

The Essential Federalist and Anti-Federalist Papers

**Edited, with Introduction, by
David Wootton**

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Introduction

Understanding the Constitution

Two texts, a decade apart. One begins "The style [i.e., name] of this confederacy shall be 'The United States of America.'" The other begins "We the people of the United States, in order to form a more perfect union . . ." Between them, the living out of a revolution. One names a political entity that as yet scarcely exists and is intended to serve only limited purposes. In the other, that entity finds its voice. Its first word is "We," identifying itself not as a state, a confederacy, or even a nation, but as a community. Its first noun is "people," declaring itself to be a community of equals. Its first adjective is "perfect," announcing itself to be a community with boundless aspirations, a community to which all the people may contribute and in whose benefits all the people may share.

Of course its aspirations are no sooner stated than compromised—even betrayed. One only has to read as far as Section 2 of Article I to discover that "We" consists of "free persons," as opposed to "Indians not taxed" (the mere payment of taxes is enough to entitle you to be one of "The People") and "other persons." "Other persons" is a euphemism for slaves, but the very fact that the word "slave" is never used in this text, even when the reality of slavery is acknowledged, is an indirect recognition that slavery is at odds with the very principles of freedom the Constitution enunciates. The Articles of Confederation had no need to mention slavery because they applied to the affairs of the thirteen states, not the lives of individuals. The Constitution could not avoid referring to slavery, but slavery was already a peculiar institution: it was confined to certain states, and its legitimacy was contested, and it could therefore be mentioned only indirectly in references to "other persons" and the "migration and importation" of such persons. This second reference is accompanied by a time limit of twenty-one years, an implicit promise that the existence of slavery will have to be reviewed, an implied suggestion that it is at odds with the principles of liberty.

Women too were excluded from this "we," but that, unlike the exclusion of male slaves, did not strike any of its authors as a fundamental problem; it did not even represent an obstacle to be overcome in drafting an acceptable text. There was no need to refer to the exclusion of women, directly or indirectly, for to the authors of the Constitution that exclusion was simply invisible.

The Constitution of the United States—no other political document has had a greater influence on the life of a people, and no other political document has so succinctly summarized a wholly new way of thinking about politics. To understand the Constitution we need to explore its intellectual origins, the ideas it sought to embody as practical institutions as they developed over the previous century and more. We need to acknowledge the complicated process of negotiation and compromise by which the text of the Constitution was constructed between May 25, 1787, when the Constitutional Convention opened, and September 17 of that same year, when it completed its work. And we need to follow the debate on the merits and demerits of the Constitution that broke out immediately after its text was made public, a debate that lasted from September 1787 until the summer of 1788.

The classic defense of the Constitution is the *Federalist* (published in installments from October 27, 1787 to May 28, 1788), and it is by reading the *Federalist* as a reply to anti-Federalist arguments that one can best begin the study of the Constitution and the ideas it embodies. However, one cannot get the measure of that remarkable sustained polemic in defense of a constitution that was still no more than words on paper unless one has some sense of how much the ideas it contains are new made, and how much they are simply made new, remade to fit the needs of the hour.

The argument of this Introduction is that the *Federalist*, like the Constitution, contained few new ideas; but in both the Constitution and the *Federalist*, ideas that contemporaries frequently mistook for old ideas (although many of them were no older than the Founders) were made new. In 1787 these ideas expressed themselves through two new voices. One was the voice not of Hamilton, Madison, and the others who labored over the text of the Constitution, nor of “the Delegates of the United States of America in Congress assembled” (the voice of the Articles of Confederation), but of “We the People. . . .” The other was the voice not of Hamilton, Madison, and Jay, but of an anonymous spokesperson for this new constitutional idea, a featureless cipher through whom the Constitution speaks—the voice of “Publius.” Our task now is to discover what these voices have to say.

Revolution

The ratification of the Constitution marked the final phase of a revolutionary crisis that had endured for more than a decade. The Declaration of Independence had been approved on July 4, 1776, but the new state to which it gave rise came into existence only with the convening of the first

Congress called under the new Constitution on March 4, 1789. We take revolutions, and the principles to which they lay claim—such as popular sovereignty and the right of a new generation to discard the institutions of an outmoded era—so much for granted that we need to start our discussion by acknowledging just how new and challenging revolutionary principles were in 1776.

For centuries, throughout the Middle Ages and the Renaissance, societies had sought to ground political legitimacy in two overlapping principles—divine authorization and ancient tradition. It is sometimes argued that modern political debate began with the Wars of Religion in late-sixteenth-century France. Both in France and in Holland (which fought a war of independence against Spain from 1568 to 1648) polemicists had no difficulty in formulating arguments against tyranny. However, in both countries it was accepted that there were limits to resistance. It might be appropriate to overthrow an evil ruler (whether heretical or tyrannical), but even in a moment of extreme crisis one could not create new political institutions from scratch. Traditional authority should be maintained if possible—a new ruler should take the place of the old. Or, failing that, authority should be exercised by existing institutions with an established legitimacy—magistrates, estates, city councils. In Calvinist Scotland the same assumptions shaped the arguments of monarchomach (i.e., king-killing) theorists such as George Buchanan. (Buchanan wrote *Of the Powers of the Crown in Scotland* [1579] to legitimize the deposition of Mary Queen of Scots.)

It is only with the outbreak of the English Civil War, in 1642, that we find the first theorists prepared to argue that a political crisis could actually dissolve all existing authorities—that subjects could find themselves back in a “state of nature,” with the opportunity to establish a new type of political authority from first principles. This is what we now call the doctrine of “popular sovereignty,” and its emergence marks the beginning of the transition, in the new nation-state, from subject to citizen. Previously, only the inhabitants of self-governing cities had claimed to rule themselves.

When the people of a large political community rule themselves, some distinction has to be made between the popular assembly (which cannot be constantly in session) and the institutions that carry out its instructions. This distinction, fundamental to modern government, is also a product of the English Civil War and required a wholly new vocabulary: “legislative authority” is a phrase dating from 1642; “legislative power” from 1651 (in Hobbes’ *Leviathan*); “the legislature” dates from 1676; “executive power” is a phrase from 1649, while the term “the executive” is a product of the debate on the American Constitution (Madison was using it in 1785); “judicatory power” dates from 1642,

while the term “the judiciary” seems to have been used first in the Constitutional Convention.¹ Only with this new terminology of legislative, executive, and judicial powers could one both discuss how people might rule themselves, and ask how the power of government could be limited by being separated into distinct, independent powers.

