continued

Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed, than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion, introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have every where perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected.

Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However

anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labour, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties, is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good. So strong is this

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. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests, forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought, is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights,

against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean, a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed, that, by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether

small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests, being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic . . . is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the

greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

PUBLIUS

Federalist Papers #39, by James Madison

The conformity of the plan to republican principles: an objection in respect to the powers of the convention, examined

The last paper having concluded the observations, which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different states, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of

aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion, to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is essential to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honourable title of republic. It is sufficient for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been, or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every state in the union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behaviour.

On comparing the constitution planned by the convention, with the standard here fixed, we perceive at once, that it is, in the most rigid sense, conformable to it. The house of representatives, like that of one branch at least of all the state legislatures, is elected immediately by the great body of the people. The senate, like the present congress, and the senate of Maryland, derives its appointment indirectly from the people. The president is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges, with all other officers of the union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of the state constitutions. The house of representatives is periodically elective, as in all the states; and for the period of two years, as in the state of South Carolina. The senate is elective, for the period of six years; which is but one year more than the period of the senate of Maryland; and but two more than that of the senates of New York and Virginia. The president is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other states the election is annual. In several of the states, however, no explicit provision is made for the impeachment of the chief

magistrate. And in Delaware and Virginia, he is not impeachable till out of office. The president of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behaviour. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case, and the example of the state constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the state governments; and in its express guarantee of the republican form to each of the latter.

But it was not sufficient, say the adversaries of the proposed constitution, for the convention to adhere to the republican form. They ought, with equal care, to have preserved the federal form, which regards the union as a confederacy of sovereign states; instead of which, they have framed a national government, which regards the union as a consolidation of the states. And it is asked, by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires, that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a national, but a federal act.

That it will be a federal, and not a national act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a majority of the people of the union, nor from that of a majority of the states. It must result from the unanimous assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each state must bind the minority; and the will

of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the states, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will, if established, be a federal, and not a national constitution.

The next relation is, to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is national, not federal. The senate, on the other hand, will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is federal, not national. The executive power will be derived from a very compound source. The immediate election of the president is to be made by the states in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and co-equal societies; partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations, from so many distinct and co-equal bodies politic. From this aspect of the government, it appears to be of a mixed character, presenting at least as many federal as national features.

The difference between a federal and national government, as it relates to the operation of the government, is, by the adversaries of the plan of the convention, supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the constitution by this criterion, it falls under the national, not the federal character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which states may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it in this relation, a national government.

But if the government be national, with regard to the operation of its powers, it changes its aspect again, when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them within its own sphere. In this relation,

then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several states, a residuary and inviolable sovereignty over all other objects. It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the constitution: and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly national, nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal on the other hand, the concurrence of each state in the union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention, is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by states, not by citizens, it departs from the national, and advances towards the federal character. In rendering the concurrence of less than the whole number of states sufficient, it loses again the federal, and partakes of the national character.

The proposed constitution, therefore, even when tested by the rules laid down by its antagonists, 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.

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Federalist Papers #47, by James Madison

The meaning of the maxim, which requires a separation of the departments of power, examined and ascertained

Having reviewed the general form of the proposed government, and the general mass of power allotted to it; I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments, ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favour of liberty. The several departments of power are distributed and blended in such a manner, as at once to destroy all symmetry and beauty of form: and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires, that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject, is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavour, in the first place, to ascertain his meaning on this point.

The British constitution was to Montesquieu, what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard, as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged: so this great political critic appears to have viewed the constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure then not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British constitution, we must perceive, that the legislative, executive, and judiciary departments, are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him; can be removed by him on the address of the two houses of parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department, forms also a great constitutional council to the executive chief; as, on another hand, it is the sole depository of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges again are so far

connected with the legislative department, as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred, that in saying, "there can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates;" or, "if the power of judging, be not separated from the legislative and executive powers," he did not mean that these departments ought to have no partial agency in, or no control over the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate, in whom the whole executive power resides, cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature, can perform no judiciary act; though by the joint act of two of its branches, the judges may be removed from their offices; and though one of its branches is possessed of the judicial power in the last resort. The entire legislature again can exercise no executive prerogative, though one of its branches* constitutes the supreme executive magistracy; and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim, are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Again, "were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor." Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several states, we find that, notwithstanding the emphatical, and in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments; and has qualified the doctrine by declaring, "that the legislative, executive, and judiciary powers, ought to be kept as separate from, and independent of each other, as the nature of a free government will admit; or as is consistent with that chain of connexion, that binds the whole fabric of the constitution in one indissoluble bond of unity and amity." Her constitution accordingly mixes these departments in several

respects. The senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The president, who is the head of the executive department, is the presiding member also of the senate; and besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department; and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient, though less pointed caution, in expressing this fundamental article of liberty. It declares, "that the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body; and the senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department again, are appointable by the executive department, and removeable by the same authority, on the address of the two legislative branches. Lastly, a number of the officers of government, are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the constitution have, in this last point at least, violated the rule established by themselves.

I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the revolution: and even before the principle under examination had become an object of political attention.

The constitution of New York contains no declaration on this subject; but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate a partial control over the legislative department; and what is more, gives a like control to the judiciary department, and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment, members of the legislative, are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors, is to consist of one branch of the legislature and the principal members of the judiciary department.

The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor, and ordinary, or surrogate of the state; is a member of the supreme court of appeals, and president with a casting vote of one of the legislative branches. The same legislative branch acts again as executive council of the governor, and with him constitutes the

court of appeals. The members of the judiciary department are appointed by the legislative department, and removeable by one branch of it on the impeachment of the other.

According to the constitution of Pennsylvania,* the president, who is head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department, and forms a court of impeachments for trial of all officers, judiciary as well as executive. The judges of the supreme court, and justices of the peace, seem also to be removeable by the legislature; and the executive power of pardoning in certain cases to be referred to the same department. The members of the executive council are made EX OFFICIO justices of peace throughout the state.

In Delaware,* the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others, appointed three by each of the legislative branches, constitute the supreme court of appeals: he is joined with the legislative department in the appointment of the other judges. Throughout the states, it appears that the members of the legislature may at the same time be justices of the peace. In this state, the members of one branch of it are EX OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislative; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature.

Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government, ought to be for ever separate and distinct from each other. Her constitution, notwithstanding, makes the executive magistrate appointable by the legislative department; and the members of the judiciary, by the executive department.

The language of Virginia is still more pointed on this subject. Her constitution declares, "that the legislative, executive, and judiciary departments, shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time; except that the justices of county courts shall be eligible to either house of assembly." Yet we find not only this express exception, with respect to the members of the inferior courts; but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter, are triennially displaced at the pleasure of the legislature; and that all the principal officers, both executive and judiciary, are filled by the same department. The executive prerogative of pardoning, also, is in one case vested in the legislative department.

The constitution of North Carolina, which declares, "that the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other," refers at the same time to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department.

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary

department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the state.

In the constitution of Georgia, where it is declared, “that the legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other,” we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardoning, to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases in which the legislative, executive, and judiciary departments, have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several state governments. I am fully aware, that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious, that, in some instances, the fundamental principle under consideration, has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is, that the charge brought against the proposed constitution, of violating a sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper.

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[*]The King.

[*]The constitutions of these states have been since altered.

Federalist Papers #48, by James Madison

The same subject continued, with a view to the means of giving efficacy in practice to that maxim

It was shown in the last paper, that the political apothegm there examined, does not require that the legislative, executive, and judiciary departments, should be wholly unconnected with each other. I shall undertake in the next place to show, that unless these departments be so far connected and blended, as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments, ought not to be directly and completely administered by either of the other departments. It is equally evident, that neither of them ought to possess, directly or indirectly, an overruling influence

over the others in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary; the next, and most difficult task, is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful members of the government. The legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty, from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of a hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favourable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude; yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy, and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not extend beyond the legislative sphere. On the other side, the executive power being

restrained within a narrower compass, and being more simple in its nature; and the judiciary being described by land-marks, still less uncertain, projects of usurpation by either of these departments, would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all, a prevailing influence over the pecuniary rewards of those who fill the other departments; a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might collect vouchers in abundance from the records and archives of every state in the union. But as a more concise, and at the same time equally satisfactory evidence, I will refer to the example of two states, attested by two unexceptionable authorities.

The first example is that of Virginia, a state which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the state of Virginia," (p. 195.) "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments, should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor if made, can be effectual; because in that case, they may put their proceeding into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly, in many instances, decided rights which should have been left to judiciary controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar."

The other state which I shall take for an example, is Pennsylvania; and the other authority the council of censors which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government, had performed their duty as guardians of the people, or assumed to themselves,

or exercised other or greater powers than they are entitled to by the constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments: and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of the legislature.

The constitutional trial by jury had been violated; and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department, frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war: but the greater part of them may be considered as the spontaneous shoots of an ill constituted government.

It appears also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head. First. A great proportion of the instances, were either immediately produced by the necessities of the war, or recommended by congress or the commander in chief. Second. In most of the other instances, they conformed either to the declared or the known sentiments of the legislative department. Third. The executive department of Pennsylvania is distinguished from that of the other states, by the number of members composing it. In this respect it has as much affinity to a legislative assembly, as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence; unauthorized measures would of course be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is, that a mere demarkation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

PUBLIUS

Federalist Papers #49, by James Madison

The same subject continued, with the same view

The author of the "Notes on the state of Virginia," quoted in the last paper, has subjoined to that valuable work, the draught of a constitution, which had been prepared in order to be laid before a convention expected to be called in 1783, by the legislature, for the establishment of a constitution for that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking original, comprehensive, and accurate; and is the more worthy of attention, as it equally displays a fervent attachment to republican government, and an enlightened view of the dangerous propensities against which it ought to be guarded. One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power, against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked.

His proposition is, "that whenever any two of the three branches of government shall concur in opinion each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or correcting breaches of it, a convention shall be called for the purpose."

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new model the powers of government; but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, neither of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers: and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commission, can alone declare its true meaning, and enforce its observance?

There is certainly great force in this reasoning, and it must be allowed to prove, that a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits.

In the first place, the provision does not reach the case of a combination of two of the departments against a third. If the legislative authority, which possesses so many means of operating on the motives of the other departments, should be able to gain to its interest either of the others, or even one-third of its members, the remaining department could derive no advantage from this remedial provision. I do not dwell, however, on this objection, because it may be thought to lie rather against the modification of the principle, than against the principle itself.

In the next place, it may be considered as an objection inherent in the principle, that, as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true, that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone; and acquires firmness and confidence, in proportion to the number with which it is associated. When the examples which fortify opinion, are ancient, as well as numerous, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected, as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side.

The danger of disturbing the public tranquillity, by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honour to the virtue and intelligence of the people of America, it must be confessed, that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect, that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardour for new and opposite forms, produced by a universal resentment and indignation against the ancient government; and whilst no spirit of party, connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against the danger which is apprehended.

But the greatest objection of all is, that the decisions which would probably result from such appeals, would not answer the purpose of maintaining the constitutional equilibrium of the government. We have seen that the tendency of republican governments is, to an aggrandizement of the legislative, at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments. But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments, are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy; and their administration is always liable to be discoloured and rendered unpopular. The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connexions of blood, of friendship, and of acquaintance, embrace a great proportion of the most influential part of the society. The

nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of their rights and liberties. With these advantages, it can hardly be supposed, that the adverse party would have an equal chance for a favourable issue.

But the legislative party would not only be able to plead their cause most successfully with the people: they would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who actually were, or who expected to be members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them.

It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious colouring. A strong party among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favourite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favour of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character, and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of the measures, to which the decision would relate. The passions, therefore, not the reason, of the public, would sit in judgment. But it is the reason of the public alone, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government.

We found in the last paper, that mere declarations in the written constitution, are not sufficient to restrain the several departments within their legal limits. It appears in this, that occasional appeals to the people would be neither a proper, nor an effectual provision for that purpose. How far the provisions of a different nature contained in the plan above quoted, might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision.

PUBLIUS

Federalist Papers #50, by James Madison

The same subject continued, with the same view

It may be contended, perhaps, that instead of occasional appeals to the people, which are liable to the objections urged against them, periodical appeals are the proper and adequate means of preventing and correcting infractions of the constitution.

It will be attended to, that in the examination of these expedients, I confine myself to their aptitude for enforcing the constitution, by keeping the several departments of power within their due bounds; without particularly considering them, as provisions for altering the constitution itself. In the first view, appeals to the people at fixed periods, appear to be nearly as ineligible, as appeals on particular occasions as they emerge. If the periods be separated by short intervals, the measures to be reviewed and rectified, will have been of recent date, and will be connected with all the circumstances which tend to vitiate and pervert the result of occasional revisions. If the periods be distant from each other, the same remark will be applicable to all recent measures; and in proportion as the remoteness of the others may favour a dispassionate review of them this advantage is inseparable from inconveniences which seem to counterbalance it. In the first place, a distant prospect of public censure would be a very feeble restraint on power from those excesses, to which it might be urged by the force of present motives. Is it to be imagined, that a legislative assembly, consisting of a hundred or two hundred members, eagerly bent on some favourite object, and breaking through the restraints of the constitution in pursuit of it, would be arrested in their career, by considerations drawn from a censorial revision of their conduct at the future distance of ten, fifteen, or twenty years? In the next place, the abuses would often have completed their mischievous effects before the remedial provision would be applied. And in the last place, where this might not be the case, they would be of long standing, would have taken deep root, and would not easily be extirpated.

The scheme of revising the constitution, in order to correct recent breaches of it, as well as for other purposes, has been actually tried in one of the states. One of the objects of the council of censors, which met in Pennsylvania, in 1783 and 1784, was, as we have seen, to inquire “whether the constitution had been violated; and whether the legislative and executive departments had encroached on each other.” This important and novel experiment in politics, merits, in several points of view, very particular attention. In some of them it may, perhaps, as a single experiment, made under circumstances somewhat peculiar, be thought to be not absolutely conclusive. But, as applied to the case under consideration, it involves some facts which I venture to remark, as a complete and satisfactory illustration of the reasoning which I have employed.

First. It appears, from the names of the gentlemen who composed the council, that some, at least, of its most active and leading members, had also been active and leading characters in the parties which pre-existed in the state.