The culture of both the Middle Ages and the Renaissance was profoundly backward looking. Present practices were governed by past precedents; the best (religion, literature, philosophy, or constitutional design) lay in the past, not the present or future. Suddenly, in the mid-seventeenth century, a few radical thinkers claimed the right to establish a new constitution quite unlike any that had preceded it: they insisted that old forms could be abandoned, and they discussed new forms in terms of distinct powers. John Locke formulated a modified version of these arguments in his *Two Treatises*, written as an attack on King Charles II, and published in 1689 after the overthrow of Charles’ brother King James II in 1688. For later generations this provided the paradigmatic definition of popular sovereignty. (Locke’s account of the separation of powers, on the other hand, was generally assumed to have been superseded by Montesquieu’s.)

Locke was prepared to accept that the best government would be a form of limited monarchy (for one needed a strong and unified executive), but during the English Civil War others insisted that monarchs would always employ their power to thwart the will of the people, and so maintained that only a republican constitution could be legitimate. The Americans were the heirs of this revolutionary tradition—the tradition of popular sovereignty, separation of powers, and suspicion of monarchy—passed down through the eighteenth century by True Whigs (the Whigs being the first national political party, formed to oppose Charles II and James II) and by others prepared to oppose the British government.

The British state, meanwhile, had been transformed as a result of the revolution of 1688. The revolution began the long struggle with France for global predominance, and led to the development of new mechanisms for concentrating power in the hands of the executive (particularly the management of patronage and the distribution of pensions and favors), ultimately perfected by the first Prime Minister, Robert Walpole, who completed the transformation of the core of the old Whig party into a party of big government and high taxation. It was this newly powerful state that sought to extend taxation to the American colonies.

1. An earlier, twofold distinction between legislature and executive goes back to Marsilius of Padua writing in Latin in the fourteenth century, but Marsilius did not distinguish between the judicial and the executive functions.

Key elements of the radical republican tradition, reconfigured for opposition against a state that was rapidly becoming the first global superpower, found expression in Thomas Paine’s *Common Sense* of January 1776, the book that announced the coming revolution.² Originally the word “revolution” had implied simply “recurrence,” that is, a return or repetition. By the late seventeenth century its meaning had begun to shift. Even as they lived through the events of 1688, contemporaries called them “a revolution,” and the term began to be used to refer to the overthrow of a government and its replacement by one based on entirely different principles. After 1776 the new concept of revolution would be firmly established, and both Federalists and anti-Federalists made use of it. “The American war is over: but this is far from being the case with the American revolution,” wrote Benjamin Rush in January 1787, calling for a new constitution. “Here is a revolution,” said Patrick Henry, opposing the constitution proposed by the Convention, “as radical as that which separated us from Great Britain.” The author of the *Federalist* believed the American colonists had “accomplished a revolution which has no parallel in the annals of human society: They reared the fabrics of governments which have no model on the face of the globe.”

This revolutionary tradition did not lie only in the immediate past; Federalist 28 reminded readers that “If the representatives of the people betray their constituents, there is then no recourse left but in the exertion of that original right of self-defense, which is paramount to all positive forms of government.” In a large country, where the State governments would be prepared to provide leadership in resisting the usurpations of central authority, the people would have the advantage over their rulers. So too Federalist 60 argues that if the federal government were to try to fix elections, there would inevitably be “a popular revolution.” If the constitution the *Federalist* advocated failed, it recognized revolution as an appropriate response.

Constitutions

Political analysis as we now know it begins with the composition of Aristotle’s *Politics* in the fifth century B.C.E. Aristotle was well aware that political communities are organized in different ways, and he believed that all political systems could be shown to be types or combinations of monarchy, aristocracy, and democracy. Aristotle was also prepared to produce a detailed analysis of the political institutions of particular

2. Paine, however, did not share the concern with limiting and separating powers that formed an important strand within the radical tradition.

communities, such as Athens. For Aristotle, the study of constitutions was comparable to the study of biology—it was primarily descriptive rather than normative. Constitutions existed in the real world before they were described by theoreticians, and even if one could identify tactics and strategies that would encourage stability and produce just government, there was still no reason why an individual should feel obliged to approve or sustain any particular constitutional arrangement.

Two thousand years later we find, at last, the idea of a written constitution. (One might look for precursors of this idea outside politics, in the regulations governing organizations such as the Franciscans and Dominicans, or the statutes of medieval universities.) The earliest proposal for a written constitution (leaving aside such American texts as the “Fundamental Orders of Connecticut,” 1639, and the “Massachusetts Body of Liberties,” 1641, as not being intended for independent states) comes from the extreme radicals of the Parliamentary army, the Levellers, in 1645. They proposed an “Agreement of the People,” a written constitution recognizing certain inalienable rights (such as freedom of religious conscience), and establishing a government controlled by the people. Having put their signature to such an agreement, citizens would be bound to preserve and maintain it. Briefly, England actually was governed under a written constitution, the Instrument of Government (1653–7). This was a modern constitution in that it distinguished between “the supreme legislative authority” and the rest of government, but it lumped together “the exercise of the chief magistracy, and the administration of the government.” The idea of an independent judiciary had yet to be clearly formulated. Although real power lay in the hands of the Lord Protector, Oliver Cromwell, the Instrument claimed legitimacy from the assent of Parliament. (Marchamont Nedham first defended the Instrument, and then, in his *The Excellency of a Free State* [1656, reprinted in 1767], which was known to John Adams and other Americans of the revolutionary era, employed principles drawn from it to imply that the Cromwellian regime had betrayed the cause of liberty.)

The Restoration in 1660 marked England’s return to an unwritten constitution, and yet by the mid-eighteenth century we find Bolingbroke writing about Britain’s Constitution as if it was something far more complicated than Aristotle’s simple division of constitutions into monarchies, aristocracies, democracies, and mixed governments. “By constitution,” says Bolingbroke, “we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions, and customs, derived from certain fixed principles of reason . . . that compose the general system according to which the community hath agreed to be governed.” The constitution is “a noble and wise system, the essential parts of which are

so proportioned, and so intimately connected, that a change in one begets a change in the whole.” In other words, a constitution is something that could in principle be written down, that embodies rational relationships, and that all political agents ought to respect. Blackstone’s *Commentaries on the Laws of England* (1765–9) continued this tradition of trying to analyze and define the British constitution as if were something established and long-lasting, but also quite specific and detailed.

For these commentators, one might say their task was to define a constitution that already existed as a set of practices. Their fundamental conviction was that a constitution involved interactions between institutions such that each part contributed to a larger whole. Bolingbroke pioneered the use of the word “system” to describe this interactive framework, and it is not surprising to find the proposed American constitution being described from the beginning as a “system.” Benjamin Franklin, addressing the Federal Convention on September 17, 1787, said, “It therefore astonishes me, Sir, to find this System [the proposed constitution] approaching as near to Perfection as it does,” and the word “system” occurs frequently in the *Federalist* (e.g., “popular systems of civil government” in Federalist 9) and in the anti-Federalists (for Richard Henry Lee, for example, the proposed constitution is “the new system”).

The conceptual tools required to construct and analyze written constitutions thus existed when such constitutions (with the solitary exception of the ill-fated Instrument of Government) did not yet exist. The written Constitution as we now know it was the offspring of the Revolution of 1776, which rapidly resulted in royal charters being rewritten as the constitutions for independent states. These new constitutions (Pennsylvania’s is the most striking example) tended to transfer the powers of the royal governor to representative assemblies whose power was virtually unlimited. Within a few years, however, the pendulum had begun to swing the other way. Massachusetts pioneered a new type of constitution when it established a constitutional convention, elected directly by the people, in 1779. John Adams wrote the bulk of the resulting constitutional proposal, which provided for a declaration of rights; the separation of powers; a bicameral legislature; an independent judiciary; and a powerful executive directly elected by the people, with control over the armed forces, extensive powers of appointment, an ample salary, and (at least in Adams’ original proposal) an absolute veto over legislation. The Massachusetts Constitution, ratified by the people in 1780, provided a model for constitutional reform in the other states (Madison and Jefferson led the campaign in Virginia), both in its specific provisions and in the procedure adopted to compose and ratify it.

The Constitution of the United States can be seen as one in a long

series of constitutions based on the model of the Massachusetts Constitution produced in a period running from 1780 to the early 1790s. Its most contentious elements were precisely those where it diverged from the Massachusetts model: its abandonment of the principle of annual elections, the absence of an elected council to advise the chief executive, and its failure to include a bill of rights.

The enterprise of writing and rewriting constitutions necessarily encouraged a comparative study of constitutions. Adams assembled much of the material relevant to such an enterprise in his three-volume *Defense of the Constitutions of the United States of America* (1787–8), the first volume of which appeared in time to be read by the delegates to the Constitutional Convention. Adams' purpose was to defend the Massachusetts model against the radical unicameralism and concentration of powers in the hands of the legislature advocated by French philosophes such as Turgot and Americans such as Thomas Paine, and embodied in the constitution of Pennsylvania. (In Pennsylvania, defenders of the Constitution such as Noah Webster had to argue at length in support of bicameralism, a proposal that was not contentious elsewhere.)

All those gathered at Philadelphia, therefore, were familiar with a range of models of constitutional design, and were agreed on the need to construct a constitution that drew on the best examples. When Noah Webster, in *An Examination into the Leading Principles of the American Constitution*, says, "It is worth our while to institute a brief comparison between our American forms of government, and the two *best constitutions* that ever existed in Europe, the *Roman* and the *British*," or the authors of the *Federalist* (in Essay 69) embark on "a comparison between the president and the King of Great Britain on the one hand, and the Governor of New York on the other," their enterprise is simply a smaller, more modest version of that of Adams in his vast *Defense*. When James Wilson maintained that "the ancients, so enlightened on other subjects, were very uninformed with regard to this [the science of politics]," his evidence was that "they seem scarcely to have had any idea of any other kinds of governments than the three simple forms design[at]ed by the epithets, monarchical, aristocratical, and democratical," and he could safely assume that his listeners were better informed. Above all, his listeners, unlike the ancients, were familiar with the modern idea of the separation of powers into legislative, executive, and judiciary.

Montesquieu and the Separation of Powers

One book dominated constitutional theorizing in the years before 1787 and the debate over the Constitution in 1787–8: Montesquieu's *Spirit of the Laws*, first published in French in 1748. Montesquieu was important as the founder of the science of comparative politics and as someone who had written at length on republicanism (arguing that it was a political system suited only to small states with a virtuous citizenry). Above all, he was important because he had given an account of a form of constitution under which liberty was maximized. For Montesquieu the nearest example, in practice, of such a constitution was Britain's ("The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry," said Madison), and discussing Montesquieu in part provided a way in which former colonists could discuss how far they wanted to model their constitution on that of the imperial power, without raising the awkward question of how far their own principles differed from those of their former rulers. "We detested the British name; and unfortunately refused to copy some things in the administration of justice and power, in the British government, which have made it the admiration and envy of the world," said Benjamin Rush, who was unusual in not taking shelter behind Montesquieu. (At the Convention, Hamilton had bluntly said that the "British constitution [is the] best form" of government, but he avoided making so impolitic a remark in the *Federalist*.)

The crucial importance of Montesquieu was that his was the classic formulation of the doctrine of the separation of powers. Although the

vocabulary required to think about the three powers and early formulations of the need for their separation arose during the English Civil War, it was Montesquieu who welded the idea of liberty to the idea of the separation of powers. It was this that made him an "oracle," "always consulted and cited" during the debate on ratification.

The idea that legislature, executive, and judiciary should be separated was, as we have seen, already present in Locke. Fundamental to his argument in the Second Treatise is the claim that no government can be legitimate if it does not provide impartial adjudication of disputes—an argument that appeared to make an independent judiciary the key index of legitimacy. Montesquieu gave the argument a new centrality. In order to understand his discussion of the subject in the *Spirit of the Laws* three points need to be made. The first is that Montesquieu, like Polybius, saw in ancient Sparta and Rome examples of governments in which different institutions were balanced against each other, the result being a limited government providing security against tyranny. These ancient constitutions, however, provided no proper separation of powers: this separation was thus a more recent construction. Where powers were separated, a new type of liberty was born. The balance of powers in ancient republics protected the community as a whole from tyranny; the separation of powers protected every individual.

The second point is crucial to understanding why Montesquieu did not stress the modernity of the concept of separation of powers. Broadly speaking, he identified the executive with the monarchy and the legislature with Parliament; both of these were long-established institutions. In addition, he identified the independent judicial element in the English Constitution with the *jury*. It was the jury who judged the facts in criminal cases and determined the innocence or guilt of the accused. Since the jury, too, was a long-established institution, the separation of powers appeared to Montesquieu to be deeply entrenched in English history.