Second. It appears that the same active and leading members of the council, had been active and influential members of the legislative and executive branches, within the period to be reviewed; and even patrons or opponents of the very measures to be thus brought to the test of the constitution. Two of the members had been vice-presidents of the state, and several others members of the executive council, within the seven preceding years. One of them had

been speaker, and a number of others, distinguished members of the legislative assembly, within the same period.

Third. Every page of their proceedings witnesses the effect of all these circumstances on the temper of their deliberations. Throughout the continuance of the council, it was split into two fixed and violent parties. The fact is acknowledged and lamented by themselves. Had this not been the case, the face of their proceedings exhibit a proof equally satisfactory. In all questions, however unimportant in themselves, or unconnected with each other, the same names stand invariably contrasted on the opposite columns. Every unbiassed observer may infer, without danger of mistake, and at the same time without meaning to reflect on either party, or any individuals of either party, that unfortunately passion, not reason, must have presided over their decisions. When men exercise their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same.

Fourth. It is at least problematical, whether the decisions of this body do not, in several instances, misconstrue the limits prescribed for the legislative and executive departments, instead of reducing and limiting them within their constitutional places.

Fifth. I have never understood that the decisions of the council on constitutional questions, whether rightly or erroneously formed, have had any effect in varying the practice founded on legislative constructions. It even appears, if I mistake not, that in one instance, the cotemporary legislature denied the constructions of the council, and actually prevailed in the contest.

This censorial body, therefore, proves at the same time, by its researches, the existence of the disease; and by its example, the inefficacy of the remedy.

This conclusion cannot be invalidated by alleging, that the state in which the experiment was made, was at that crisis, and had been for a long time before, violently heated and distracted by the rage of party. Is it to be presumed, that at any future septennial epoch, the same state will be free from parties? Is it to be presumed that any other state, at the same, or any other given period, will be exempt from them? Such an event ought to be neither presumed nor desired; because an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty.

Were the precaution taken of excluding from the assemblies elected by the people to revise the preceding administration of the government, all persons who should have been concerned in the government within the given period, the difficulties would not be obviated. The important task would probably devolve on men, who, with inferior capacities, would in other respects be little better qualified. Although they might not have been personally concerned in the administration, and therefore not immediately agents in the measures to be examined; they would probably have been involved in the parties connected with these measures, and have been elected under their auspices.

PUBLIUS

Federalist Papers, #51, by James Madison

The same subject continued, with the same view, and concluded

To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments, would be less difficult in practice, than it may in contemplation appear. Some difficulties, however, and some additional expense, would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other, would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the

government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is, to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a centinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature, appears, at first view, to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe, nor alone sufficient. On ordinary occasions, it might not be exerted with the requisite firmness; and on extraordinary occasions, it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connexion between this weaker department, and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several state constitutions, and to the federal constitution, it will be found, that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are moreover two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and the usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.

Second. It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other

part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one, by creating a will in the community independent of the majority, that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from, and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government, the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government: since it shows, that in exact proportion as the territory of the union may be formed into more circumscribed confederacies, or states, oppressive combinations of a majority will be facilitated; the best security under the republican form, for the rights of every class of citizens, will be diminished; and consequently, the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been, and ever will be, pursued, until it be obtained, or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger: and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak, as well as themselves: so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted, that if the state of Rhode Island was separated from the confederacy, and left to itself, the insecurity of rights under the popular form of government within such narrow limits, would be displayed by such reiterated oppressions of factious majorities, that some power altogether independent of the people, would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects, which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles, than those of justice and the general good: whilst there being thus less danger to a minor from the will of the major party, there must be less pretext also, to provide for the security of the former, by introducing into the government a will not dependent on the latter: or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger

the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.

PUBLIUS

Federalist Papers #78, by Alexander Hamilton

A view of the constitution of the judicial department in relation to the tenure of good behaviour

We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing confederation, the utility and necessity of a federal judicature 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 these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges: this is the same with that of appointing the officers of the union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: This chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices during good behaviour, which is conformable to the most approved of the state constitutions . . . among the rest, to that of this state. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behaviour for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy, it is an excellent barrier to the despotism of the prince: in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honours, but holds the sword of the community; the legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated; the

judiciary, on the contrary, 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 executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power;* that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."† And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence, as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution; and in a great measure as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other

departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation: So far as they can by any fair construction be reconciled to each other; reason and law conspire to dictate that this should be done. Where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an equal authority, that which was the last indication of its will, should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that, accordingly, whenever a particular statute contravenes the constitution, it will be the duty of the judicial tribunals to adhere to the latter, and disregard the former.

It can be of no weight to say, that the courts on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon

any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything, would prove that there ought to be no judges distinct from that body.

If then the courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency, in the mean time, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed constitution will never concur with its enemies,* in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually: and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the constitution only, that the independence of the judges may be an essential safe-guard against the effects of occasional ill humours in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may imagine. The benefits of the integrity and moderation of the judiciary have already been felt in more states than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded

the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the constitution and the laws.

There is yet a further and a weighty reason for the permanency of judicial offices; which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived, from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society, who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit characters; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt, that the convention acted wisely in copying from the models of those constitutions which have established good behaviour as the tenure of judicial offices, in point of duration; and that, so far from being blameable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

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[*]The celebrated Montesquieu, speaking of them says, “of the three powers above mentioned, the JUDICIARY is next to nothing.” Spirit of Laws, vol. 1, page 186.

[†]Idem. page 181.

[*]Vide Protest of the minority of the convention of Pennsylvania, Martin’s speech, &c.

Federalist Papers # 84, by Alexander Hamilton

Concerning several miscellaneous objections

In the course of the foregoing review of the constitution, I have endeavoured to answer most of the objections which have appeared against it. There remain, however, a few which either did not fall naturally under any particular head, or were forgotten in their proper places. These shall now be discussed: but as the subject has been drawn into great length, I shall so far consult brevity, as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of the remaining objections is, that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked, that the constitutions of several of the states are in a similar predicament. I add, that New York is of the number. And yet the persons who in this state oppose the new system, while they profess an unlimited admiration for our particular constitution, are among the most intemperate partizans of a bill of rights. To justify their zeal in this matter, they allege two things: one is, that though the constitution of New York has no bill of rights prefixed to it, yet it contains in the body of it, various provisions in favour of particular privileges and rights, which, in substance, amount to the same thing; the other is, that the constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed, are equally secured.

To the first I answer, that the constitution offered by the convention contains, as well as the constitution of this state, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article I. section 3. clause 7. “Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.” Section 9. of the same article, clause 2. “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” Clause 3. “No bill of attainder or ex post facto law shall be passed.” Clause 7. “No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind

whatever, from any king, prince, or foreign state.” Article III. section 2. clause 3. “The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.” Section 3. of the same article: “Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.” And clause 3. of the same section: “The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.”

It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this state. The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of TITLES OF NOBILITY, to which we have no corresponding provisions in our constitution, are perhaps greater securities to liberty than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law; and the practice of arbitrary imprisonments have been, in all ages, the favourite and most formidable instruments of tyranny. The observations of the judicious Blackstone,* in reference to the latter, are well worthy of recital: “To bereave a man of life (says he) or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.” And as a remedy for this fatal evil, he is every where peculiarly emphatical in his encomiums on the habeas corpus act, which in one place he calls “the BULWARK of the British constitution.”†

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner stone of republican government for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

To the second, that is, to the pretended establishment of the common and statute law by the constitution, I answer, that they are expressly made subject “to such alterations and provisions as the legislature shall from time to time make concerning the same.” They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law, and to remove doubts which might have been occasioned by the revolution. This consequently can be considered as no part of a declaration of rights; which under our constitutions must be intended to limit the power of the government itself.

It has been several times truly remarked, that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favour of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the Barons, sword in hand, from king John. Such were the subsequent confirmations of that

charter by succeeding princes. Such was the petition of right assented to by Charles the First, in the beginning of his reign. Such also, was the declaration of right presented by the lords and commons to the prince of Orange in 1688, and afterwards thrown into the form of an act of parliament, called the bill of rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing, they have no need of particular reservations. "WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America:" this is a better recognition of popular rights, than volumes of those aphorisms, which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics, than in a constitution of government.

But a minute detail of particular rights, is certainly far less applicable to a constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to one which has the regulation of every species of personal and private concerns. If therefore the loud clamours against the plan of convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this state. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired.

I go further, and affirm, that bills of rights, in the sense and to the extent they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done, which there is no power to do? Why, for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power. They might urge with a semblance of reason, that the constitution ought not to be charged with the absurdity of providing against the abuse of an authority, which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a right to prescribe proper regulations concerning it, was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much has been said, I cannot forbear adding a remark or two: in the first place, I observe that there is not a syllable concerning it in the constitution of this state; in the next, I contend that whatever has been said about it in that of any other state, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved?" What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.* And here, after all, as intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, that the constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights, in Great Britain, form its constitution, and conversely the constitution of each state is its bill of rights. In like manner the proposed constitution, if adopted, will be the bill of rights of the union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the state constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are provided for in any part of the instrument which establishes the government. Whence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign to the substance of the thing.

Another objection, which, from the frequency of its repetition, may be presumed to be relied on, is of this nature: it is improper (say the objectors) to confer such large powers, as are proposed, upon the national government; because the seat of that government must of necessity be too remote from many of the states to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body. This argument, if it proves any thing, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show, that the objection is, in reality, not well founded. There is in most of the arguments which relate to distance, a palpable illusion of the imagination. What are the sources of information, by which the people in any distant county must regulate their judgment of the conduct of their representatives in the state legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide: and how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives, and with other persons who reside at the place of their deliberations.

It is equally evident that the like sources of information would be open to the people, in relation to the conduct of their representatives in the general government: and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the state governments. The executive and legislative bodies of each state will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behaviour

of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rivalry of power. And we may conclude with the fullest assurance, that the people, through that channel, will be better informed of the conduct of their national representatives, than they can be by any means they now possess, of that of their state representatives.

It ought also to be remembered, that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance; and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the union.

Among the many curious objections which have appeared against the proposed constitution, the most extraordinary and the least colourable is derived from the want of some provision respecting the debts due to the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; yet there is nothing clearer than that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another place, I shall only observe, that as it is a plain dictate of common sense, so it is also an established doctrine of political law, that "states neither lose any of their rights, nor are discharged from any of their obligations, by a change in the form of their civil government."*

The last objection of any consequence at present recollected, turns upon the article of expense. If it were even true, that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan. The great bulk of the citizens of America, are with reason convinced that union is the basis of their political happiness. Men of sense of all parties now, with few exceptions, agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government; a single body being an unsafe depository of such ample authorities. In conceding all this, the question of expense is given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons; the same number of which congress, under the existing confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the progress of the population and resources of the country. It is evident, that a less number would, even in the first instance, have been unsafe; and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people.

Whence is the dreaded augmentation of expense to spring? One source indicated, is the multiplication of offices under the new government. Let us examine this a little.

It is evident that the principal departments of the administration under the present government, are the same which will be required under the new. There are now a secretary at

war, a secretary for foreign affairs, a secretary for domestic affairs, a board of treasury consisting of three persons, a treasurer, assistants, clerks, &c. These offices are indispensable under any system, and will suffice under the new, as well as the old. As to ambassadors and other ministers and agents in foreign countries, the proposed constitution can make no other difference, than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow, that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of state for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The states individually, will stand in no need of any for this purpose. What difference can it make in point of expense, to pay officers of the customs appointed by the state, or by the United States.

Where then are we to seek for those additional articles of expense, which are to swell the account to the enormous size that has been represented? The chief item which occurs to me, respects the support of the judges of the United States. I do not add the president, because there is now a president of congress, whose expenses may not be far, if any thing, short of those which will be incurred on account of the president of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in regard to this matter. But upon no reasonable plan can it amount to a sum which will be an object of material consequence.

Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing which presents itself is, that a great part of the business, that now keeps congress sitting through the year, will be transacted by the president. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the senate, and subject to their final concurrence. Hence it is evident, that a portion of the year will suffice for the session of both the senate and the house of representatives: we may suppose about a fourth for the latter, and a third, or perhaps half, for the former. The extra business of treaties and appointments may give this extra occupation to the senate. From this circumstance we may infer, that until the house of representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present, and the temporary session of the future congress.

But there is another circumstance, of great importance in the view of economy. The business of the United States has hitherto occupied the state legislatures, as well as congress. The latter has made requisitions which the former have had to provide for. It has thence happened, that the sessions of the state legislatures have been protracted greatly beyond what was necessary for the execution of the mere local business. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several states amount to two thousand and upwards; which number has hitherto performed what, under the new system, will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or a fifth of that number. The congress under the proposed government will do all the business of the United States themselves, without the intervention of the state legislatures, who thenceforth will have only

to attend to the affairs of their particular states, and will not have to sit in any proportion as long as they have heretofore done. This difference, in the time of the sessions of the state legislatures, will be clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system.

The result from these observations is, that the sources of additional expense from the establishment of the proposed constitution, are much fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; that that, while it is questionable on which side of the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the union.

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[*]Vide Blackstone's Commentaries, vol. 1, page 136.

[†]Idem. vol. 4, page 438.

[*]To show that there is a power in the constitution, by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said, that duties may be laid upon publications so high as to amount to a prohibition. I know not by what logic it could be maintained, that the declarations in the state constitutions, in favour of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the state legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press no where enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, regulated by public opinion; so that after all general declarations respecting the liberty of the press, will give it no greater security than it will have without them. The same invasions of it may be effected under the state constitutions which contain those declarations through the means of taxation, as under the proposed constitution, which has nothing of the kind. It would be quite as significant to declare, that government ought to be free, that taxes ought not to be excessive, &c. as that the liberty of the press ought not to be restrained.

[*]Vide Rutherford's Institutes, vol. 2, book II, chap. x, sect. xiv, and xv. . . . Vide also Grotius, book 11, chap. ix, sect. viii, and ix.

Federalist Papers # 85, by Alexander Hamilton

Conclusion

According to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points. . . . "the analogy of the proposed government to your own state constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been

so fully anticipated, and so completely exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been already said; which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this state, holds, not less with regard to many of the supposed defects, than to the real excellencies of the former. Among the pretended defects, are the re-eligibility of the executive; the want of a council; the omission of a formal bill of rights; the omission of a provision respecting the liberty of the press: these, and several others, which have been noted in the course of our inquiries, are as much chargeable on the existing constitution of this state, as on the one proposed for the union: and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention, who profess to be devoted admirers of the government of this state, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally, or perhaps more vulnerable.

The additional securities to republican government, to liberty, and to property, to be derived from the adoption of the plan, consist chiefly in the restraints which the preservation of the union will impose upon local factions and insurrections, and upon the ambition of powerful individuals in single states, who might acquire credit and influence enough, from leaders and favourites, to become the despots of the people: in the diminution of the opportunities to foreign intrigue, which the dissolution of the confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the states in a disunited situation; in the express guarantee of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the state governments, which have undermined the foundations of property and credit: have planted mutual distrust in the breasts of all classes of citizens; and have occasioned an almost universal prostration of morals.

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 constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well born, and the great, are such as to inspire the disgust of all sensible men. And 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 expression

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.

Let us now pause, and ask ourselves whether, in the course of these papers, the proposed constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. It is one that he is called upon, nay, constrained by all the obligations that form the bands on society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party: let him reflect, that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation: and let him remember, that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble, that I feel an entire confidence in the arguments which recommend the proposed system to your adoption; and that I am unable to discern any real force in those by which it has been assailed. I am persuaded, that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

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 not amend it, and make it perfect before it is irrevocably established? 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 the interests of the community cannot be safely confided to 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 the measure can be found, who 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 esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies, must necessarily be a compound as well of the errors and prejudices, as of the good sense and wisdom of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct states, in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet lately published in this city,* unanswerably show the utter improbability of assembling a new convention, under circumstances in any degree so favourable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worth the perusal of every friend to his country. There is however one point of light in which the subject of amendments still remains to be considered; and in which it has not yet been exhibited. I cannot resolve to conclude, without first taking a survey of it in this aspect.

It appears to me susceptible of complete demonstration, that it will be far more easy to obtain subsequent than previous amendments to the constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each state. To its complete establishment throughout the union, it will therefore require the concurrence of thirteen states. If, on the contrary, the constitution should once be ratified by all the states as it stands, alterations in it may at any time be effected by nine states. In this view alone the chances are as thirteen to nine[†] in favour of subsequent amendments, rather than of the original adoption of an entire system.

This is not all. Every constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent states are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form the majority on one question, may become the minority on a second, and an association dissimilar to either, may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner, as to satisfy all the parties to the compact; and hence also an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point; no giving nor taking. The will of the requisite number, would at once bring the matter to a decisive issue. And consequently whenever nine, or rather ten states, were united in the desire of a particular amendment, that amendment must infallibly prevail. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete constitution.

In opposition to the probability of subsequent amendments it has been urged, that the persons delegated to the administration of the national government, will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little force in it on another account. The intrinsic difficulty of governing THIRTEEN STATES, independent of calculations upon an ordinary degree

of public spirit and integrity, will, in my opinion, constantly impose on the national rulers, the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of doubt, that the observation is futile. It is this, that the national rulers, whenever nine states concur, will have no option upon the subject. By the fifth article of the plan the congress will be obliged, "on the application of the legislatures of two-thirds of the states, (which at present amount to nine) to call a convention for proposing amendments, which shall be valid to all intents and purposes as part of the constitution, when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths thereof." The words of this article are peremptory. The congress "shall call a convention." Nothing in this particular is left to discretion. Of consequence all the declamation about the disinclination to a change, vanishes in air. Nor, however difficult it may be supposed to unite two-thirds, or three-fourths of the state legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority.

If the foregoing argument be a fallacy, certain it is that I am myself deceived by it; for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of mathematical demonstration. Those who see the matter in the same light, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their object.

The zeal for attempts to amend, prior to the establishment of the constitution, must abate in every man, who is ready to accede to the truth of the following observations of a writer, equally solid and ingenious: "to balance a large state or society (says he) whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work: EXPERIENCE must guide their labour: TIME must bring it to perfection: and the FEELING OF inconveniences must correct the mistakes which they inevitably fall into, in their first trials and experiments."* These judicious reflections contain a lesson of moderation to all the sincere lovers of the union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the states from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from TIME and EXPERIENCE. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A NATION without a NATIONAL GOVERNMENT, is an awful spectacle. The establishment of a constitution, in time of profound peace, by the voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety. In so arduous an enterprise, I can reconcile it to no rules of prudence to let go the hold we now have, upon seven out of the thirteen states; and after having passed over so considerable a part of the ground, to re-commence the course. I dread the more the consequences of new attempts, because I KNOW that POWERFUL INDIVIDUALS, in this and in other states, are enemies to a general national government in every possible shape.

PUBLIUS

Part Ten: Ratification

The Constitution of the United States, the second constitution of the United States, was drafted in 1787 by a convention of the States in Philadelphia. The initial purpose of the convention was to address the inadequacies of the Articles of Confederation and propose amendments to the States. On May 14, 1787, only the Virginia and Pennsylvania delegations were present, and so the convention's opening meeting was postponed for lack of a quorum. A quorum of seven states met and deliberations began on May 25. The decision was made to write an entirely new constitution. Eventually twelve states were represented; 74 delegates were named, 55 attended and 39 signed.

Dates of Ratification of the Constitution

<u>State</u>	<u>Date</u>	<u>Votes for</u>	<u>Votes against</u>
Delaware	December 7, 1787	30	0
Pennsylvania	December 12, 1787	46	23
New Jersey	December 18, 1787	38	0
Georgia	January 2, 1788	26	0
Connecticut	January 9, 1788	128	40
Massachusetts	February 6, 1788	187	168
Maryland	April 28, 1788	63	11
South Carolina	May 23, 1788	149	73
New Hampshire	June 21, 1788	57	47
Virginia	June 25, 1788	89	79
New York	July 26, 1788	30	27
North Carolina	November 21, 1789	194	77
Rhode Island	May 29, 1790	34	32

Ratification of the Constitution by the State of Virginia; June 26, 1788. (1)
Virginia to wit

We the Delegates of the People of Virginia duly elected in pursuance of a recommendation from the General Assembly and now met in Convention having fully and freely investigated and discussed the proceedings of the Federal Convention and being prepared as well as the most mature deliberation hath enabled us to decide thereon Do in the name and in behalf of the People of Virginia declare and make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression and that every power not granted thereby remains with them and at their will: that therefore no right of any denomination can be cancelled abridged restrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States except in those instances in which power is given by the Constitution for those purposes: & that among other essential rights the liberty of Conscience and of the Press cannot be cancelled abridged restrained or modified by any authority of the United States. With these impressions with a

solemn appeal to the Searcher of hearts for the purity of our intentions and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein than to bring the Union into danger by a delay with a hope of obtaining Amendments previous to the Ratification, We the said Delegates in the name and in behalf of the People of Virginia do by these presents assent to and ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by the Federal Convention for the Government of the United States hereby announcing to all those whom it may concern that the said Constitution is binding upon the said People according to an authentic Copy hereto annexed in the Words following; .

Done in Convention this twenty Sixth day of June one thousand seven hundred and eighty-eight

By Order of the Convention

EDMD PENDLETON President [SEAL.]

Virginia towit:

Subsequent Amendments agreed to in Convention as necessary to the proposed Constitution of Government for the United States, recommended to the consideration of the Congress which shall first assemble under the said Constitution to be acted upon according to the mode prescribed in the fifth article thereof:

Videlicet;

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following;

First, That there are certain natural rights of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Second. That all power is naturally vested in and consequently derived from the people; that Magistrates, therefore, are their trustees and agents and at all times amenable to them.

Third, That Government ought to be instituted for the common benefit, protection and security of the People; and that the doctrine of non-resistance against arbitrary power and oppression is absurd slavish, and destructive of the good and happiness of mankind.

Fourth, That no man or set of Men are entitled to exclusive or separate public emoluments or privileges from the community, but in Consideration of public services; which not being descendible, neither ought the offices of Magistrate, Legislator or Judge, or any other public office to be hereditary.

Fifth, That the legislative, executive, and judiciary powers of Government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burthens, they should, at fixt periods be reduced to a private station, return into the mass of the people; and the vacancies be supplied by certain and regular elections; in which all or

any part of the former members to be eligible or ineligible, as the rules of the Constitution of Government, and the laws shall direct.

Sixth, That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with and attachment to the Community ought to have the right of suffrage: and no aid, charge, tax or fee can be set, rated, or levied upon the people without their own consent, or that of their representatives so elected, nor can they be bound by any law to which they have not in like manner assented for the public good.

Seventh, That all power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people in the legislature is injurious to their rights, and ought not to be exercised.

Eighth, That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial Jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

Ninth. That no freeman ought to be taken, imprisoned, or disseised of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the law of the land.

Tenth. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

Eleventh. That in controversies respecting property, and in suits between man and man, the ancient trial by Jury is one of the greatest Securities to the rights of the people, and ought to remain sacred and inviolable.

Twelfth. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property or character. He ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust.

Thirteenth, That excessive Bail ought not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth, That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers and his property; all warrants, therefore, to search suspected places, or seize any freeman, his papers or property, without information upon Oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general Warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous and ought not to be granted.

Fifteenth, That the people have a right peaceably to assemble together to consult for the common good, or to instruct their Representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

Sixteenth, That the people have a right to freedom of speech, and of writing and publishing their Sentiments; but the freedom of the press is one of the greatest bulwarks of liberty and ought not to be violated.

Seventeenth, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power.

Eighteenth, That no Soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct.

Nineteenth, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

Twentieth, That religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

AMENDMENTS TO THE BODY OF THE CONSTITUTION

First, That each State in the Union shall respectively retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States or to the departments of the Federal Government.

Second, That there shall be one representative for every thirty thousand, according to the Enumeration or Census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or increased as the Congress shall direct, upon the principles fixed by the Constitution by apportioning the Representatives of each State to some greater number of people from time to time as population increases.

Third, When Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State of the quota of such state according to the Census herein directed, which is proposed to be thereby raised; And if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected, in such State.

Fourth, That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.

Fifth, That the Journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy.

Sixth, That a regular statement and account of the receipts and expenditures of all public money shall be published at least once in every year.

Seventh, That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no Treaty ceding, contracting, restraining or suspending the territorial rights or claims of the United States, or any of them or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers shall be but in cases of the most urgent and extreme necessity, nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

Eighth, That no navigation law, or law regulating Commerce shall be passed without the consent of two thirds of the Members present in both houses.

Ninth, That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses.

Tenth, That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

Eleventh, That each State respectively shall have the power to provide for organizing, arming and disciplining its own Militia, whensoever Congress shall omit or neglect to provide for the same. That the Militia shall not be subject to Martial law, except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties and punishments as shall be directed or inflicted by the laws of its own State.

Twelfth That the exclusive power of legislation given to Congress over the Federal Town and its adjacent District and other places purchased or to be purchased by Congress of any of the States shall extend only to such regulations as respect the police and good government thereof.

Thirteenth, That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

Fourteenth That the judicial power of the United States shall be vested in one supreme Court, and in such courts of Admiralty as Congress may from time to time ordain and establish in any of the different States: The Judicial power shall extend to all cases in Law and Equity arising under treaties made, or which shall be made under the authority of the United States; to all cases affecting ambassadors other foreign ministers and consuls; to all cases of Admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, and between parties claiming lands under the grants of different States. In all cases affecting ambassadors, other foreign ministers and Consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction; in all other cases before mentioned the supreme Court shall have appellate jurisdiction as to matters of law only: except in cases of equity, and of admiralty and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make. But the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this Constitution; except in disputes between States about their Territory, disputes

between persons claiming lands under the grants of different States, and suits for debts due to the United States.

Fifteenth, That in criminal prosecutions no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the Jury.

Sixteenth, That Congress shall not alter, modify or interfere in the times, places, or manner of holding elections for Senators and Representatives or either of them, except when the legislature of any State shall neglect, refuse or be disabled by invasion or rebellion to prescribe the same.

Seventeenth, That those clauses which declare that Congress shall not exercise certain powers be not interpreted in any manner whatsoever to extend the powers of Congress. But that they may be construed either as making exceptions to the specified powers where this shall be the case, or otherwise as inserted merely for greater caution.

Eighteenth, That the laws ascertaining the compensation to Senators and Representatives for their services be postponed in their operation, until after the election of Representatives immediately succeeding the passing thereof; that excepted, which shall first be passed on the Subject.

Nineteenth, That some Tribunal other than the Senate be provided for trying impeachments of Senators.

Twentieth, That the Salary of a Judge shall not be increased or diminished during his continuance in Office, otherwise than by general regulations of Salary which may take place on a revision of the subject at stated periods of not less than seven years to commence from the time such Salaries shall be first ascertained by Congress.

And the Convention do, in the name and behalf of the People of this Commonwealth enjoin it upon their Representatives in Congress to exert all their influence and use all reasonable and legal methods to obtain a Ratification of the foregoing alterations and provisions in the manner provided by the fifth article of the said Constitution; and in all Congressional laws to be passed in the meantime, to conform to the spirit of those Amendments as far as the said Constitution will admit.

Done in Convention this twenty seventh day of June in the year of our Lord one thousand seven hundred and eighty eight.

By order of the Convention.

EDMD PENDLETON President [SEAL.]

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), pp. 145, 146, 160, 377-385.
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Source:

Documents Illustrative of the Formation of the Union of the American States.
Government Printing Office, 1927.

House Document No. 398.

Selected, Arranged and Indexed by Charles C. Tansill

The Virginia Ratifying Convention (also historically referred to as the "Virginia Federal Convention") was a convention of 168 delegates from Virginia who met in 1788 to ratify or reject the United States Constitution. The Convention deliberated from June 2 through June 27 in Richmond. Judge Edmund Pendleton, Virginia delegate to the Constitutional Convention, served as the convention's president by unanimous consent. The Virginia Ratifying Convention was open to the public and crowds filled the building and the streets. A majority of Virginians opposed ratification, with the Anti-federalists having the oratorical advantage with Patrick Henry. The Federalists were better organized and lead by judges and former Continental Army officers, including General George Washington.

Ratification of the Constitution by the State of Virginia, June 26, 1788.
[A copy of the Constitution was included in the ratification document.]

WE the Delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon, DO in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will: that therefore no right of any denomination, can be cancelled, abridged, restrained or modified, by the Congress, by the Senate or House of Representatives acting in any capacity, by the President or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes: and that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States.