He would have come up with a very different account had he focused on the independence of judges. Judges had served during the King's pleasure until 1715—they could simply be dismissed if their judgments did not please the king.⁴ It was the activities of royalist judges such as Judge Jeffries (conductor of the Bloody Assizes, when those who had supported Monmouth's rebellion against James II were condemned to

4. That judges should serve during good behavior was one of Parliament's demands in 1641–2. The principle was briefly conceded by Charles I, and Charles II appointed judges on this basis from 1660 until 1667; after that the old formula, that judges served at the king's pleasure, was restored. Even the Bill of Rights of 1689 provided no guarantee of judicial independence.

death wholesale), who made no secret of their political allegiances, and did not hesitate to intimidate juries, which partly explains Locke's preoccupation with judicial impartiality. An independent judiciary—defined in the eighteenth century as a judiciary who served during good behavior, rather than at the executive's pleasure (Federalist 78)—had thus existed in England for less than a century when the debate on the Constitution took place. (Noah Webster, who thought that English judges had been independent "for many centuries," was simply mistaken.)

For Montesquieu, the principle of jury trial was central to English liberty. This principle, along with the separation of powers, was entrenched in the Massachusetts Constitution of 1780. For the anti-Federalists, the absence of any guarantee of jury trial was a fundamental weakness of the proposed constitution, and Federalist 83 was devoted to rebutting their arguments. In their original discussion of the separation of powers (Essays 47–51), the authors of the *Federalist* saw no need to discuss juries, nor even the independence of the judiciary, although this was the alternative to the independence of the jury on which they (and the Constitution) relied. They clearly did not foresee, in the early stages of planning and then writing the *Federalist*, how central the arguments that would lead to calls for a Bill of Rights would prove in the debate over ratification. They also did not foresee—as others did, even in their contributions to the debates at the Convention—the role the Supreme Court might play in interpreting and defending the Constitution. A recognition of the importance of this topic was something they took *from* the debates, not something they brought *to* them. We can date their new grasp of the importance of the topic between January 2 and January 16, 1788 (compare pages 213 and 230 below).

Instead (and this is the third point), the *Federalist* seeks to play the doctrine of the separation of powers against the doctrine of the balance of powers. Perfectly reasonably, the authors interpreted Montesquieu's doctrine of the separation of powers by referring to the practices embodied in the British Constitution, where the King had a veto over legislation and the House of Lords had a judicial role. They argued that if Britain embodied a separation of powers, then Montesquieu must have intended not a complete separation, but merely that no one power should be allowed to gain control over any of the others. They went on to argue that interaction between the departments was essential if each power was not only to be independent, but also to assist in controlling the others. In other words, the overriding importance of having a balance of powers required that one could not have a full separation. (In simultaneously stressing independence and interaction they were recapitulating the arguments of Bolingbroke, from whom Montesquieu is sometimes said to have

derived his doctrine of the separation of powers.) The separation of powers was thus a secondary principle for the authors of the *Federalist*. The central principle was that power must be used to control power, and the partial separation of powers was merely a means to this end.

Although Montesquieu writes of the distribution rather than the separation of powers, it was an easy step to derive a doctrine of the separation of powers from his argument because he evidently thinks of them as separate and, because he thinks of them as separate, he assumes that the power of the executive to control the legislature will be exercised through the use of an unlimited veto.⁵ It is surely because the veto is central to Montesquieu's argument that sophisticated statesmen kept trying to build vetoes into constitutions: Adams and Hamilton wanted the executive to have a veto over legislation, and Madison wanted the federal assembly to have a veto over the state assemblies. Vetoes, however, are bad politics, and again and again they had to be abandoned in the course of turning drafts into agreed texts: Even Montesquieu recognized that in theory vetoes would give rise to frequent deadlock, and they also imply subordination rather than autonomy (something unacceptable, for example, to the states in their relation to the federal government). The text of the Constitution contained only one absolute veto: The ability of Senate and House to veto each other's proposals for legislation. The *Federalist*, therefore, had to give an account of how one of the three powers might control another without relying on what had long seemed the obvious and simplest mechanism for control, the veto.

Thus, what was new (at least in an American context) in the *Federalist* was the bold way in which the authors generalized the fundamental principle that power should act as a control on power, while making only a glancing reference to the missing mechanism of the veto. Federalist 51 (along with Federalist 10, the most commented on of all the essays) is the classic statement of this principle, but it merely crystallizes a line of argument that runs through the whole work. For example, in Essay 15: "Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged." In Essay 28: "Power being almost always the rival of power; the General Government will at all times stand ready to check the usurpations of the state governments; and these will

5. Montesquieu also expects the executive to control the legislature by determining when and for how long it sits. The Constitution, which gives Presidents a limited veto over legislation, gives them no control over the assembly and dissolution of Congress. The legislature was assumed to have no need for a veto over the actions of the executive because it had both the power of impeachment and the power to refuse taxation.

have the same disposition toward the General Government." This principle, "the policy of supplying, by opposite and rival interests, the defect of better motives," the policy that "ambition must be made to counteract ambition" is the underlying principle of constitutional design in the *Federalist*. In order to understand this principle, we need to look briefly at the development of the new science of politics.

The Science of Politics

Article I

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. 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.

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.

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. 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 choose 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.

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

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

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

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

CONSTITUTION OF THE UNITED STATES OF AMERICA

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defense, 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.

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.

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.

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

The Senate shall choose 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.

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.

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. The Time, 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 choosing Senators.

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

Section 5. 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.

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

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.

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. 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. 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.

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. 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.

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.

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

To borrow Money on the credit of the United States;

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

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

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

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

To establish Post Offices and post Roads;

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;

To constitute Tribunals inferior to the supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Ser-

vice 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;

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, Dockyards, and other needful Buildings;—And

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. 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.

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.

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

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

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

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.

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.

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. 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.

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 its 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 Control of the Congress.

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

Section 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:

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.

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 choose 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 choose the President. But in choosing 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 choose from them by Ballot the Vice President.

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

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.

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, 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.

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.

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. 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 Offenses against the United States, except in Cases of Impeachment.

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.

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

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 Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2. 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;—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.

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.

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. 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.

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

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

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.

No Person held to Service or Labor 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 Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

Section 3. 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.

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

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

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.

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 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.