With these impressions, with a solemn appeal to the searcher of hearts for the purity of our intentions, and under the conviction, that, whatsoever imperfections may exist in the Constitution, ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by a delay, with a hope of obtaining amendments previous to the ratification:

We the said Delegates, in the name and in behalf of the people of Virginia, do by these presents assent to, and ratify the Constitution recommended on the seventeenth day of September, one thousand seven hundred and eighty seven, by the Federal Convention for the Government of the United States; hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said People, according to an authentic copy hereto annexed, in the words following:

On motion, Ordered, That the Secretary of this Convention cause to be engrossed, forthwith, two fair copies of the form of ratification, and of the proposed Constitution of Government, as recommended by the Foederal Convention on the seventeenth day of September, one thousand seven hundred and eighty seven.



Part Eleven: *Natural Law*, by Lysander Spooner¹

Lysander Spooner (1808-1887) was a legal theorist, abolitionist, and radical individualist who started his own mail company in order to challenge the monopoly held by the US government. He wrote on the constitutionality of slavery, natural law, trial by jury, intellectual property, paper currency, and banking.²

¹ Source: *Natural Law: or the Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; showing that all Legislation whatsoever is an Absurdity, a Usurpation, and a Crime. Part First*, by Lysander Spooner. (Boston: A Williams & Co., Washington Street, 1882).

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² <https://oll.libertyfund.org/people/lysander-spooner>

Section I: The Science of Justice

The science of mine and thine --- the science of justice --- is the science of all human rights; of all a man's rights of person and property; of all his rights to life, liberty, and the pursuit of happiness.

It is the science which alone can tell any man what he can, and cannot, do; what he can, and cannot, have; what he can, and cannot, say, without infringing the rights of any other person.

It is the science of peace; and the only science of peace; since it is the science which alone can tell us on what conditions mankind can live in peace, or ought to live in peace, with each other.

These conditions are simply these: viz., first, that each man shall do, towards every other, all that justice requires him to do; as, for example, that he shall pay his debts, that he shall return borrowed or stolen property to its owner, and that he shall make reparation for any injury he may have done to the person or property of another.

The second condition is, that each man shall abstain from doing so another, anything which justice forbids him to do; as, for example, that he shall abstain from committing theft, robbery, arson, murder, or any other crime against the person or property of another.

So long as these conditions are fulfilled, men are at peace, and ought to remain at peace, with each other. But when either of these conditions is violated, men are at war. And they must necessarily remain at war until justice is re-established.

Through all time, so far as history informs us, wherever mankind have attempted to live in peace with each other, both the natural instincts, and the collective wisdom of the human race, have acknowledged and prescribed, as an indispensable condition, obedience to this one only universal obligation: viz., *that each should live honestly towards every other.*

The ancient maxim makes the sum of a man's legal duty to his fellow men to be simply this: "*To live honestly, to hurt no one, to give to every one his due.*"

This entire maxim is really expressed in the single words, *to live honestly*; since to live honestly is to hurt no one, and give to every one his due.

Section II.

Man, no doubt, owes many other *moral* duties to his fellow men; such as to feed the hungry, clothe the naked, shelter the homeless, care for the sick, protect the defenceless, assist the weak, and enlighten the ignorant. But these are simply *moral* duties, of which each man must be his own judge, in each particular case, as to whether, and how, and how far, he can, or will, perform them. But of his *legal* duty --- that is, of his duty to live honestly towards his fellow men --- his fellow men not only *may* judge, but, for their own protection, must judge. And, if need be, they

may rightfully *compel* him to perform it. They may do this, acting singly, or in concert. They may do it on the instant, as the necessity arises, or deliberately and systematically, if they prefer to do so, and the exigency will admit of it.

Section III.

Although it is the right of anybody and everybody --- of any one man, or set of men, no less than another --- to repel injustice, and compel justice, for themselves, and for all who may be wronged, yet to avoid the errors that are liable to result from haste and passion, and that everybody, who desires it, may rest secure in the assurance of protection, without a resort to force, it is evidently desirable that men should associate, so far as they freely and voluntarily can do so, for the maintenance of justice among themselves, and for mutual protection against other wrong-doers. It is also in the highest degree desirable that they should agree upon some plan or system of judicial proceedings, which, in the trial of causes, should secure caution, deliberation, thorough investigation, and, as far as possible, freedom from every influence but the simple desire to do justice.

Yet such associations can be rightful and desirable only in so far as they are purely voluntary. No man can rightfully be coerced into joining one, or supporting one, against his will. His own interest, his own judgement, and his own conscience alone must determine whether he will join this association, or that; or whether he will join any. If he chooses to depend, for the protection of his own rights, solely upon himself, and upon such voluntary assistance as other persons may freely offer to him when the necessity for it arises, he has a perfect right to do so. And this course would be a reasonably safe one for him to follow, so long as he himself should manifest the ordinary readiness of mankind, in like cases, to go to the assistance and defence of injured persons; and should also himself "live honestly, hurt no one, and give to every one his due." For such a man is reasonably sure of always giving friends and defenders enough in case of need, whether he shall have joined any association, or not.

Certainly no man can rightfully be required to join, or support, an association whose protection he does not desire. Nor can any man be reasonably or rightfully expected to join, or support, any association whose plans, or method of proceeding, he does not approve, as likely to accomplish its professed purpose of maintaining justice, and at the same time itself avoid doing injustice. To join, or support, one that would, in his opinion, be inefficient, would be absurd. To join or support one that, in his opinion, would itself do injustice, would be criminal. He must, therefore, be left at the same liberty to join, or not to join, an association for this purpose, as for any other, according as his own interest, discretion, or conscience shall dictate.

An association for mutual protection against injustice is like an association for mutual protection against fire or shipwreck. And there is no more right or reason in *compelling* any man to join or support one of these associations, against his will, his judgement, or his conscience, than there is in compelling him to join or support any other, whose benefits (if it offer any) he does not want, or whose purposes or methods he does not approve.

Section IV.

No objection can be made to these voluntary associations upon the ground that they would lack that knowledge of justice, as a science, which would be necessary to enable them to maintain justice, and themselves avoid doing injustice. Honesty, justice, natural law, is usually a very plain and simple matter, easily understood by common minds. Those who desire to know what it is, in any particular case, seldom have to go far to find it. It is true, it must be learned, like any other science. But it is also true that it is very easily learned. Although as illimitable in its applications as the infinite relations and dealings of men with each other, it is, nevertheless, made up of a few simple elementary principles, of the truth and justice of which every ordinary mind has an almost intuitive perception. And almost all men have the same perceptions of what constitutes justice, or of what justice requires, when they understand alike the facts from which their inferences are to be drawn.

Men living in contact with each other, and having intercourse together, *cannot avoid* learning natural law, to a very great extent, even if they would. The dealings of men with men, their separate possessions and their individual wants, and the disposition of every man to demand, and insist upon, whatever he believes to be his due, and to resent and resist all invasions of what he believes to be his rights, are continually forcing upon their minds the questions, Is this act just? or is it unjust? Is this thing mine? or is it his? And these are questions of natural law; questions which, in regard to the great mass of cases, are answered alike by the human mind everywhere. [1]

Children learn the fundamental principles of natural law at a very early age. Thus they very early understand that one child must not, without just cause, strike or otherwise hurt, another; that one child must not assume any arbitrary control or domination over another; that one child must not, either by force, deceit, or stealth, obtain possession of anything that belongs to another; that if one child commits any of these wrongs against another, it is not only the right of the injured child to resist, and, if need be, punish the wrongdoer, and compel him to make reparation, but that it is also the right, and the moral duty, of all other children, and all other persons, to assist the injured party in defending his rights, and redressing his wrongs. These are fundamental principles of natural law, which govern the most important transactions of man with man. Yet children learn them earlier than they learn that three and three are six, or five and five ten. Their childish plays, even, could not be carried on without a constant regard to them; and it is equally impossible for persons of any age to live together in peace on any other conditions.

It would be no extravagance to say that, in most cases, if not in all, mankind at large, young and old, learn this natural law long before they have learned the meanings of the words by which we describe it. In truth, it would be impossible to make them understand the real meanings of the words, if they did not understand the nature of the thing itself. To make them understand the meanings of the words justice and injustice before knowing the nature of the things themselves, would be as impossible as it would be to make them understand the meanings of the words heat and cold, wet and dry, light and darkness, white and black, one and two, before knowing the nature of the things themselves. Men necessarily must know sentiments and ideas, no less than material things, before they can know the meanings of the words by which we describe them.

CHAPTER II. THE SCIENCE OF JUSTICE (CONTINUED)

Section I.

If justice be not a natural principle, it is no principle at all. If it be not a natural principle, there is no such thing as justice. If it be not a natural principle, all that men have ever said or written about it, from time immemorial, has been said and written about that which had no existence. If it be not a natural principle, all the appeals for justice that have ever been heard, and all the struggles for justice that have ever been witnessed, have been appeals and struggles for a mere fantasy, a vagary of the imagination, and not for a reality.

If justice be not a natural principle, then there is no such thing as injustice; and all the crimes of which the world has been the scene, have been no crimes at all; but only simple events, like the falling of the rain, or the setting of the sun; events of which the victims had no more reason to complain than they had to complain of the running of the streams, or the growth of vegetation.

If justice be not a natural principle, governments (so-called) have no more right or reason to take cognizance of it, or to pretend or profess to take cognizance of it, than they have to take cognizance, or to pretend or profess to take cognizance, of any other nonentity; and all their professions of establishing justice, or of maintaining justice, or of rewarding justice, are simply the mere gibberish of fools, or the frauds of imposters.

But if justice be a natural principle, then it is necessarily an immutable one; and can no more be changed --- by any power inferior to that which established it --- than can the law of gravitation, the laws of light, the principles of mathematics, or any other natural law or principle whatever; and all attempts or assumptions, on the part of any man or body of men --- whether calling themselves governments, or by any other name --- to set up their own commands, wills, pleasure, or discretion, in the place of justice, as a rule of conduct for any human being, are as much an absurdity, an usurpation, and a tyranny, as would be their attempts to set up their own commands, wills, pleasure, or discretion in the place of any and all the physical, mental, and moral laws of the universe.

Section II.

If there be any such principle as justice, it is, of necessity, a natural principle; and, as such, it is a matter of science, to be learned and applied like any other science. And to talk of either adding to, or taking from, it, by legislation, is just as false, absurd, and ridiculous as it would be to talk of adding to, or taking from, mathematics, chemistry, or any other science, by legislation.

Section III.

If there be in nature such a principle as justice, nothing can be added to, or taken from, its supreme authority by all the legislation of which the entire human race united are capable. And all the attempts of the human race, or of any portion of it, to add to, or take from, the supreme authority of justice, in any case whatever, is of no more obligation upon any single human being than is the idle wind.

Section IV.

If there be such a principle as justice, or natural law, it is the principle, or law, that tells us what rights were given to every human being at his birth; what rights are, therefore, inherent in him as a human being, necessarily remain with him during life; and, however capable of being trampled upon, are incapable of being blotted out, extinguished, annihilated, or separated or eliminated from his nature as a human being, or deprived of their inherent authority or obligation.

On the other hand, if there be no such principle as justice, or natural law, then every human being came into the world utterly destitute of rights; and coming into the world destitute of rights, he must necessarily forever remain so. For if no one brings any rights with him into the world, clearly no one can ever have any rights of his own, or give any to another. And the consequence would be that mankind could never have any rights; and for them to talk of any such things as their rights, would be to talk of things that never had, never will have, and never can have any existence.

Section V.

If there be such a natural principle as justice, it is necessarily the highest, and consequently the only and universal, law for all those matters to which it is naturally applicable. And, consequently, all human legislation is simply and always an assumption of authority and dominion, where no right of authority or dominion exists. It is, therefore, simply and always an intrusion, an absurdity, an usurpation, and a crime.

On the other hand, if there be no such natural principle as justice, there can be no such thing as dishonesty; and no possible act of either force or fraud, committed by one man against the person or property of another, can be said to be unjust or dishonest; or be complained of, or prohibited, or punished as such. In short, if there be no such principle as justice, there can be no such acts as crimes; and all the professions of governments, so called, that they exist, either in whole or in part, for the punishment or prevention of crimes, are professions that they exist for the punishment or prevention of what never existed, nor ever can exist. Such professions are therefore confessions that, so far as crimes are concerned, governments have no occasion to exist; that there is nothing for them to do, and that there is nothing that they can do. They are confessions that the governments exist for the punishment and prevention of acts that are, in their nature, simple impossibilities.

Section VI.

If there be in nature such a principle as justice, such a principle as honesty, such principles as we describe by the words mine and thine, such principles as men's natural rights of person and property, then we have an immutable and universal law; a law that we can learn, as we learn any other science; a law that tells us what is just and what is unjust, what is honest and what is dishonest, what things are mine and what things are thine, what are my rights of person and property and what are your rights of person and property, and where is the boundary between each and all of my rights of person and property and each and all of your rights of person and property. And this law is the paramount law, and the same law, over all the world, at all times, and for all peoples; and will be the same paramount and only law, at all times, and for all peoples, so long as man shall live upon the earth.

But if, on the other hand, there be in nature no such principle as justice, no such principle as honesty, no such principle as men's natural rights of person or property, then all such words as justice and injustice, honesty and dishonesty, all such words as mine and thine, all words that signify that one thing is one man's property and that another thing is another man's property, all words that are used to describe men's natural rights of person or property, all such words as are used to describe injuries and crimes, should be struck out of all human languages as having no meanings; and it should be declared, at once and forever, that the greatest force and the greatest frauds, for the time being, are the supreme and only laws for governing the relations of men with each other; and that, from henceforth, all persons and combinations of persons --- those that call themselves governments, as well as all others --- are to be left free to practice upon each other all the force, and all the fraud, of which they are capable.

Section VII.

If there be no such science as justice, there can be no science of government; and all the rapacity and violence, by which, in all ages and nations, a few confederated villains have obtained the mastery over the rest of mankind, reduced them to poverty and slavery, and established what they called governments to keep them in subjection, have been as legitimate examples of government as any that the world is ever to see.

Section VIII.

If there be in nature such a principle as justice, it is necessarily the only *political* principle there ever was, or ever will be. All the other so-called political principles, which men are in the habit of inventing, are not principles at all. They are either the mere conceits of simpletons, who imagine they have discovered something better than truth, and justice, and universal law; or they are mere devices and pretences, to which selfish and knavish men resort as means to get fame, and power, and money.

CHAPTER III. NATURAL LAW CONTRASTED WITH LEGISLATION.

Section I.

Natural law, natural justice, being a principle that is naturally applicable and adequate to the rightful settlement of every possible controversy that can arise among men; being too, the only standard by which any controversy whatever, between man and man, can be rightfully settled; being a principle whose protection every man demands for himself, whether he is willing to accord it to others, or not; being also an immutable principle, one that is always and everywhere the same, in all ages and nations; being self-evidently necessary in all times and places; being so entirely impartial and equitable towards all; so indispensable to the peace of mankind everywhere; so vital to the safety and welfare of every human being; being, too, so easily learned, so generally known, and so easily maintained by such voluntary associations as all honest men can readily and rightfully form for that purpose --- being such a principle as this, these questions arise, viz.: Why is it that it does not universally, or well nigh universally, prevail? Why is it that it has not, ages ago, been established throughout the world as the one only law that any man, or all men, could rightfully be compelled to obey? Why is it that any human being ever

conceived that anything so self-evidently superfluous, false, absurd, and atrocious as all legislation necessarily must be, could be of any use to mankind, or have any place in human affairs?

Section II.

The answer is, that through all historic times, wherever any people have advanced beyond the savage state, and have learned to increase their means of subsistence by the cultivation of soil, a greater or less number of them have associated and organized themselves as robbers, to plunder and enslave all others, who had either accumulated any property that could be seized, or had shown, by their labor, that they could be made to contribute to the support or pleasure of those who should enslave them.

These bands of robbers, small in number at first, have increased their power by uniting with each other, inventing warlike weapons, disciplining themselves, and perfecting their organizations as military forces, and dividing their plunder (including their captives) among themselves, either in such proportions as have been previously agreed on, or in such as their leaders (always desirous to increase the number of their followers) should prescribe.

The success of these bands of robbers was an easy thing, for the reason that those whom they plundered and enslaved were comparatively defenceless; being scattered thinly over the country; engaged wholly in trying, by rude implements and heavy labor, to extort a subsistence from the soil; having no weapons of war, other than sticks and stones; having no military discipline or organization, and no means of concentrating their forces, or acting in concert, when suddenly attacked. Under these circumstances, the only alternative left them for saving even their lives, or the lives of their families, was to yield up not only the crops they had gathered, and the lands they had cultivated, but themselves and their families also as slaves.

Thenceforth their fate was, as slaves, to cultivate for others the lands they had before cultivated for themselves. Being driven constantly to their labor, wealth slowly increased; but all went into the hands of their tyrants.

These tyrants, living solely on plunder, and on the labor of their slaves, and applying all their energies to the seizure of still more plunder, and the enslavement of still other defenceless persons; increasing, too, their numbers, perfecting their organizations, and multiplying their weapons of war, they extend their conquests until, in order to hold what they have already got, it becomes necessary for them to act systematically, and cooperate with each other in holding their slaves in subjection.

But all this they can do only by establishing what they call a government, and making what they call laws.

All the great governments of the world --- those now existing, as well as those that have passed away --- have been of this character. They have been mere bands of robbers, who have associated for purposes of plunder, conquest, and the enslavement of their fellow men. And their laws, as they have called them, have been only such agreements as they have found it necessary

to enter into, in order to maintain their organizations, and act together in plundering and enslaving others, and in securing to each his agreed share of the spoils.

All these laws have had no more real obligation than have the agreements which brigands, bandits, and pirates find it necessary to enter into with each other, for the more successful accomplishment of their crimes, and the more peaceable division of their spoils.

Thus substantially all the legislation of the world has had its origin in the desires of one class -- of persons to plunder and enslave others, and hold them as property.

Section III.

In process of time, the robber, or slaveholding, class --- who had seized all the lands, and held all the means of creating wealth --- began to discover that the easiest mode of managing their slaves, and making them profitable, was *not* for each slaveholder to hold his specified number of slaves, as he had done before, and as he would hold so many cattle, but to give them so much liberty as would throw upon themselves (the slaves) the responsibility of their own subsistence, and yet compel them to sell their labor to the land-hodling class --- their former owners --- for just what the latter might choose to give them.

Of course, these liberated slaves, as some have erroneously called them, having no lands, or other property, and no means of obtaining an independent subsistence, had no alternative --- to save themselves from starvation --- but to sell their labor to the landholders, in exchange only for the coarsest necessaries of life; not always for so much even as that.

These liberated slaves, as they were called, were now scarcely less slaves than they were before. Their means of subsistence were perhaps even more precarious than when each had his own owner, who had an interest to preserve his life. They were liable, at the caprice or interest of the landholders, to be thrown out of home, employment, and the opportunity of even earning a subsistence by their labor. They were, therefore, in large numbers, driven to the necessity of begging, stealing, or starving; and became, of course, dangerous to the property and quiet of their late masters.

The consequence was, that these late owners found it necessary, for their own safety and the safety of their property, to organize themselves more perfectly as a government *and make laws for keeping these dangerous people in subjection*; that is, laws fixing the prices at which they should be compelled to labor, and also prescribing fearful punishments, even death itself, for such thefts and trespasses as they were driven to commit, as their only means of saving themselves from starvation.

These laws have continued in force for hundreds, and, in some countries, for thousands of years; and are in force to-day, in greater or less severity, in nearly all the countries on the globe.

The purpose and effect of these laws have been to maintain, in the hands of the robber, or slave holding class, a monopoly of all lands, and, as far as possible, of all other means of creating wealth; and thus to keep the great body of laborers in such a state of poverty and dependence, as

would compel them to sell their labor to their tyrants for the lowest prices at which life could be sustained.

The result of all this is, that the little wealth there is in the world is all in the hands of a few -- - that is, in the hands of the law-making, slave-holding class; who are now as much slaveholders in spirit as they ever were, but who accomplish their purposes by means of *the laws they make* for keeping the laborers in subjection and dependence, instead of each one's owning his individual slaves as so many chattels.

Thus the whole business of legislation, which has now grown to such gigantic proportions, had its origin in the conspiracies, which have always existed among the few, for the purpose of holding the many in subjection, and extorting from them their labor, and all the profits of their labor.

And the real motives and spirit which lie at the foundation of all legislation --- notwithstanding all the pretences and disguises by which they attempt to hide themselves --- are the same to-day as they always have been. Their whole purpose of this legislation is simply to keep one class of men in subordination and servitude to another.

Section IV.

What, then, is legislation? It is an assumption by one man, or body of men, of absolute, irresponsible dominion over all other men whom they call subject to their power. It is the assumption by one man, or body of men, of a right to subject all other men to their will and their service. It is the assumption by one man, or body of men, of a right to abolish outright all the natural rights, all the natural liberty of all other men; to make all other men their slaves; to arbitrarily dictate to all other men what they may, and may not, do; what they may, and may not, have; what they may, and may not, be. It is, in short, the assumption of a right to banish the principle of human rights, the principle of justice itself, from off the earth, and set up their own personal will, pleasure, and interest in its place. All this, and nothing less, is involved in the very idea that there can be any such thing as human legislation that is obligatory upon those upon whom it is imposed.

NOTES

1. Sir William Jones, an English judge in India, and one of the most learned judges that ever lived, learned in Asiatic as well as European law, says: "It is pleasing to remark the similarity, or, rather, the identity, of those conclusions which pure, unbiased reason, *in all ages and nations*, seldom fails to draw, in such juridical inquiries as are not fettered and manacled by positive institutions." --- *Jones on Bailments*, 133.

He means here to say that, when no law has been made in violation of justice, judicial tribunals, "in all ages and nations," have "seldom" failed to agree as to what justice is.



Part Twelve: *ANATOMY OF THE STATE*[®], by MURRAY N. ROTHBARD

“The greatest danger to the State is independent intellectual criticism.”
Murray N. Rothbard

WHAT THE STATE IS NOT

The State is almost universally considered an institution of social service. Some theorists venerate the State as the apotheosis of society; others regard it as an amiable, though often inefficient, organization for achieving social ends; but almost all regard it as a necessary means for achieving the goals of mankind, a means to be ranged against the “private sector” and often winning in this competition of resources. With the rise of democracy, the identification of the State with society has been redoubled, until it is common to hear sentiments expressed which violate virtually every tenet of reason and common sense such as, “we are the government.” The useful collective term “we” has enabled an ideological camouflage to be thrown over the reality of political life. If “we are the government,” then anything a government does to an individual is not only just and untyrannical but also “voluntary” on the part of the individual concerned. If the government has incurred a huge public debt which must be paid by taxing one group for the benefit of another, this reality of burden is obscured by saying that “we owe it to ourselves”; if the government conscripts a man, or throws him into jail for dissident opinion, then he is “doing it to himself” and, therefore, nothing untoward has occurred. Under this reasoning, any Jews murdered by the Nazi government were not murdered; instead, they must have “committed suicide,” since they were the government (which was democratically chosen), and, therefore, anything the government did to them was voluntary on their part. One would not think it necessary to belabor this point, and yet the overwhelming bulk of the people hold this fallacy to a greater or lesser degree.

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We must, therefore, emphasize that “we” are not the government; the government is not “us.” The government does not in any accurate sense “represent” the majority of the people.¹ But, even if it did, even if 70 percent of the people decided to murder the remaining 30 percent, this would still be murder and would not be voluntary suicide on the part of the slaughtered minority.² No organicist metaphor, no irrelevant bromide that “we are all part of one another,” must be permitted to obscure this basic fact. If, then, the State is not “us,” if it is not “the human family” getting together to decide mutual problems, if it is not a lodge meeting or country club, what is it? Briefly, the State is that organization in society which attempts to maintain a monopoly of the use of force and violence in a given territorial area; in particular, it is the only organization in society that obtains its revenue not by voluntary contribution or payment for services rendered but by coercion. While other individuals or institutions obtain their income by production of goods and services and by the peaceful and voluntary sale of these goods and services to others, the State obtains its revenue by the use of compulsion; that is, by the use and the threat of the jailhouse and the bayonet.³ Having used force and violence to obtain its revenue, the State generally goes on to regulate and dictate the other actions of its individual subjects. One would think that simple observation of all States through history and over the globe would be proof enough of this assertion; but the miasma of myth has lain so long over State activity that elaboration is necessary.

WHAT THE STATE IS

Man is born naked into the world, and needing to use his mind to learn how to take the resources given him by nature, and to transform them (for example, by investment in “capital”) into shapes and forms and places where the resources can be used for the satisfaction of his wants and the advancement of his standard of living. The only way by which man can do this is by the use of his mind and energy to transform resources (“production”) and to exchange these products for products created by others. Man has found that, through the process of voluntary, mutual exchange, the productivity and hence, the living standards of all participants in exchange may increase enormously. The only “natural” course for man to survive and to attain wealth, therefore, is by using his mind and energy to engage in the production-and-exchange process. He does this, first, by finding natural resources, and then by transforming them (by “mixing his labor” with them, as Locke puts it), to make them his individual property, and then by exchanging this property for the similarly obtained property of others. The social path dictated by the requirements of man’s nature, therefore, is the path of “property rights” and the “free market” of gift or exchange of such rights. Through this path, men have learned how to avoid the “jungle” methods of fighting over scarce resources so that A can only acquire them at the expense of B

¹ We cannot, in this chapter, develop the many problems and fallacies of “democracy.” Suffice it to say here that an individual’s true agent or “representative” is always subject to that individual’s orders, can be dismissed at any time and cannot act contrary to the interests or wishes of his principal. Clearly, the “representative” in a democracy can never fulfill such agency functions, the only ones consonant with a libertarian society.

² Social democrats often retort that democracy—majority choice of rulers—logically implies that the majority must leave certain freedoms to the minority, for the minority might one day become the majority. Apart from other flaws, this argument obviously does not hold where the minority cannot become the majority, for example, when the minority is of a different racial or ethnic group from the majority.

³ Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper and Bros., 1942), p. 198. The friction or antagonism between the private and the public sphere was intensified from the first by the fact that . . . the State has been living on a revenue which was being produced in the private sphere for private purposes and had to be deflected from these purposes by political force. The theory which construes taxes on the analogy of club dues or of the purchase of the service of, say, a doctor only proves how far removed this part of the social sciences is from scientific habits of mind. Also see Murray N. Rothbard, “The Fallacy of the ‘Public Sector,’” *New Individualist Review* (Summer, 1961): 3ff.

and, instead, to multiply those resources enormously in peaceful and harmonious production and exchange.

The great German sociologist Franz Oppenheimer pointed out that there are two mutually exclusive ways of acquiring wealth; one, the above way of production and exchange, he called the “economic means.” The other way is simpler in that it does not require productivity; it is the way of seizure of another’s goods or services by the use of force and violence. This is the method of one-sided confiscation, of theft of the property of others. This is the method which Oppenheimer termed “the political means” to wealth. It should be clear that the peaceful use of reason and energy in production is the “natural” path for man: the means for his survival and prosperity on this earth. It should be equally clear that the coercive, exploitative means is contrary to natural law; it is parasitic, for instead of adding to production, it subtracts from it. The “political means” siphons production off to a parasitic and destructive individual or group; and this siphoning not only subtracts from the number producing, but also lowers the producer’s incentive to produce beyond his own subsistence. In the long run, the robber destroys his own subsistence by dwindling or eliminating the source of his own supply. But not only that; even in the short-run, the predator is acting contrary to his own true nature as a man.

We are now in a position to answer more fully the question: what is the State? The State, in the words of Oppenheimer, is the “organization of the political means”; it is the systematization of the predatory process over a given territory.¹ For crime, at best, is sporadic and uncertain; the parasitism is ephemeral, and the coercive, parasitic lifeline may be cut off at any time by the resistance of the victims. The State provides a legal, orderly, systematic channel for the predation of private property; it renders certain, secure, and relatively “peaceful” the lifeline of the parasitic caste in society.² Since production must always precede predation, the free market is anterior to the State. The State has never been created by a “social contract”; it has always been born in conquest and exploitation. The classic paradigm was a conquering tribe pausing in its time-honored method of looting and murdering a conquered tribe, to realize that the timespan of plunder would be longer and more secure, and the situation more pleasant, if the conquered tribe were allowed to live and produce, with the conquerors settling among them as rulers exacting a steady annual tribute.³ One method of the birth of a State may

¹ Franz Oppenheimer, *The State* (New York: Vanguard Press, 1926) pp. 24 –27: There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one’s own labor and the forcible appropriation of the labor of others. . . . I propose in the following discussion to call one’s own labor and the equivalent exchange of one’s own labor for the labor of others, the “economic means” for the satisfaction of need while the unrequited appropriation of the labor of others will be called the “political means.” . . . The State is an organization of the political means. No State, therefore, can come into being until the economic means has created a definite number of objects for the satisfaction of needs, which objects may be taken away or appropriated by warlike robbery.