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

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

Same. 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, [the names of the delegates follow]

BILL OF RIGHTS (ADOPTED AS AMENDING THE CONSTITUTION, DECEMBER 15, 1791)

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offenses to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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The Anti-Federalists

GEORGE MASON, *OBJECTIONS TO THE CONSTITUTION
OF GOVERNMENT FORMED BY THE CONVENTION*

November 1787

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 Benefits 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.¹

The Senate have the Power of altering all Money Bills and of originating Appropriations of Money and the Salaries of the Officers of their own 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 Power 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

1. 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. (Mason)

Law 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 public Officers; and the alarming Dependence and Connection between that Branch of the Legislature, and the supreme Executive.

Hence also sprung that unnecessary and dangerous 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 Preeminence 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 that 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 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 Causes; 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 Defense.

Both the general Legislature and the State Legislatures are expressly prohibited making ex post facto Laws; though there never was, or 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.

THE ADDRESS AND REASONS OF DISSENT OF THE
MINORITY OF THE CONVENTION OF THE STATE OF PENNSYLVANIA

SPEECH OF PATRICK HENRY BEFORE THE
VIRGINIA RATIFYING CONVENTION

June 5, 1788

Mr. Chairman—I am much obliged to the very worthy Gentleman for his encomium. I wish I was possessed of talents, or possessed of anything, 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 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 retain 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 those great considerations which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition, our rights and privileges are endangered, and the sovereignty of the States 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 an 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 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 blessings—give us that precious jewel, and you may take everything 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 pore 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 a 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 Honorable 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 of the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect everyone 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 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 this 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 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 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 Representative 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 in earnest. This acquisition will trample on your 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 defense, 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? Until they tell us the ground 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 career, 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;¹⁰ 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 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 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 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." Hence it appears that three-fourths of the States must ultimately agree to any amendments that may be necessary. Let us consider the consequences 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 these 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 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

10. [I.e., theoretical.]

people may reject 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: third 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 maladministration, and that whenever 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." This, Sir, is the language of democracy; that a majority of the community have a right to alter their 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 are left to the twentieth or the tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practiced in the House of Commons in England; and that many of the members raised themselves to preferments, by selling the rights of the people: But, Sir, the tenth part of that body cannot continue oppressions 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. Oh, 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 have no longer an aristocratical; no longer democratical spirit. Did you ever read of any revolution in any 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, etc. 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: Those 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, 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 defense, 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. 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: They are not the proper agents for this purpose: States and sovereign 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 of 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 system of my notes, he attributes to the present feeble Government. An opinion has gone forth, we find, that we are a contemptible people: The time has been when we were thought otherwise: Under this 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 the 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 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 of everything. 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 to 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, Sir, 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, 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 the society, you will find the same tranquil ease and content; you will find no alarms or disturbances: Why then tell us of dangers to terrify us into an adoption of this new 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 class 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 these 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 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, inalienable, 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: 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 defense 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 but 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; that is, after noncompliance 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, until 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 until 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 these powers given to Congress, are accompanied by a Judiciary which will connect 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 sufficient 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 bloodsuckers, 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 have 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 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 persons 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 excise men, 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 until 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 toward monarchy: And does not this raise indignation in the breast of every 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, although horribly defective: Where are your checks in this Government? Your strongholds will be in the hands of your enemies: It is on a supposition that our 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 shall come at the head of his army to carry everything 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 everything, 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 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? {Here Mr. Henry strongly and pathetically expatiated on the probability of the President's enslaving America, and the horrible consequences that must result.} ¹¹ What can be more defective than the clause concerning the elections?—The control given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the State; or they may be at remote distances from those who have a right of suffrage: Hence nine out of ten must either not vote at all, or vote for strangers: For the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat that the control of Congress over the *manner*, etc., of electing, well warrants this idea. The natural consequence will be; that this democratic branch, will possess none of the public confidence: The people will be prejudiced against Representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from the yeomanry of this country: We are told that the yeas and nays shall be taken and entered on the journals: This, Sir, will avail nothing: It may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy: They *may* think, and *will* think, the whole requires it. Another beautiful feature of this Constitution is, the publication from time to time of the receipts and expenditures of the public money. This expression, from time to time, is very indefinite and indeterminate: It may extend to a century. Grant that any of them are wicked, they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say, they may ruin you;—for where, Sir, is the responsibility? The yeas and nays will show you nothing, unless they be fools as well as knaves: For after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and divulge their iniquity, when they have it equally in their power to suppress and conceal it.—Where is the responsibility—that leading principle in the British government? In that government a punishment, certain and inevitable, is provided: But in this, there is no real actual punishment for the grossest maladministration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, by

11. [Clearly the stenographer had difficulty keeping up with Henry and was occasionally reduced to recording a mere summary, not his actual words.]

what law? They must make the law—for there is no existing law to do it. What—will they make a law to punish themselves? This, Sir, is my great objection to the Constitution, that there is no true responsibility—and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves. In the country from which we are descended, they have real, and not imaginary, responsibility—for there, maladministration has cost their heads, to some of the most saucy geniuses that ever were. The Senate, by making treaties may destroy your liberty and laws for want of responsibility. Two-thirds of those that shall happen to be present, can, with the President, make treaties, that shall be the supreme law of the land: They may make the most ruinous treaties; and yet there is no punishment for them. Whoever shows me a punishment provided for them, will oblige me. So, Sir, notwithstanding there are eight pillars, they want another. Where will they make another? I trust, Sir, the exclusion of the evils wherewith this system is replete, in its present form, will be made a condition, precedent to its adoption, by this or any other State. The transition from a general unqualified admission to offices, to a consolidation of government, seems easy; for though the American States are dissimilar in their structure, this will assimilate them: This, Sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine States are sufficient to establish this government over those nine: Imagine that nine have come into it. Virginia has certain scruples. Suppose she will consequently, refuse to join with those States:—May not they still continue in friendship and union with her? If she sends her annual requisitions in dollars, do you think their stomachs will be so squeamish that they will refuse her dollars? Will they not accept her regiments? They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be dissolved. It is a bugbear, Sir:—The fact is, Sir, that the eight adopting States can hardly stand on their own legs. Public fame tells us, that the adopting States have already heartburnings and animosity, and repent their precipitate hurry: This, Sir, may occasion exceeding great mischief. When I reflect on these and many other circumstances, I must think those States will be fond to be in confederacy with us. If we pay our quota of money annually, and furnish our ratable number of men, when necessary, I can see no danger from a rejection. The history of Switzerland clearly proves, 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 structure may be Confederated; that Confederate Republic has stood upward 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 this 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 a people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Seigneur, alongside of our President, would put us to disgrace: But we should be abundantly consoled for this disgrace, when our citizen should be 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 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 that 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 peo-

ple 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 affection 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 that we shall be properly represented: Remember, Sir, that the number of our Representatives is but ten, whereof six is a majority. Will these 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 situation of their farmers, cottagers, and mechanics, but also the relative situation 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 thirty. The House of Commons in England, numerous as they are, we are told, is 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.¹² 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 today, 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 to it. May you be fully apprised of the dangers of the latter, not by fatal experience, but by some abler advocate than me.