² Albert Jay Nock wrote vividly that

the State claims and exercises the monopoly of crime. . . . It forbids private murder, but itself organizes murder on a colossal scale. It punishes private theft, but itself lays unscrupulous hands on anything it wants, whether the property of citizen or of alien. Nock, *On Doing the Right Thing, and Other Essays* (New York: Harper and Bros., 1929), p. 143; quoted in Jack Schwartzman, “Albert Jay Nock—A Superfluous Man,” *Faith and Freedom* (December, 1953): 11.

³ Oppenheimer, *The State*, p. 15: “What, then, is the State as a sociological concept? The State, completely in its genesis . . . is a social institution, forced by a victorious group of men on a defeated group, with the sole purpose of regulating the dominion of the victorious group of men on a defeated group, and securing itself against revolt from within and attacks from abroad. Teleologically, this dominion had no other purpose than the economic exploitation of the vanquished by the victors.” And de Jouvenel has written: “the State is in essence the result of

be illustrated as follows: in the hills of southern “Ruritania,” a bandit group manages to obtain physical control over the territory, and finally the bandit chieftain proclaims himself “King of the sovereign and independent government of South Ruritania”; and, if he and his men have the force to maintain this rule for a while, lo and behold! a new State has joined the “family of nations,” and the former bandit leaders have been transformed into the lawful nobility of the realm.

HOW THE STATE PRESERVES ITSELF

Once a State has been established, the problem of the ruling group or “caste” is how to maintain their rule.¹ While force is their *modus operandi*, their basic and longrun problem is ideological. For in order to continue in office, any government (not simply a “democratic” government) must have the support of the majority of its subjects. This support, it must be noted, need not be active enthusiasm; it may well be passive resignation as if to an inevitable law of nature. But support in the sense of acceptance of some sort it must be; else the minority of State rulers would eventually be outweighed by the active resistance of the majority of the public. Since predation must be supported out of the surplus of production, it is necessarily true that the class constituting the State—the full-time bureaucracy (and nobility)—must be a rather small minority in the land, although it may, of course, purchase allies among important groups in the population. Therefore, the chief task of the rulers is always to secure the active or resigned acceptance of the majority of the citizens.^{2 3}

Of course, one method of securing support is through the creation of vested economic interests. Therefore, the King alone cannot rule; he must have a sizable group of followers who enjoy the prerequisites of rule, for example, the members of the State apparatus, such as the full-time

the successes achieved by a band of brigands who superimpose themselves on small, distinct societies.” Bertrand de Jouvenel, *On Power* (New York: Viking Press, 1949), pp. 100–01.

¹On the crucial distinction between “caste,” a group with privileges or burdens coercively granted or imposed by the State and the Marxian concept of “class” in society, see Ludwig von Mises, *Theory and History* (New Haven, Conn.: Yale University Press, 1957), pp. 112ff.

²Such acceptance does not, of course, imply that the State rule has become “voluntary”; for even if the majority support be active and eager, this support is not unanimous by every individual.

³That every government, no matter how “dictatorial” over individuals, must secure such support has been demonstrated by such acute political theorists as Étienne de la Boétie, David Hume, and Ludwig von Mises. Thus, cf. David Hume, “Of the First Principles of Government,” in *Essays, Literary, Moral and Political* (London: Ward, Locke, and Taylor, n.d.), p. 23; Étienne de la Boétie, *Anti-Dictator* (New York: Columbia University Press, 1942), pp. 8–9; Ludwig von Mises, *Human Action* (Auburn, Ala.: Mises Institute, 1998), pp. 188ff. For more on the contribution to the analysis of the State by la Boétie, see Oscar Jaszi and John D. Lewis, *Against the Tyrant* (Glencoe, Ill.: The Free Press, 1957), pp. 55–57.

bureaucracy or the established nobility.¹ But this still secures only a minority of eager supporters, and even the essential purchasing of support by subsidies and other grants of privilege still does not obtain the consent of the majority. For this essential acceptance, the majority must be persuaded by ideology that their government is good, wise and, at least, inevitable, and certainly better than other conceivable alternatives. Promoting this ideology among the people is the vital social task of the “intellectuals.” For the masses of men do not create their own ideas, or indeed think through these ideas independently; they follow passively the ideas adopted and disseminated by the body of intellectuals. The intellectuals are, therefore, the “opinion-molders” in society. And since it is precisely a molding of opinion that the State most desperately needs, the basis for age-old alliance between the State and the intellectuals becomes clear.

It is evident that the State needs the intellectuals; it is not so evident why intellectuals need the State. Put simply, we may state that the intellectual’s livelihood in the free market is never too secure; for the intellectual must depend on the values and choices of the masses of his fellow men, and it is precisely characteristic of the masses that they are generally uninterested in intellectual matters. The State, on the other hand, is willing to offer the intellectuals a secure and permanent berth in the State apparatus; and thus a secure income and the panoply of prestige. For the intellectuals will be handsomely rewarded for the important function they perform for the State rulers, of which group they now become a part.²

The alliance between the State and the intellectuals was symbolized in the eager desire of professors at the University of Berlin in the nineteenth century to form the “intellectual bodyguard of the House of Hohenzollern.” In the present day, let us note the revealing comment of an eminent Marxist scholar concerning Professor Wittfogel’s critical study of ancient Oriental despotism: “The civilization which Professor Wittfogel is so bitterly attacking was one which could make poets and scholars into officials.”³ Of innumerable examples, we may cite the recent development of the “science” of strategy, in the service of the government’s main violence-wielding arm, the military.⁴ A venerable institution, furthermore, is the official or “court” historian, dedicated to purveying the rulers’ views of their own and their predecessors’ actions.⁵

¹ La Boétie, *Anti-Dictator*, pp. 43–44. Whenever a ruler makes himself dictator . . . all those who are corrupted by burning ambition or extraordinary avarice, these gather around him and support him in order to have a share in the booty and to constitute themselves petty chiefs under the big tyrant.

²This by no means implies that all intellectuals ally themselves with the State. On aspects of the alliance of intellectuals and the State, cf. Bertrand de Jouvenel, “The Attitude of the Intellectuals to the Market Society,” *The Owl* (January, 1951): 19–27; idem, “The Treatment of Capitalism by Continental Intellectuals,” in F.A. Hayek, ed., *Capitalism and the Historians* (Chicago: University of Chicago Press, 1954), pp. 93–123; reprinted in George B. de Huszar, *The Intellectuals* (Glencoe, Ill.: The Free Press, 1960), pp. 385–99; and Schumpeter, *Imperialism and Social Classes* (New York: Meridian Books, 1975), pp. 143–55.

³Joseph Needham, “Review of Karl A. Wittfogel, *Oriental Despotism*,” *Science and Society* (1958): 65. Needham also writes that “the successive [Chinese] emperors were served in all ages by a great company of profoundly humane and disinterested scholars,” p. 61. Wittfogel notes the Confucian doctrine that the glory of the ruling class rested on its gentleman scholar-bureaucrat officials, destined to be professional rulers dictating to the mass of the populace. Karl A. Wittfogel, *Oriental Despotism* (New Haven, Conn.: Yale University Press, 1957), pp. 320–21 and passim. For an attitude contrasting to Needham’s, cf. John Lukacs, “Intellectual Class or Intellectual Profession?” in de Huszar, *The Intellectuals*, pp. 521–22.

⁴Jeanne Ribs, “The War Plotters,” *Liberation* (August, 1961): 13, “[s]trategists insist that their occupation deserves the ‘dignity of the academic counterpart of the military profession.’” Also see Marcus Raskin, “The Megadeath Intellectuals,” *New York Review of Books* (November 14, 1963): 6–7.

⁵Thus the historian Conyers Read, in his presidential address, advocated the suppression of historical fact in the service of “democratic” and national values. Read proclaimed that “total war, whether it is hot or cold, enlists

Many and varied have been the arguments by which the State and its intellectuals have induced their subjects to support their rule. Basically, the strands of argument may be summed up as follows: (a) the State rulers are great and wise men (they “rule by divine right,” they are the “aristocracy” of men, they are the “scientific experts”), much greater and wiser than the good but rather simple subjects, and (b) rule by the extent government is inevitable, absolutely necessary, and far better, than the indescribable evils that would ensue upon its downfall. The union of Church and State was one of the oldest and most successful of these ideological devices. The ruler was either anointed by God or, in the case of the absolute rule of many Oriental despotisms, was himself God; hence, any resistance to his rule would be blasphemy. The States’ priestcraft performed the basic intellectual function of obtaining popular support and even worship for the rulers.¹

Another successful device was to instill fear of any alternative systems of rule or nonrule. The present rulers, it was maintained, supply to the citizens an essential service for which they should be most grateful: protection against sporadic criminals and marauders. For the State, to preserve its own monopoly of predation, did indeed see to it that private and unsystematic crime was kept to a minimum; the State has always been jealous of its own preserve. Especially has the State been successful in recent centuries in instilling fear of other State rulers. Since the land area of the globe has been parceled out among particular States, one of the basic doctrines of the State was to identify itself with the territory it governed. Since most men tend to love their homeland, the identification of that land and its people with the State was a means of making natural patriotism work to the State’s advantage. If “Ruritania” was being attacked by “Walldavia,” the first task of the State and its intellectuals was to convince the people of Ruritania that the attack was really upon them and not simply upon the ruling caste. In this way, a war between rulers was converted into a war between peoples, with each people coming to the defense of its rulers in the erroneous belief that the rulers were defending them. This device of “nationalism” has only been successful, in Western civilization, in recent centuries; it was not too long ago that the mass of subjects regarded wars as irrelevant battles between various sets of nobles.

Many and subtle are the ideological weapons that the State has wielded through the centuries. One excellent weapon has been tradition. The longer that the rule of a State has been able to preserve itself, the more powerful this weapon; for then, the X Dynasty or the Y State has the seeming weight of centuries of tradition behind it.² Worship of one’s ancestors, then, becomes a none too subtle means of

everyone and calls upon everyone to play his part. The historian is not freer from this obligation than the physicist.” Read, “The Social Responsibilities of the Historian,” *American Historical Review* (1951): 283ff. For a critique of Read and other aspects of court history, see Howard K. Beale, “The Professional Historian: His Theory and Practice,” *The Pacific Historical Review* (August, 1953): 227–55. Also cf. Herbert Butterfield, “Official History: Its Pitfalls and Criteria,” *History and Human Relations* (New York: Macmillan, 1952), pp. 182–224; and Harry Elmer Barnes, *The Court Historians Versus Revisionism* (n.d.), pp. 2ff.

¹Cf. Wittfogel, *Oriental Despotism*, pp. 87–100. On the contrasting roles of religion vis-à-vis the State in ancient China and Japan, see Norman Jacobs, *The Origin of Modern Capitalism and Eastern Asia* (Hong Kong: Hong Kong University Press, 1958), pp. 161–94.

²De Jouvenel, *On Power*, p. 22: “The essential reason for obedience is that it has become a habit of the species. . . . Power is for us a fact of nature. From the earliest days of recorded history it has always presided over human destinies. . . . the authorities which ruled [societies] in former times did not disappear without bequeathing to their successors their privilege nor without leaving in men’s minds imprints which are cumulative in their effect. The succession of governments which, in the course of centuries, rule the same society may be looked on as one underlying government which takes on continuous accretions.”

worship of one's ancient rulers. The greatest danger to the State is independent intellectual criticism; there is no better way to stifle that criticism than to attack any isolated voice, any raiser of new doubts, as a profane violator of the wisdom of his ancestors. Another potent ideological force is to deprecate the individual and exalt the collectivity of society. For since any given rule implies majority acceptance, any ideological danger to that rule can only start from one or a few independently- thinking individuals. The new idea, much less the new critical idea, must needs begin as a small minority opinion; therefore, the State must nip the view in the bud by ridiculing any view that defies the opinions of the mass. "Listen only to your brothers" or "adjust to society" thus become ideological weapons for crushing individual dissent.¹ By such measures, the masses will never learn of the nonexistence of their Emperor's clothes.² It is also important for the State to make its rule seem inevitable; even if its reign is disliked, it will then be met with passive resignation, as witness the familiar coupling of "death and taxes." One method is to induce historiographical determinism, as opposed to individual freedom of will. If the X Dynasty rules us, this is because the Inexorable Laws of History (or the Divine Will, or the Absolute, or the Material Productive Forces) have so decreed and nothing any puny individuals may do can change this inevitable decree. It is also important for the State to inculcate in its subjects an aversion to any "conspiracy theory of history;" for a search for "conspiracies" means a search for motives and an attribution of responsibility for historical misdeeds. If, however, any tyranny imposed by the State, or venality, or aggressive war, was caused not by the State rulers but by mysterious and arcane "social forces," or by the imperfect state of the world or, if in some way, everyone was responsible ("We Are All Murderers," proclaims one slogan), then there is no point to the people becoming indignant or rising up against such misdeeds. Furthermore, an attack on "conspiracy theories" means that the subjects will become more gullible in believing the "general welfare" reasons that are always put forth by the State for engaging in any of its despotic actions. A "conspiracy theory" can unsettle the system by causing the public to doubt the State's ideological propaganda.

Another tried and true method for bending subjects to the State's will is inducing guilt. Any increase in private well-being can be attacked as "unconscionable greed," "materialism," or "excessive affluence," profit-making can be attacked as "exploitation" and "usury," mutually beneficial exchanges denounced as "selfishness," and somehow with the conclusion always being drawn that more resources should be siphoned from the private to the "public sector." The induced guilt makes the public more ready to do just that. For while individual persons tend to indulge in "selfish greed," the failure of the State's rulers to engage in exchanges is supposed to signify their devotion to higher and nobler causes—parasitic predation being apparently morally and esthetically lofty as compared to peaceful and productive work.

In the present more secular age, the divine right of the State has been supplemented by the invocation of a new god, Science. State rule is now proclaimed as being ultrascientific, as constituting planning by experts. But while "reason" is invoked more than in previous centuries, this is not the true reason of the individual and his exercise of free will; it is still collectivist and determinist, still implying holistic aggregates and coercive manipulation of passive subjects by their rulers. The increasing use of scientific jargon has permitted the State's intellectuals to weave obscurantist apologia for State rule that would

¹ On such uses of the religion of China, see Norman Jacobs, *passim*.

² H.L. Mencken, *A Mencken Chrestomathy* (New York: Knopf, 1949), p. 145: "All [government] can see in an original idea is potential change, and hence an invasion of its prerogatives. The most dangerous man, to any government, is the man who is able to think things out for himself, without regard to the prevailing superstitions and taboos. Almost inevitably he comes to the conclusion that the government he lives under is dishonest, insane and intolerable, and so, if he is romantic, he tries to change it. And even if he is not romantic personally he is very apt to spread discontent among those who are."

have only met with derision by the populace of a simpler age. A robber who justified his theft by saying that he really helped his victims, by his spending giving a boost to retail trade, would find few converts; but when this theory is clothed in Keynesian equations and impressive references to the “multiplier effect,” it unfortunately carries more conviction. And so the assault on common sense proceeds, each age performing the task in its own ways. Thus, ideological support being vital to the State, it must unceasingly try to impress the public with its “legitimacy,” to distinguish its activities from those of mere brigands. The unremitting determination of its assaults on common sense is no accident, for as Mencken vividly maintained:

“The average man, whatever his errors otherwise, at least sees clearly that government is something lying outside him and outside the generality of his fellow men—that it is a separate, independent, and hostile power, only partly under his control, and capable of doing him great harm. Is it a fact of no significance that robbing the government is everywhere regarded as a crime of less magnitude than robbing an individual, or even a corporation? . . . What lies behind all this, I believe, is a deep sense of the fundamental antagonism between the government and the people it governs. It is apprehended, not as a committee of citizens chosen to carry on the communal business of the whole population, but as a separate and autonomous corporation, mainly devoted to exploiting the population for the benefit of its own members. . . . When a private citizen is robbed, a worthy man is deprived of the fruits of his industry and thrift; when the government is robbed, the worst that happens is that certain rogues and loafers have less money to play with than they had before. The notion that they have earned that money is never entertained; to most sensible men it would seem ludicrous.”¹

HOW THE STATE TRANSCENDS ITS LIMITS

As Bertrand de Jouvenel has sagely pointed out, through the centuries men have formed concepts designed to check and limit the exercise of State rule; and, one after another, the State, using its intellectual allies, has been able to transform these concepts into intellectual rubber stamps of legitimacy and virtue to attach to its decrees and actions. Originally, in Western Europe, the concept of divine sovereignty held that the kings may rule only according to divine law; the kings turned the concept into a rubber stamp of divine approval for any of the kings’ actions. The concept of parliamentary democracy began as a popular check upon absolute monarchical rule; it ended with parliament being the essential part of the State and its every act totally sovereign. As de Jouvenel concludes:

“Many writers on theories of sovereignty have worked out one . . . of these restrictive devices. But in the end every single such theory has, sooner or later, lost its original purpose, and come to act merely as a springboard to Power, by providing it with the powerful aid of an invisible sovereign with whom it could in time successfully identify itself.”²

Similarly with more specific doctrines: the “natural rights” of the individual enshrined in John Locke and the Bill of Rights, became a statist “right to a job”; utilitarianism turned from arguments for liberty to arguments against resisting the State’s invasions of liberty, etc.

Certainly the most ambitious attempt to impose limits on the State has been the Bill of Rights and other restrictive parts of the American Constitution, in which written limits on government became the

¹ Ibid., pp. 146–47.

² De Jouvenel, *On Power*, pp. 27ff.

fundamental law to be interpreted by a judiciary supposedly independent of the other branches of government. All Americans are familiar with the process by which the construction of limits in the Constitution has been inexorably broadened over the last century. But few have been as keen as Professor Charles Black to see that the State has, in the process, largely transformed judicial review itself from a limiting device to yet another instrument for furnishing ideological legitimacy to the government's actions. For if a judicial decree of "unconstitutional" is a mighty check to government power, an implicit or explicit verdict of "constitutional" is a mighty weapon for fostering public acceptance of ever-greater government power.

Professor Black begins his analysis by pointing out the crucial necessity of "legitimacy" for any government to endure, this legitimation signifying basic majority acceptance of the government and its actions.¹ Acceptance of legitimacy becomes a particular problem in a country such as the United States, where "substantive limitations are built into the theory on which the government rests." What is needed, adds Black, is a means by which the government can assure the public that its increasing powers are, indeed, "constitutional." And this, he concludes, has been the major historic function of judicial review. Let Black illustrate the problem:

"The supreme risk [to the government] is that of disaffection and a feeling of outrage widely disseminated throughout the population, and loss of moral authority by the government as such, however long it may be propped up by force or inertia or the lack of an appealing and immediately available alternative. Almost everybody living under a government of limited powers, must sooner or later be subjected to some governmental action which as a matter of private opinion he regards as outside the power of government or positively forbidden to government. A man is drafted, though he finds nothing in the Constitution about being drafted. . . . A farmer is told how much wheat he can raise; he believes, and he discovers that some respectable lawyers believe with him, that the government has no more right to tell him how much wheat he can grow than it has to tell his daughter whom she can marry. A man goes to the federal penitentiary for saying what he wants to, and he paces his cell reciting . . . "Congress shall make no laws abridging the freedom of speech." . . . A businessman is told what he can ask, and must ask, for buttermilk."

The danger is real enough that each of these people (and who is not of their number?) will confront the concept of governmental limitation with the reality (as he sees it) of the flagrant overstepping of actual limits, and draw the obvious conclusion as to the status of his government with respect to legitimacy.²

This danger is averted by the State's propounding the doctrine that one agency must have the ultimate decision on constitutionality and that this agency, in the last analysis, must be part of the federal government.³ For while the seeming independence of the federal judiciary has played a vital part in making its actions virtual Holy Writ for the bulk of the people, it is also and ever true that the judiciary is part and parcel of the government apparatus and appointed by the executive and legislative branches. Black admits that this means that the State has set itself up as a judge in its own cause, thus violating a

¹ Charles L. Black, Jr., *The People and the Court* (New York: Macmillan, 1960), pp. 35ff.

² *Ibid.*, pp. 42–43.

³ *Ibid.*, p. 52: "The prime and most necessary function of the [Supreme] Court has been that of validation, not that of invalidation. What a government of limited powers needs, at the beginning and forever, is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers. This is the condition of its legitimacy, and its legitimacy, in the long run, is the condition of its life. And the Court, through its history, has acted as the legitimation of the government."

basic juridical principle for aiming at just decisions. He brusquely denies the possibility of any alternative.¹

Black adds: “The problem, then, is to devise such governmental means of deciding as will [hopefully] reduce to a tolerable minimum the intensity of the objection that government is judge in its own cause. Having done this, you can only hope that this objection, though theoretically still tenable [*italics mine*], will practically lose enough of its force that the legitimating work of the deciding institution can win acceptance.”²

In the last analysis, Black finds the achievement of justice and legitimacy from the State’s perpetual judging of its own cause as “something of a miracle.”³

Applying his thesis to the famous conflict between the Supreme Court and the New Deal, Professor Black keenly chides his fellow pro-New Deal colleagues for their shortsightedness in denouncing judicial obstruction:

“[t]he standard version of the story of the New Deal and the Court, though accurate in its way, displaces the emphasis. . . . It concentrates on the difficulties; it almost forgets how the whole thing turned out. The upshot of the matter was [and this is what I like to emphasize] that after some twentyfour months of balking . . . the Supreme Court, without a single change in the law of its composition, or, indeed, in its actual manning, *placed the affirmative stamp of legitimacy on the New Deal, and on the whole new conception of government in America.*”⁴

In this way, the Supreme Court was able to put the quietus on the large body of Americans who had had strong constitutional objections to the New Deal: “Of course, not everyone was satisfied. The Bonnie Prince Charlie of constitutionally commanded laissez-faire still stirs the hearts of a few zealots in the Highlands of choleric unreality. But there is no longer any significant or dangerous public doubt as to the constitutional power of Congress to deal as it does with the national economy. . . .” We had no means, other than the Supreme Court, for imparting legitimacy to the New Deal.⁵

As Black recognizes, one major political theorist who recognized—and largely in advance— the glaring loophole in a constitutional limit on government of placing the ultimate interpreting power in the

¹ To Black, this solution, while paradoxical, is blithely self-evident: “the final power of the State . . . must stop where the law stops it. And who shall set the limit, and who shall enforce the stopping, against the mightiest power? Why, the State itself, of course, through its judges and its laws. Who controls the temperate? Who teaches the wise?” (Ibid., pp. 32–33) And: “Where the questions concern governmental power in a sovereign nation, it is not possible to select an umpire who is outside government. Every national government, so long as it is a government, must have the final say on its own power.” (Ibid., pp. 48–49)

² Ibid., p. 49.

³ This ascription of the miraculous to government is reminiscent of James Burnham’s justification of government by mysticism and irrationality: “In ancient times, before the illusions of science had corrupted traditional wisdom, the founders of cities were known to be gods or demigods. . . . Neither the source nor the justification of government can be put in wholly rational terms . . . why should I accept the hereditary or democratic or any other principle of legitimacy? Why should a principle justify the rule of that man over me? . . . I accept the principle, well . . . because I do, because that is the way it is and has been.” James Burnham, *Congress and the American Tradition* (Chicago: Regnery, 1959), pp. 3–8. But what if one does not accept the principle? What will “the way” be then?

⁴ Black, *The People and the Court*, p. 64.

⁵ Ibid., p. 65.

Supreme Court was John C. Calhoun. Calhoun was not content with the “miracle,” but instead proceeded to a profound analysis of the constitutional problem. In his *Disquisition*, Calhoun demonstrated the inherent tendency of the State to break through the limits of such a constitution:

“A written constitution certainly has many and considerable advantages, but it is a great mistake to suppose that the mere insertion of provisions to restrict and limit the power of the government, *without investing those for whose protection they are inserted with the means of enforcing their observance* [my italics] will be sufficient to prevent the major and dominant party from abusing its powers. Being the party in possession of the government, they will, from the same constitution of man which makes government necessary to protect society, be in favor of the powers granted by the constitution and opposed to the restrictions intended to limit them. . . . The minor or weaker party, on the contrary, would take the opposite direction and regard them [the restrictions] as essential to their protection against the dominant party. . . . But where there are no means by which they could compel the major party to observe the restrictions, the only resort left them would be a strict construction of the constitution. . . . To this the major party would oppose a liberal construction It would be construction against construction—the one to contract and the other to enlarge the powers of the government to the utmost. But of what possible avail could the strict construction of the minor party be, against the liberal construction of the major, when the one would have all the power of the government to carry its construction into effect and the other be deprived of all means of enforcing its construction? In a contest so unequal, the result would not be doubtful. The party in favor of the restrictions would be overpowered. . . . The end of the contest would be the subversion of the constitution . . . the restrictions would ultimately be annulled and the government be converted into one of unlimited powers.¹

One of the few political scientists who appreciated Calhoun’s analysis of the Constitution was Professor J. Allen Smith. Smith noted that the Constitution was designed with checks and balances to limit any one governmental power and yet had then developed a Supreme Court with the monopoly of ultimate interpreting power. If the Federal Government was created to check invasions of individual liberty by the separate states, who was to check the Federal power? Smith maintained that implicit in the check-and-balance idea of the Constitution was the concomitant view that no one branch of government may be conceded the ultimate power of interpretation: “It was assumed by the people that the new government could not be permitted to determine the limits of its own authority, since this would make it, and not the Constitution, supreme.”²

The solution advanced by Calhoun (and seconded, in this century, by such writers as Smith) was, of course, the famous doctrine of the “concurrent majority.” If any substantial minority interest in the country, specifically a state government, believed that the Federal Government was exceeding its powers and encroaching on that minority, the minority would have the right to veto this exercise of power as unconstitutional. Applied to state governments, this theory implied the right of “nullification” of a Federal law or ruling within a state’s jurisdiction.

¹ John C. Calhoun, *A Disquisition on Government* (New York: Liberal Arts Press, 1953), pp. 25–27. Also cf. Murray N. Rothbard, “Conservatism and Freedom: A Libertarian Comment,” *Modern Age* (Spring, 1961): 219.

² J. Allen Smith, *The Growth and Decadence of Constitutional Government* (New York: Henry Holt, 1930), p. 88. Smith added: “it was obvious that where a provision of the Constitution was designed to limit the powers of a governmental organ, it could be effectively nullified if its interpretation and enforcement are left to the authorities as it designed to restrain. Clearly, common sense required that no organ of the government should be able to determine its own powers. Clearly, common sense and “miracles” dictate very different views of government.” (p. 87)

In theory, the ensuing constitutional system would assure that the Federal Government check any state invasion of individual rights, while the states would check excessive Federal power over the individual. And yet, while limitations would undoubtedly be more effective than at present, there are many difficulties and problems in the Calhoun solution. If, indeed, a subordinate interest should rightfully have a veto over matters concerning it, then why stop with the states? Why not place veto power in counties, cities, wards? Furthermore, interests are not only sectional, they are also occupational, social, etc. What of bakers or taxi drivers or any other occupation? Should they not be permitted a veto power over their own lives? This brings us to the important point that the nullification theory confines its checks to agencies of government itself. Let us not forget that federal and state governments, and their respective branches, are still states, are still guided by their own state interests rather than by the interests of the private citizens. What is to prevent the Calhoun system from working in reverse, with states tyrannizing over their citizens and only vetoing the federal government when it tries to intervene to stop that state tyranny? Or for states to acquiesce in federal tyranny? What is to prevent federal and state governments from forming mutually profitable alliances for the joint exploitation of the citizenry? And even if the private occupational groupings were to be given some form of “functional” representation in government, what is to prevent them from using the State to gain subsidies and other special privileges for themselves or from imposing compulsory cartels on their own members?

In short, Calhoun does not push his pathbreaking theory on concurrence far enough: he does not push it down to the individual himself. If the individual, after all, is the one whose rights are to be protected, then a consistent theory of concurrence would imply veto power by every individual; that is, some form of “unanimity principle.” When Calhoun wrote that it should be “impossible to put or to keep it [the government] in action without the concurrent consent of all,” he was, perhaps unwittingly, implying just such a conclusion.¹ But such speculation begins to take us away from our subject, for down this path lie political systems which could hardly be called “States” at all.² For one thing, just as the right of nullification for a state logically implies its right of secession, so a right of individual nullification would imply the right of any individual to “secede” from the State under which he lives.³

Thus, the State has invariably shown a striking talent for the expansion of its powers beyond any limits that might be imposed upon it. Since the State necessarily lives by the compulsory confiscation of private capital, and since its expansion necessarily involves ever-greater incursions on private individuals and private enterprise, we must assert that the State is profoundly and inherently anticapitalist. In a sense, our position is the reverse of the Marxist dictum that the State is the “executive committee” of the ruling class in the present day, supposedly the capitalists. Instead, the State — the organization of the political means—constitutes, and is the source of, the “ruling class” (rather, ruling caste), and is in permanent opposition to genuinely private capital. We may, therefore, say with de Jouvenel:

¹ Calhoun, *A Disquisition on Government*, pp. 20–21.