12. [I.e., members of Parliament.]

Assembly; and hence inferred, that sixty-five is to two hundred and forty thousand, as sixty-five is to three million.—This is curious reasoning.

I feel that I have troubled the committee too long. I should not indeed have risen again upon this subject, had not my ideas been grossly misrepresented.

LETTERS OF CATO (4 AND 5)

No. 4

[November 8, 1787]

Admitting, however, that the vast extent of America, together with the various other reasons which I offered you in my last number, against the practicability of the just exercise of the new government are insufficient to convince you; still it is an undeniable truth, that its several parts are either possessed of principles, which you have heretofore considered as ruinous, and that others are omitted which you have established as fundamental to your political security, and must in their operation, I will venture to assert—fetter your tongues and minds, enchain your bodies, and ultimately extinguish all that is great and noble in man.

In pursuance of my plan, I shall begin with observations on the executive branch of this new system; and though it is not the first in order, as arranged therein, yet being the *chief* is perhaps entitled by the rules of rank to the first consideration. The executive power as described in the second article, consists of a president and vice president, who are to hold their offices *during* the term of four years; the same article has marked the manner and time of their election, and established the qualifications of the president; it also provides against the removal, death, or inability of the president and vice president—regulates the salary of the president, delineates his duties and powers; and lastly, declares the causes for which the president and vice president shall be removed from office.

Notwithstanding the great learning and abilities of the gentlemen who composed the convention, it may be here remarked with deference, that the construction of the first paragraph of the first section of the second article, is vague and inexplicit, and leaves the mind in doubt, as to the election of a president and vice president, after the expiration of the election for the first term of four years—in every other case, the election of these great officers is expressly provided for; but there is no explicit provision for their election in case of the expiration of their offices, subsequent to the election which is to set this political machine in motion—no certain and express terms as in your state constitution, that *statedly* once in every four years, and as often as these offices shall become vacant, by expiration

or otherwise, as is therein expressed, an election shall be held as follows, etc.—this inexplicitness perhaps may lead to an establishment for life.

It is remarked by Montesquieu, in treating of republics, that *in all magistracies, the greatness of the power must be compensated by the brevity of the duration; and that a longer time than a year, would be dangerous*. It is therefore obvious to the least intelligent mind, to account why, great power in the hands of a magistrate, and that power connected, with a considerable duration, may be dangerous to the liberties of a republic—the deposit of vast trusts in the hands of a single magistrate, enables him in their exercise, to create a numerous train of dependents—this tempts his *ambition*, which in a republican magistrate is also remarked, *to be pernicious* and the duration of his office for any considerable time favors his views, gives him the means and time to perfect and execute his designs—he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country.—And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers—his power of nomination and influence on all appointments—the strong posts in each state comprised within his superintendence, and garrisoned by troops under his direction—his control over the army, militia, and navy—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt—his duration in office for four years: these, and various other principles evidently prove the truth of the position—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.

Though the president, during the sitting of the legislature, is assisted by the senate, yet he is without a constitutional council in their recess—he will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country.

The ten miles square, which is to become the seat of government, will of course be the place of residence for the president and the great officers of state—the same observations of a great man will apply to the court of a president possessing the powers of a monarch, that is observed of that of a monarch—*ambition with idleness—baseness with pride—the thirst of riches without labor—aversion to truth—flattery—treason—perfidy—violation of engagements—contempt of civil duties—hope from the magistrates' weakness;*

but above all, the perpetual ridicule of virtue—these, he remarks, are the characteristics by which the courts in all ages have been distinguished.

The language and the manners of this court will be what distinguishes them from the rest of the community, not what assimilates them to it, and in being remarked for a behavior that shows they are not *meanly born*, and in adulation to people of fortune and power.

The establishment of a vice president is as unnecessary as it is dangerous. This officer, for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence.

It is a maxim in republics, that the representative of the people should be of their immediate choice; but by the manner in which the president is chosen he arrives to this office at the fourth or fifth hand, nor does the highest votes, in the way he is elected, determine the choice—for it is only necessary that he should be taken from the highest of five, who may have a plurality of votes.

Compare your past opinions and sentiments with the present proposed establishment, and you will find, that if you adopt it, that it will lead you into a system which you heretofore reprobated as odious. Every American Whig, not long since, bore his emphatic testimony against a monarchical government, though limited, because of the dangerous inequality that it created among citizens as relative to their rights and property; and wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great Britain (save as to name, the creation of nobility, and some immaterial incidents, the offspring of absurdity and locality) the direct prerogatives of the president, as springing from his political character, are among the following:—It is necessary, in order to distinguish him from the rest of the community, and enable him to keep, and maintain his court, that the compensation for his services; or in other words, his revenue should be such as to enable him to appear with the splendor of a prince; he has the power of receiving ambassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the senate, which when made, become the supreme law of the land: he is a constituent part of the legislative power; for every bill which shall pass the house of representatives and senate, is to be presented to him for approbation; if he approves of it, he is to sign it, if he disapproves, he is to return it with objections, which in many cases will amount to a complete negative; and in this view he will have a great share in the power of making peace, coining money, etc. and all the various objects of legislation, expressed or implied in this Constitution: for though it may be

asserted that the king of Great Britain has the express power of making peace or war, yet he never thinks it prudent so to do without the advice of his parliament from whom he is to derive his support, and therefore these powers, in both president and king, are substantially the same: he is the generalissimo of the nation, and of course, has the command and control of the army, navy, and militia; he is the general conservator of the peace of the union—he may pardon all offenses, except in cases of impeachment, and the principal fountain of all offices and employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his reelection, in what circle appointments will be made; by which means *an imperfect aristocracy* bordering on monarchy may be established.

You must, however, my countrymen, beware, that the advocates of this new system do not deceive you, by a fallacious resemblance between it and your own state government, which you so much prize; and if you examine, you will perceive that the chief magistrate of this state, is your immediate choice, controlled and checked by a just and full representation of the people, divested of the prerogative of influencing war and peace, making treaties, receiving and sending embassies, and commanding standing armies and navies, which belong to the power of the confederation, and will be convinced that this government is no more like a true picture of your own, than an Angel of darkness resembles an Angel of light.

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 everywhere perished; as they continue to be the favorite 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 everywhere 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

40. ["Civilian" here has the technical sense of a student of the law. The Hopkins edition substitutes "writer."]

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 labor, 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 administration.

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 a 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 everywhere 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 preeminence 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 cooperate 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.⁴¹ 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 moneyed 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

41. [Compare Hume, "Of Parties in General," *Essays, Moral and Political* (1741): "Men have such a propensity to divide into personal factions, that the smallest appearance of real difference will produce them. What can be imagined more trivial than the difference between one color of livery and another in horse races? Yet this difference begat two most inveterate factions in the GREEK empire, the PRASINI and VENETI, who never suspended their animosities, until they ruined that unhappy government."]

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 overburden 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 labored, 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 coexistent

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.⁴²

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 obnoxious⁴³ 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 patronized 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.

42. [Compare Hume, "Of the Independency of Parliament" (*Essays, Moral and Political*, 1741): "Honour is a great check upon mankind: But where a considerable body of men act together, this check is, in a great measure, removed; since a man is sure to be approved of by his own party, for what promotes the common interest; and he soon learns to despise the clamour of adversaries."]

43. [There is either an ambiguity or (more likely) a pun here. The original meaning of *obnoxious* is "liable to injury" (e.g., below, p. 280), in which sense *obnoxious* is a synonym for *weaker*; but Madison probably also had in mind the modern sense of *obnoxious*, referring to someone who is disliked.]

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 favorable to the election of proper guardians of the public weal: and it is clearly decided in favor 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 practice 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 center on 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, and 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 princi-

pally 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 dishonorable 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 palatable 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.

[November 22, 1787]

No. 12

THE UTILITY OF THE UNION

The effects of
been suff

other resources must throw the principal weight of the public burdens on the possessors of land. And as, on the other hand, the wants of the government can never obtain an adequate supply, unless all the sources of revenue are open to its demands, the finances of the community under such embarrassments, cannot be put into a situation consistent with its respectability, or its security. Thus we shall not even have the consolations of a full treasury to atone for the oppression of that valuable class of the citizens, who are employed in the cultivation of the soil. But public and private distress will keep pace with each other in gloomy concert; and unite in deploring the infatuation of those councils, which led to disunion.

[November 27, 1787]

No. 14

[Madison]

AN OBJECTION DRAWN FROM THE EXTENT OF COUNTRY ANSWERED

We have seen the necessity of the union as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the old world; and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains, within this branch of our inquiries, is to take notice of an objection, that may be drawn from the great extent of country which the union embraces. A few observations on this subject will be the more proper, as it is perceived that the adversaries of the new constitution are availing themselves of a prevailing prejudice, with regard to the practicable sphere of republican administration, in order to supply by imaginary difficulties, the want of those solid objections, which they endeavor in vain to find.

The error which limits Republican Government to a narrow district, has been unfolded and refuted in preceding papers.⁵⁵ I remark here only, that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy: And applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is, that in a democracy, the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A

55. [See Essays 9 and 10, above.]

democracy consequently must be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error may be added, the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute, or limited monarchy, they have endeavored to heighten the advantages or palliate the evils of those forms; by placing in comparison with them, the vices and defects of the republican, and by citing as specimens of the latter, the turbulent democracies of ancient Greece, and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic, observations applicable to a democracy only, and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded at the same time wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which, the will of the largest political body may be concentrated, and its force directed to any object, which the public good requires; America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented, that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy is that distance from the central point, which will just permit the most remote citizens to assemble as often as their public functions demand; and will include no greater number than can join in those functions; so the natural limit of a republic is that distance from the center, which will barely allow the representatives of the people to meet as often as may be necessary for the administration of public affairs. Can it be said, that the limits of the United States exceed this distance? It will not be said by those who recollect that the Atlantic coast is the longest side of the union; that during the term of thirteen years, the representatives of the States have been almost continually assembled; and that the members from the most distant states are not chargeable with greater intermissions of attendance, than those from the States in the neighborhood of Congress.

That we may form a juster estimate with regard to this interesting subject, let us resort to the actual dimensions of the union. The limits as fixed by the treaty of peace are on the east the Atlantic, on the south the latitude of thirty-one degrees, on the west the Mississippi, and on the north an

irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees to seven hundred, sixty-four miles and an half. Taking the mean for the distance, the amount will be eight hundred, sixty-eight miles and three-fourths. The mean distance from the Atlantic to the Mississippi does not probably exceed seven hundred and fifty miles. On a comparison of this extent, with that of several countries in Europe, the practicability of rendering our system commensurate to it, appears to be demonstrable. It is not a great deal larger than Germany, where a Diet, representing the whole empire is continually assembled; or than Poland before the late dismemberment, where another national Diet was the depository of the supreme power. Passing by France and Spain, we find that in Great Britain, inferior as it may be in size, the representatives of the northern extremity of the island, have as far to travel to the national Council, as will be required of those of the most remote parts of the union.

Favorable as this view of the subject may be, some observations remain which will place it in a light still more satisfactory.

In the first place it is to be remembered, that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments which can extend their care to all those other objects, which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular States, its adversaries would have some ground for their objection, though it would not be difficult to show that if they were abolished, the general government would be compelled by the principle of self preservation, to reinstate them in their proper jurisdiction.

A second observation to be made is, that the immediate object of the Federal Constitution is to secure the union of the Thirteen Primitive States, which we know to be practicable; and to add to them such other States, as may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory, which lie on our northwestern frontier, must be left to those whom further discoveries and experience will render more equal to the task.

Let it be remarked in the third place, that the intercourse throughout the union will be daily facilitated by new improvements. Roads will

everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout the whole extent of the Thirteen States. The communication between the western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

A fourth and still more important consideration is, that as almost every State will on one side or other, be a frontier, and will thus find in a regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance from the heart of the union, and which of course may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia or the States forming our western or northeastern borders, to send their representatives to the seat of government, but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions, which may be dictated by the neighborhood of continual danger. If they should derive less benefit therefore from the union in some respects, than the less distant States, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout.