² In recent years, the unanimity principle has experienced a highly diluted revival, particularly in the writings of Professor James Buchanan. Injecting unanimity into the present situation, however, and applying it only to changes in the status quo and not to existing laws, can only result in another transformation of a limiting concept into a rubber stamp for the State. If the unanimity principle is to be applied only to changes in laws and edicts, the nature of the initial “point of origin” then makes all the difference. Cf. James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962), *passim*.

³ Cf. Herbert Spencer, “The Right to Ignore the State,” in *Social Statics* (New York: D. Appleton, 1890), pp. 229–39.

“Only those who know nothing of any time but their own, who are completely in the dark as to the manner of Power’s behaving through thousands of years, would regard these proceedings [nationalization, the income tax, etc.] as the fruit of a particular set of doctrines. They are in fact the normal manifestations of Power and differ not at all in their nature from Henry VIII’s confiscation of the monasteries. The same principle is at work; the hunger for authority, the thirst for resources; and in all of these operations the same characteristics are present, including the rapid elevation of the dividers of the spoils. Whether it is Socialist or whether it is not, Power must always be at war with the capitalist authorities and despoil the capitalists of their accumulated wealth; in doing so it obeys the law of its nature.”¹

WHAT THE STATE FEARS

What the State fears above all, of course, is any fundamental threat to its own power and its own existence. The death of a State can come about in two major ways: (a) through conquest by another State, or (b) through revolutionary overthrow by its own subjects—in short, by war or revolution. War and revolution, as the two basic threats, invariably arouse in the State rulers their maximum efforts and maximum propaganda among the people. As stated above, any way must always be used to mobilize the people to come to the State’s defense in the belief that they are defending themselves. The fallacy of the idea becomes evident when conscription is wielded against those who refuse to “defend” themselves and are, therefore, forced into joining the State’s military band: needless to add, no “defense” is permitted them against this act of “their own” State.

In war, State power is pushed to its ultimate, and, under the slogans of “defense” and “emergency,” it can impose a tyranny upon the public such as might be openly resisted in time of peace. War thus provides many benefits to a State, and indeed every modern war has brought to the warring peoples a permanent legacy of increased State burdens upon society. War, moreover, provides to a State tempting opportunities for conquest of land areas over which it may exercise its monopoly of force. Randolph Bourne was certainly correct when he wrote that “war is the health of the State,” but to any particular State a war may spell either health or grave injury.²

We may test the hypothesis that the State is largely interested in protecting itself rather than its subjects by asking: which category of crimes does the State pursue and punish most intensely—those against private citizens or those against itself? The gravest crimes in the State’s lexicon are almost invariably not invasions of private person or property, but dangers to its own contentment, for example, treason, desertion of a soldier to the enemy, failure to register for the draft, subversion and subversive conspiracy, assassination of rulers and such economic crimes against the State as counterfeiting its money or evasion of its income tax. Or compare the degree of zeal devoted to pursuing the man who

¹ De Jouvenel, *On Power*, p. 171.

² We have seen that essential to the State is support by the intellectuals, and this includes support against their two acute threats. Thus, on the role of American intellectuals in America’s entry into World War I, see Randolph Bourne, “The War and the Intellectuals,” in *The History of a Literary Radical and Other Papers* (New York: S.A. Russell, 1956), pp. 205–22. As Bourne states, a common device of intellectuals in winning support for State actions, is to channel any discussion within the limits of basic State policy and to discourage any fundamental or total critique of this basic framework.

assaults a policeman, with the attention that the State pays to the assault of an ordinary citizen. Yet, curiously, the State's openly assigned priority to its own defense against the public strikes few people as inconsistent with its presumed *raison d'être*.¹

HOW STATES RELATE TO ONE ANOTHER

Since the territorial area of the earth is divided among different States, inter-State relations must occupy much of a State's time and energy. The natural tendency of a State is to expand its power, and externally such expansion takes place by conquest of a territorial area. Unless a territory is stateless or uninhabited, any such expansion involves an inherent conflict of interest between one set of State rulers and another. Only one set of rulers can obtain a monopoly of coercion over any given territorial area at any one time: complete power over a territory by State X can only be obtained by the expulsion of State Y. War, while risky, will be an ever-present tendency of States, punctuated by periods of peace and by shifting alliances and coalitions between States.

We have seen that the "internal" or "domestic" attempt to limit the State, in the seventeenth through nineteenth centuries, reached its most notable form in constitutionalism. Its "external," or "foreign affairs," counterpart was the development of "international law," especially such forms as the "laws of war" and "neutrals' rights."² Parts of international law were originally purely private, growing out of the need of merchants and traders everywhere to protect their property and adjudicate disputes. Examples are admiralty law and the law merchant. But even the governmental rules emerged voluntarily and were not imposed by any international super-State. The object of the "laws of war" was to limit inter-State destruction to the State apparatus itself, thereby preserving the innocent "civilian" public from the slaughter and devastation of war. The object of the development of neutrals' rights was to preserve private civilian international commerce, even with "enemy" countries, from seizure by one of the warring parties. The overriding aim, then, was to limit the extent of any war, and, particularly to limit its destructive impact on the private citizens of the neutral and even the warring countries.

The jurist F.J.P. Veale charmingly describes such "civilized warfare" as it briefly flourished in fifteenth-century Italy:

"the rich burghers and merchants of medieval Italy were too busy making money and enjoying life to undertake the hardships and dangers of soldiering themselves. So they adopted the practice of hiring mercenaries to do their fighting for them, and, being thrifty, businesslike folk, they dismissed their

¹ As Mencken puts it in his inimitable fashion: "This gang ("the exploiters constituting the government") is well-nigh immune to punishment. Its worst extortions, even when they are baldly for private profit, carry no certain penalties under our laws. Since the first days of the Republic, less than a few dozen of its members have been impeached, and only a few obscure understrappers have ever been put into prison. The number of men sitting at Atlanta and Leavenworth for revolting against the extortions of the government is always ten times as great as the number of government officials condemned for oppressing the taxpayers to their own gain." (Mencken, *A Mencken Chrestomathy*, pp. 147–48) For a vivid and entertaining description of the lack of protection for the individual against incursion of his liberty by his "protectors," see H.L. Mencken, "The Nature of Liberty," in *Prejudices: A Selection* (New York: Vintage Books, 1958), pp. 138–43.

² This is to be distinguished from modern international law, with its stress on maximizing the extent of war through such concepts as "collective security."

mercenaries immediately after their services could be dispensed with. Wars were, therefore, fought by armies hired for each campaign. . . . For the first time, soldiering became a reasonable and comparatively harmless profession. The generals of that period maneuvered against each other, often with consummate skill, but when one had won the advantage, his opponent generally either retreated or surrendered. It was a recognized rule that a town could only be sacked if it offered resistance: immunity could always be purchased by paying a ransom. . . . As one natural consequence, no town ever resisted, it being obvious that a government too weak to defend its citizens had forfeited their allegiance. Civilians had little to fear from the dangers of war which were the concern only of professional soldiers.”¹

The well-nigh absolute separation of the private civilian from the State’s wars in eighteenth century Europe is highlighted by Nef:

“Even postal communications were not successfully restricted for long in wartime. Letters circulated without censorship, with a freedom that astonishes the twentieth-century mind. . . . The subjects of two warring nations talked to each other if they met, and when they could not meet, corresponded, not as enemies but as friends. The modern notion hardly existed that . . . subjects of any enemy country are partly accountable for the belligerent acts of their rulers. Nor had the warring rulers any firm disposition to stop communications with subjects of the enemy. The old inquisitorial practices of espionage in connection with religious worship and belief were disappearing, and no comparable inquisition in connection with political or economic communications was even contemplated. Passports were originally created to provide safe conduct in time of war. During most of the eighteenth century it seldom occurred to Europeans to abandon their travels in a foreign country which their own was fighting.”²

And trade being increasingly recognized as beneficial to both parties; eighteenth-century warfare also counterbalances a considerable amount of “trading with the enemy.”³

How far States have transcended rules of civilized warfare in this century needs no elaboration here. In the modern era of total war, combined with the technology of total destruction, the very idea of keeping war limited to the State *apparati* seems even more quaint and obsolete than the original Constitution of the United States.

When States are not at war, agreements are often necessary to keep frictions at a minimum. One doctrine that has gained curiously wide acceptance is the alleged “sanctity of treaties.” This concept is treated as the counterpart of the “sanctity of contract.” But a treaty and a genuine contract have

¹ F.J.P. Veale, *Advance to Barbarism* (Appleton, Wis.: C.C. Nelson, 1953), p. 63. Similarly, Professor Nef writes of the War of Don Carlos waged in Italy between France, Spain, and Sardinia against Austria, in the eighteenth century: “at the siege of Milan by the allies and several weeks later at Parma . . . the rival armies met in a fierce battle outside the town. In neither place were the sympathies of the inhabitants seriously moved by one side or the other. Their only fear was that the troops of either army should get within the gates and pillage. The fear proved groundless. At Parma the citizens ran to the town walls to watch the battle in the open country beyond.” (John U. Nef, *War and Human Progress* [Cambridge, Mass.: Harvard University Press, 1950], p. 158) Also cf. Hoffman Nickerson, *Can We Limit War?* (New York: Frederick A. Stokes, 1934).

² Nef, *War and Human Progress*, p. 162.

³ *Ibid.*, p. 161. On advocacy of trading with the enemy by leaders of the American Revolution, see Joseph Dorfman, *The Economic Mind in American Civilization* (New York: Viking Press, 1946), vol. 1, pp. 210–11.

nothing in common. A contract transfers, in a precise manner, titles to private property. Since a government does not, in any proper sense, “own” its territorial area, any agreements that it concludes do not confer titles to property. If, for example, Mr. Jones sells or gives his land to Mr. Smith, Jones’s heir cannot legitimately descend upon Smith’s heir and claim the land as rightfully his. The property title has already been transferred. Old Jones’s contract is automatically binding upon young Jones, because the former had already transferred the property; young Jones, therefore, has no property claim. Young Jones can only claim that which he has inherited from old Jones, and old Jones can only bequeath property which he still owns. But if, at a certain date, the government of, say, Ruritania is coerced or even bribed by the government of Waldavia into giving up some of its territory, it is absurd to claim that the governments or inhabitants of the two countries are forever barred from a claim to reunification of Ruritania on the grounds of the sanctity of a treaty. Neither the people nor the land of northwest Ruritania are owned by either of the two governments. As a corollary, one government can certainly not bind, by the dead hand of the past, a later government through treaty. A revolutionary government which overthrew the king of Ruritania could, similarly, hardly be called to account for the king’s actions or debts, for a government is not, as is a child, a true “heir” to its predecessor’s property.

HISTORY AS A RACE BETWEEN STATE POWER AND SOCIAL POWER

Just as the two basic and mutually exclusive interrelations between men are peaceful cooperation or coercive exploitation, production or predation, so the history of mankind, particularly its economic history, may be considered as a contest between these two principles. On the one hand, there is creative productivity, peaceful exchange and cooperation; on the other, coercive dictation and predation over those social relations. Albert Jay Nock happily termed these contesting forces: “social power” and “State power.”¹ Social power is man’s power over nature, his cooperative transformation of nature’s resources and insight into nature’s laws, for the benefit of all participating individuals. Social power is the power over nature, the living standards achieved by men in mutual exchange. State power, as we have seen, is the coercive and parasitic seizure of this production—a draining of the fruits of society for the benefit of nonproductive (actually anti-productive) rulers. While social power is over nature, State power is power over man. Through history, man’s productive and creative forces have, time and again, carved out new ways of transforming nature for man’s benefit. These have been the times when social power has spurred ahead of State power, and when the degree of State encroachment over society has considerably lessened. But always, after a greater or smaller time lag, the State has moved into these new areas, to cripple and confiscate social power once more.² If the seventeenth through the nineteenth centuries were, in many countries of the West, times of accelerating social power, and a corollary increase in freedom, peace, and material welfare, the twentieth century has been primarily an age in which State power has been catching up—with a consequent reversion to slavery, war, and destruction.³

¹ On the concepts of State power and social power, see Albert J. Nock, *Our Enemy the State* (Caldwell, Idaho: Caxton Printers, 1946). Also see Nock, *Memoirs of a Superfluous Man* (New York: Harpers, 1943), and Frank Chodorov, *The Rise and Fall of Society* (New York: Devin-Adair, 1959).

² Amidst the flux of expansion or contraction, the State always makes sure that it seizes and retains certain crucial “command posts” of the economy and society. Among these command posts are a monopoly of violence, monopoly of the ultimate judicial power, the channels of communication and transportation (post office, roads, rivers, air routes), irrigated water in Oriental despotisms, and education—to mold the opinions of its future citizens. In the modern economy, money is the critical command post.

³ This parasitic process of “catching up” has been almost openly proclaimed by Karl Marx, who conceded that socialism must be established through seizure of capital previously accumulated under capitalism.

In this century, the human race faces, once again, the virulent reign of the State—of the State now armed with the fruits of man’s creative powers, confiscated and perverted to its own aims. The last few centuries were times when men tried to place constitutional and other limits on the State, only to find that such limits, as with all other attempts, have failed. Of all the numerous forms that governments have taken over the centuries, of all the concepts and institutions that have been tried, none has succeeded in keeping the State in check. The problem of the State is evidently as far from solution as ever. Perhaps new paths of inquiry must be explored, if the successful, final solution of the State question is ever to be attained.¹

¹ Certainly, one indispensable ingredient of such a solution must be the sundering of the alliance of intellectual and State, through the creation of centers of intellectual inquiry and education, which will be independent of State power. Christopher Dawson notes that the great intellectual movements of the Renaissance and the Enlightenment were achieved by working outside of, and sometimes against, the entrenched universities. These academia of the new ideas were established by independent patrons. See Christopher Dawson, *The Crisis of Western Education* (New York: Sheed and Ward, 1961).