I submit to you my fellow citizens, these considerations, in full confidence that the good sense which has so often marked your decisions, will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you. Harken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow citizens of one great respectable and flourishing empire. Harken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of

their sacred rights, consecrate their union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces, in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected merely because it may comprise what is new? Is it not the glory of the people of America, that whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for the possession, and the world for the example of the numerous innovations displayed on the American theater, in favor of private rights and public happiness. Had no important step been taken by the leaders of the revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment, have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily we trust for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society: They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the union, this was the work most difficult to be executed; this is the work which had been new modeled by the act of your Convention, and it is that act on which you are now to deliberate and to decide.

[November 30, 1787]

No. 15

[Hamilton]

CONCERNING THE DEFECTS OF THE PRESENT CONFEDERATION
IN RELATION TO THE PRINCIPLE OF LEGISLATION FOR THE
STATES IN THEIR COLLECTIVE CAPACITIES

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 defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.¹²⁹ 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

129. [Compare Hume, "Of the Independency of Parliament" (*Essays, Moral and Political*, 1741): "When there offers, therefore, to our censure and examination, any plan of government, real or imaginary, where the power is distributed among several courts, and several orders of men, we should always consider the separate interest of each court, and each order; and, if we find that, by the skilful division of power, this interest must necessarily, in its operation, concur with public, we may pronounce that government to be wise and happy."]

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.¹³⁰ 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 sentinel over the public rights.¹³¹ 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-defense. 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 defense 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

130. [For the paradox that government must be made to control itself, see Hume, "Of the Independency of Parliament," *Essays, Moral and Political* (1741): "How, therefore, shall we solve this paradox? And by what means is this member of our constitution [the House of Commons] confined within the proper limits; since, from our very constitution, it must necessarily have as much power as it demands, and can only be confined by itself?"]

131. [Compare Hume, "That Politics May Be Reduced to a Science," *Essays, Moral and Political* (1741): "Effects will always correspond to causes; and wise regulations in any commonwealth are the most valuable legacy that can be left to future ages. In the smallest court or office, the stated forms and methods, by which business must be conducted, are found to be a considerable check upon the natural depravity of mankind."]

this defect of an absolute negative be supplied, by some qualified connection 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 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. While 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 for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects.¹³² 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 on any other principles than those of justice and the general good; and¹³³ 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

132. [See Madison's "Memorial and Remonstrance against Religious Assessments" (June 1785).]

133. ["Whilst" substituted for "and" in McLean and later editions.]

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*.

[February 6, 1788]

CONCERNING THE CONSTITUTION OF THE SENATE WITH
REGARD TO THE QUALIFICATIONS OF THE MEMBERS,
THE MANNER OF APPOINTING THEM, THE EQUALITY OF
REPRESENTATION, THE NUMBER OF THE SENATORS,
AND THE DURATION OF THEIR APPOINTMENTS

Having examined the constitution of the house of representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the senate. The heads into which this member of the government may be considered, are I. the qualifications of senators. II. the appointment of them by the state legislatures. III. the equality of representation in the senate. IV. the number of senators, and the term for which they are to be elected. V. the powers vested in the senate.¹³⁹

139. [The discussion of IV continues in Essay 63, whereas V is discussed in Essays 64, 65, and 66, which are not included in this selection.]

I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age, and a longer period of citizenship. A senator must be thirty years of age at least; as a representative, must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust; which requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merit and talents may claim a share in the public confidence; and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

II. It is equally unnecessary to dilate on the appointment of senators by the state legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the state governments such an agency in the formation of the federal government, as must secure the authority of the former; and may form a convenient link between the two systems.

III. The equality of representation in the senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small states, does not call for much discussion. If indeed it be right among a people thoroughly incorporated into one nation, every district ought to have a *proportional* share in the government; and that among independent and sovereign states bound together by¹⁴⁰ simple league, the parties however unequal in size, ought to have an *equal* share in the common councils, it does not appear to be without some reason, that in a compound republic partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try by the standards of theory, a part of the constitution which is allowed on all hands to be the result not of theory, but "of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable." A common government with powers equal to its objects, is called for by the voice, and still more

140. ["By a" was substituted in the McLean and Hopkins editions.]

loudly by the political situation of America. A government founded on principles more consonant to the wishes of the larger states, is not likely to be obtained from the smaller states. The only option then for the former lies between the proposed government and a government still more objectionable. Under this alternative the advice of prudence must be, to embrace the lesser evil; and instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each state, is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small states; since they are not less solicitous to guard by every possible expedient against an improper consolidation of the states into one simple republic.

Another advantage accruing from this ingredient in the constitution of the senate, is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence first of a majority of the people, and then of a majority of the states. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller states would be more rational, if any interests common to them, and distinct from those of the other states, would otherwise be exposed to peculiar danger. But as the larger states will always be able by their power over the supplies to defeat unreasonable exertions of this prerogative of the lesser states; and as the facility and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the constitution may be more convenient in practice than it appears to many in contemplation.

IV. The number of senators and the duration of their appointment come next to be considered. In order to form an accurate judgment on both these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it, may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies

in schemes of usurpation or perfidy, where the ambition or corruption of one, would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies; it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted need not be proved. All that need be remarked is that a body which is to correct this infirmity ought itself be free from it, and consequently ought to be less numerous. It ought moreover to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Thirdly. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding, against each preceding session; so many admonitions to the people of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things; first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities: Most governments are deficient in the first. I scruple not to assert that in the American governments, too little attention has been paid to the last. The federal constitution

avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Fourthly. The mutability in the public councils, arising from a rapid succession of new members, however qualified they may be, points out in the strongest manner, the necessity of some stable institution in the government. Every new election in the states, is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence, and every prospect of success. The remark is verified in private life, and becomes more just as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once by all prudent people as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him; but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage of the indiscretions of each other. Every nation consequently whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of its wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man who knows what the law is today can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few, over the

industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any manner affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest reared not by themselves but by the toils and cares of the great body of their fellow citizens. This is a state of things in which it may be said with some truth that laws are made for the *few* not for the *many*.

In another point of view great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking; the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce, when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word no great improvement or laudable enterprise, can go forward, which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, toward a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government any more than an individual will long be respected, without being truly respectable, nor be truly respectable without possessing a certain portion of order and stability.

[February 27, 1788]